

# The PBM Shield

## *ERISA Preemption and the Foreclosure of Pharmacy Competition*

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### **Abstract**

This article presents a doctrinal and economic analysis of how ERISA Section 514 preemption operates as a competitive shield for vertically integrated pharmacy benefit managers. It develops a three-pronged reformulated connection-with test for evaluating PBM regulatory regimes against ERISA preemption challenges, organized around plan identification, functional locus, and substitute federal remedy. The article then proposes four corrective doctrines to close the gap between ERISA's statutory text and its application to pharmacy network conduct, reimbursement methodology, credentialing, and patient access.

The analysis engages the Sixth Circuit's April 2026 decision in *McKee Foods Corp. v. BFP, Inc.* and the Consolidated Appropriations Act of 2026, Pub. L. No. 119-75. It draws on a confidential review of five executed PBM-pharmacy network agreements and on the author's firsthand operational experience negotiating PBM contracts as the founder of a multi-location independent pharmacy. The article advances a structural reform proposal grounded in the legislative purposes of ERISA, the economic mechanics of pharmacy benefit administration, and the antitrust principles applicable to vertically integrated gatekeeper intermediaries.

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### **Keywords**

ERISA preemption; ERISA Section 514; pharmacy benefit managers; PBM regulation; pharmacy network access; pharmacy reimbursement; MAC pricing; spread pricing; healthcare antitrust; vertical integration; managed care; pharmacy law; *McKee Foods Corp. v. BFP, Inc.*; Consolidated Appropriations Act of 2026.

### **Author Note**

Doctor of Pharmacy (University of Tennessee Health Science Center, 2002) and Juris Doctor with a Health Law concentration (University of Tennessee College of Law, 2021). Certified Pharmacy Benefits Specialist. Uniform Bar Examination passed, February 2026. Twenty-plus years of pharmacy operations, executive compliance leadership, and direct PBM network contracting experience, including founding and scaling a multi-location independent pharmacy to approximately twelve million dollars in annual revenue. Has provided PBM regulatory input to Tennessee policymakers.

### **Access to Full Manuscript**

The full manuscript is available for sharing with retaining counsel upon written request and confirmation of conflicts clearance. Inquiries: [chad@volunteerpharmacy.com](mailto:chad@volunteerpharmacy.com).