

[In the Press] The Source Quoted in Pharmacy Today Regarding Supreme Court Case Rutledge v PCMA



Senior Health Policy Researcher [Katie Gudiksen](#) was quoted in the 4/1/2020 Pharmacy Today article [The skinny on the PBM case before the U.S. Supreme Court](#):

“Many people incorrectly equate the term ‘ERISA plan’ with ‘self-funded plans,’” said Katherine L. Gudiksen, PhD, MS, who is senior health policy researcher for The Source on Healthcare Price and Competition, a program associated with the University of California Hastings College of the Law.

“Congress saved any state insurance law from ERISA preemption, so states [are able to] continue to regulate insurance—including health insurance—in the state,” Gudiksen said. “But Congress ‘deemed’ self-funded plans not to be insurance, so ERISA preempts the application of any state insurance law to self-insured plans.” That means state laws don’t protect or apply to patients covered by a self-funded employer—which amounts to approximately two-thirds of Americans who get insurance through their employers.

“ERISA exempts self-funded insurance plans from state regulations,” Gudiksen said.

The Arkansas case is particularly confusing—and many legal scholars would say wrongly decided by the Eighth Circuit Appeals Court—because the state tried to exempt self-funded ERISA plans when it wrote the law. “The decision [by the

Eighth Circuit Court of Appeals] is very terse and nearly completely relies on a similar decision in Iowa, in which the court took a perplexingly broad interpretation of what 'relates to' an employee benefit," Gudiksen said. "The court struck down the whole [Arkansas] law rather than just ruling that it did not apply to self-funded plans—which would [align with] decisions in other areas."

Lower courts have been split in their rulings on cases about PBM regulation, not only in Arkansas but also in Iowa, Maine, the District of Columbia, and North Dakota. If the Supreme Court overturns the Eighth Circuit's Rutledge decision, states will likely have more leeway in regulating reimbursement details for PBMs, Gudiksen said.

The federal government, however, could pass rules that apply to all plans. "Things like surprise billing or adding coverage must be done at the federal level if it is going to apply to those Americans with self-funded insurance."