

# HOBBY LOBBY

## Legal

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National Association of Insurance Commissioners  
444 North Capitol Street NW, Suite 700  
Washington, DC 20001

### Statement from Hobby Lobby

As an employer serving 45,000 employees across 47 states, Hobby Lobby has historically relied on the uniformity afforded by ERISA preemption to govern its health and welfare plans.

ERISA promotes continuity and uniformity in benefits administration by preempting “any and all state laws insofar as they may now or hereafter relate to” any ERISA benefit plan. Section 514(a) of ERISA, known as the statute’s preemption provision, is intended to protect plan sponsors and fiduciaries from operating under countless and potentially conflicting state and local regulations on benefits administration.

The variety of state laws that “relate to” an ERISA plan for purposes of Section 514(a) is very broad, and encompasses “all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.” This would apply to both common law and statutory laws. A state law “relates to” an ERISA plan for purposes of Section 514 preemption if it bears either a “reference to,” or a “connection with,” the plan.

It is a core purpose of ERISA to create uniformity and continuity for employers managing benefits across multiple state lines. Until the Rutledge case in 2020, this approach had gone unchallenged. The United States Supreme Court in Rutledge looked at one very narrow Arkansas state law and ultimately concluded that it was not preempted by ERISA. Unfortunately, legislators – and frankly, insurance departments – have used Rutledge to act as if ERISA does not exist at all and pass laws and regulations specifically targeting self-funded employers (under the cloak of laws and regulations supposedly targeting “PBMs”).

This is creating significant challenges for multi-state employers like Hobby Lobby.

The potential deterioration of ERISA preemption and the uniformity it affords for multi-state employers is very concerning.

Below are just a few of the challenges multiple-state employers will face if ERISA does not preempt state law with respect to pharmacy benefit management legislation:

- **Administrative Challenges:**
  - Maintaining consistency and continuity of 47 different state laws for one health and welfare plan impacting 45,000+ employees and their families.
  - Ensuring consistent treatment of all plan members, avoiding potentially discriminatory disparate treatment.
  - Balancing (a) the publicity and expense of filing lawsuits challenging overreaching state laws and regulations, against (b) the need to run a business and managing costs.
  
- **Cost and Sustainability Considerations:**
  - Varying requirements across state lines creates increased complexity that leads to increased costs of administration both internally for the employer, but also for PBMs. This translates to the PBMs increasing their costs that are then passed on to the employer in addition to the employer's increased internal costs.
  - Maintaining the fiduciary obligation to defray reasonable expenses to the plan with varying state laws creating increased administration and oversight. This is exacerbated by some state laws that prohibit plan sponsors from implementing effective cost-containment strategies.
  - Varying limitations on specialty steerage in some states threatens the long-term sustainability of offering employer-sponsored pharmacy benefits.
    - Members in some states could lose access to specialty pharmacy case management and concierge navigators, resulting in reduced quality of care and potential outcomes that lead to the increased likelihood of catastrophic episodes.
    - Loss of efficient, streamlined, processes made available through employer-preferred specialty pharmacies leads to potential depletion of manufacturer cost sharing in states that impose restrictions.
    - Loss of ability to leverage negotiations and steerage to the lowest cost, highest quality pharmacies, leads to increased total cost of care which reduces long-term sustainability.
  - Loss of ability to encourage mail order in markets with limited access threatens the member medication adherence.

We appreciate the opportunity to address the Honorable Commissioners of the National Association of Insurance Commissioners to raise awareness as to the challenges facing multi-state employers with varying state laws specific to Pharmacy Benefit Managers.

Respectfully,



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