

April 21, 2022

Mr. Robert Wake  
Chair  
Employee Retirement Income Security Act (ERISA) (B) Working Group  
National Association of Insurance Commissioners (NAIC)  
Executive Office  
444 North Capitol Street, NW  
Hall of the States, Suite 700  
Washington, DC 20001-1509

**Re: Comments on Draft Summary of *Rutledge v. PCMA* & Other Proposed Changes to ERISA Handbook**

Dear Bob:

As one of the consumer representatives to the National Association of Insurance Commissioners (NAIC) who is working with the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup, please accept the following comments on the Draft Summary of *Rutledge v. PCMA*, along with some additional changes that we propose to be made to the NAIC ERISA Handbook.

*Rutledge v. PCMA* Summary

We believe that the NAIC has done an excellent job in crafting a fact-based summary of the Supreme Court case *Rutledge v. PCMA*. The only addition we would suggest is to specifically mention subsequent cases that have been decided by courts relative to what other states have enacted. States such as North Dakota and Oklahoma have enacted PBM laws that challenge ERISA preemption that the courts have upheld. They are current law and we believe they should be specifically mentioned in the handbook.

Additional Changes to the Handbook

Besides adding the summary of *Rutledge v. PCMA* to the Handbook, we believe other parts of it also need to be updated to reflect the decision. They include:

- 1) The **Introduction** should include a sentence referencing *Rutledge*. Currently, it states that ERISA preempts state law in all instances, *Rutledge* changed that for specific circumstances. That should be reflected in the Introduction.
- 2) In the section **Key U.S. Supreme Court Opinions On ERISA's Preemption Provisions**, the introduction to that section as well as the concluding section should mention *Rutledge*. We suggest language such as: "The US Supreme Court in *Rutledge* held that state rate regulations that merely increase costs or alter incentives for ERISA plans without forcing plans to adopt any particular scheme of substantive coverage are not pre-empted by ERISA."

- 3) The **Glossary** of terms should include the terms and definitions of Pharmacy Benefit Manager, contractor or plan designee.

Thank you for the opportunity to submit these comments. Should you have any questions, please contact Carl Schmid, HIV+Hepatitis Policy Institute at [cschmid@hivhep.org](mailto:cschmid@hivhep.org). Thank you very much.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Carl Schmid', is positioned above the typed name.

Executive Director  
HIV+Hepatitis Policy Institute

cc: TK Keen, Chair, PBM Subgroup  
Jennifer Cook, NAIC