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Employee Benefits Compliance

State PBM Reporting and Attestation Laws – What's a Self-Funded Plan to Do?

Overview of the Challenge

In the absence of any meaningful federal regulation, over the past few years, states have been extremely active in regulating pharmacy benefit managers (PBMs) and/or employer sponsored pharmacy plans. This has created significant challenges for employer plan sponsors with multi-state operations. The general rule is that where an employer sponsored plan is insured, state law requirements generally apply to the plan by way of the underlying health insurance policy. In the case of self-funded plans, state regulation of health plans is generally preempted by ERISA and not applicable to self-funded plans. State regulation of PBMs and pharmacy plans, however, takes on a number of different forms and approaches, which makes it difficult to determine which state laws are or might be preempted by ERISA, an issue that can only be resolved by litigation.

For example, the Supreme Court held in *Rutledge v. Pharmaceutical Care Management Association* that an Arkansas PBM law was not preempted, but are considering whether to hear another PBM case, *Mulready v. Pharmaceutical Care Management Association*, where the 10th Circuit Court of Appeals concluded that an Oklahoma PBM law is preempted by ERISA. The current posture of state regulation and litigation over this issue makes it extremely difficult for employers sponsoring multi-state, self-funded plans to determine their obligations under these state laws.

Compliance Considerations

Generally, employer plan sponsors should consult with their PBM partners on the right approach, as well as their outside counsel to determine whether a particular state law applies to their plan. Specifically, however, as it relates to a pharmacy plan attestation requirement out of Florida and a reporting requirement out of Arkansas, it is important to note that both laws specifically state they are applicable to self-funded plans and the reporting and attestation processes appear fairly intuitive. Plans with participants in these states should consult with counsel before choosing not to do the reporting. Otherwise, we recommend self-funded plans contact their PBMs to determine what support they will provide for these requirements and visit the respective [Arkansas](#) and [Florida](#) websites for additional information on how to comply.

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