PBM Fiduciary Provisions of New California Law Challenged by PBM Trade Association as Preempted by ERISA

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With the passage of Senate Bill 41 (SB 41), signed by Governor Newsom on October 11, 2025, California joins a growing list of states regulating the business practices of Pharmacy Benefits Managers ("PBMs" or, singularly, a "PBM"). SB 41, authored by Bay Area Assemblymembers Scott Wiener and Aisha Wahab, regulates nearly every aspect of a PBM's business practice, including its relationships with pharmacies, drug manufacturers, health insurers, health care service plans—it even contains provisions that apply to self-funded health plans. In so doing, SB 41 makes changes to California's Business and Professions Code, various sections of the Health and Safety Code, and the Insurance Code.

One of the more notable provisions of SB 41, added to the Business and Professions Code, is that a PBM owes a "fiduciary duty" to any self-funded employee benefit plan with which it contracts. This specific provision is now the subject of a lawsuit filed on January 2, 2026, by the Pharmaceutical Care Management Association ("PCMA"), a trade association of PBMs ("the Complaint"). The Complaint, which names the California Attorney General and Director of the California Department of Consumer Affairs, seeks to enjoin this provision on the grounds that it is preempted by the Employee Retirement Income Security Act of 1974 ("ERISA"). Below is an examination of the legal framework, the fiduciary standards requirement of SB 41, the pending PCMA lawsuit and relevant precedent.

ERISA Background

To understand the PCMA lawsuit, it is important to understand fiduciary status and preemption under ERISA.

Under ERISA, whether a person is a fiduciary can be based on the tasks they perform for an ERISA-covered employee benefit plan—that is, it can be a functional inquiry. Specifically, ERISA Section 3(21)(a) states that a person is a fiduciary with respect to an employee benefit plan if they (i) exercise discretion related to the management of the plan or disposition of plan assets; (ii) render investment advice for a fee; or (iii) possess discretion regarding the administration of the plan.[1] A person who performs purely ministerial functions for a plan within a framework of policies, procedures and rules made by other persons is not a fiduciary.[2]

Consequently, whether a PBM (or any other service provider) is a fiduciary with regard to the contractual services they perform for health plans, like pricing or formula creation, is a functional test as to whether they are exercising discretion over the management of the plan or its assets. Courts have reached varying

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conclusions when examining whether a PBM is fiduciary based on the specific duties performed by the PBM and the relevant contractual language.[3] Most PBM contracts contain provisions expressly stating that the PBM is not an ERISA fiduciary, except when they exercise discretion to determine appeals on behalf of the plan.

Fiduciary status is critical, because it triggers ERISA's fiduciary standards, which importantly includes:

- *The exclusive purpose rule*—fiduciaries must act for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan; and[4]
- *The prudence rule*—fiduciaries must act with the care, skill, prudence and diligence that a "prudent man" familiar with such matters would use.[5]

Fiduciaries are also prohibited from entering into "prohibited transactions"[6] and may face civil and financial penalties for breaches of fiduciary duty.

Suffice it to say, if PBMs were universally required to be ERISA fiduciaries it would necessitate a seismic shift in their current business practices and compensation model.

ERISA Preemption

ERISA Section 514 contains a broad preemption clause which states that ERISA supersedes "any and all State laws insofar as they may now or hereafter relate" to any "employee benefit plan" subject to ERISA.[7] ERISA does not preempt state laws that regulate the business of insurance, banking or securities. Under Supreme Court precedent, a state law "relates to" an employee benefit plan if it has an "impermissible connection with" or a "reference to" such a plan.

- *Connection With*—Courts consider whether a state law governs a central matter of plan administration or interferes with a nationally uniform administration.[8]
- *Reference To*—A state law refers to ERISA if it acts immediately and exclusively upon ERISA plans or where the existence of ERISA plans is essential to the law's operation.[9]

Fiduciary Duties Imposed on PBMs by SB 41

SB 41 amends California's Business and Professions Code to apply to any PBM contract entered into or renewed on or after January 1, 2019. For self-insured group health plans, the law specifically states that PBMs have a "fiduciary duty" to a "self-insured employer plan" that includes:

- A duty to be fair and truthful to your client;
- To act in the client's best interests;
- To avoid conflicts of interest; and
- To perform its duties with care, skill, prudence and diligence.[10]

While similar to ERISA's fiduciary requirements, it does not use identical language, or state that the PBM is a fiduciary *under* ERISA.

PMCA's Lawsuit

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PMCA's Complaint, filed in the U.S. District Court for the Central District of California, asserts that SB 41's fiduciary duty provision is preempted by ERISA. PMCA seeks a declaration that this provision is preempted by ERISA and an injunction prohibiting it from being enforced.

PMCA's arguments in favor of ERISA preemption of the fiduciary standards provision for self-funded employer plans center around three main points:

- It makes an impermissible reference to ERISA plans because it specifically references "self-insured employer plans" (i.e., ERISA plans) in the law itself;
- It regulates in a field already fully occupied by federal standards given ERISA comprehensively governs fiduciaries, including who is a fiduciary and under what circumstances fiduciary duties may be delegated, and what is required of a plan fiduciary in protecting beneficiaries and plan assets; and
- It requires plan sponsors to design or structure their plan in a particular way, by requiring that plan sponsors design their benefit plan around the fact a PBM will be considered a "deemed fiduciary" under California law.

The Complaint asserts that absent immediate relief, this provision will "upend existing contracts, compels costly alterations to business practices and exposes PBMs to new litigation risks untethered to ERISA's uniform fiduciary framework."

Relevant Precedent

We have only been able to find one other state, Maine, that has a similar law to SB 41's fiduciary standards provision. While other states, such as Vermont, impose fiduciary standards on PBMs that contract with insured health plans, Maine is the only state we are aware of that imposes a fiduciary standard on contracts with self-funded plans. In 2005, the First Circuit Court of Appeals upheld Maine's Unfair Prescription Drug Practices Act ("UPDPA") against an ERISA preemption challenge.[11] The UPDPA, among other things, imposed on PBMs certain fiduciary duties and "required practices," which duties and obligations are owed to the PBMs' benefits provider customers—labeled "covered entities" under the UPDPA. Among other duties, the UPDPA requires that PBMs "shall notify the covered entity in writing of any activity, policy or practice of the pharmacy benefits manager that directly or indirectly presents any conflict of interest with the duties imposed by this subsection." The UPDPA also compels PBMs to disclose certain financial and pricing information to covered entities.

The PCMA challenged the UPDPA as being preempted under ERISA. In examining the issue, the First Circuit found the following:

- the UPDPA did not circumscribe the ability of plan administrators to structure or administer their ERISA plans.
- the existence of ERISA plans is not essential to the operation of the UPDPA because the UPDPA applies regardless of whether PBMs are serving ERISA plans, because "covered entities" under the UPDPA includes health plans, labor union plans, association plans, insurance companies, HMOs, medical service organizations and the state Medicaid program. If the reference to employee health plans was deleted from the text of the UPDPA, the statute would still be operable.[12]

Trucker Huss Note: Central to the First Circuit's determination that the UPDPA was not preempted was that it applied to other entities, such Medicaid plans and insured plans, not just ERISA plans. Given that the fiduciary standards provision at issue in the lawsuit expressly applies only to "self-insured employer plans" and does not apply to any other entities, it may be harder for California to argue that SB 41 does not make an impermissible

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"reference" to an ERISA plan. However, the analysis will be complicated by the fact that a different section of SB 41 amends the Health and Safety Code to require that PBMs have a fiduciary duty to insured plans, using nearly identical language.[13]

Next Steps

The Attorney General has not yet responded to the Complaint. We anticipate that this will be the first of many lawsuits challenging SB 41 on various legal grounds.

We will keep you apprised as the litigation proceeds.

[1] A person may also be considered a fiduciary by the nature of the position they hold with respect to the plan, such as Trustee or plan administrator, because by the very nature of the position the person would have discretionary authority over the administration of the plan. ERISA Section 402((a) also requires that the written plan document provide for one or more "named fiduciaries" who are responsible for the control and management of the operation and administration of the plan.

[2] See for example, *Chicago District Council of Carpenters Welfare Fund v. Caremark, Inc.* 474 F.3d 464 (7th Cir. 2007); *Moeckel v. Caremark, Inc.,* 622 F.Supp. 2d 663, 682 (M.D. Tenn. 2007); *Negron vs. Cigna Health & Life Ins.,* 300 F. Supp. 3d 341 (D. Conn. 2018).

[3] ERISA Section 404(a)(1)(A).

[4] ERISA Section 404(a)(1)(B).

[5] ERISA Section 406.

[6] 29 U.S.C. §1144(a)

[7] *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 320 (2016).

[8] *Id.*.

[9] Business and Professions Code § 4441(c)(2).

[10] *Pharm. Care Mgmt. Ass'n v. Rowe*, 429 F.3d 294 (1st Cir. 2005)

[11] *Id.* at 304.

[12] Health and Safety Code 1385.0022.

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