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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

COMMONWEALTH OF KENTUCKY, *ex rel*. Russell Coleman, Attorney General,

Plaintiff-Appellee,

v.

EXPRESS SCRIPTS, INC.; ESI MAIL PHARMACY SERVICE, INC.; EXPRESS SCRIPTS PHARMACY, INC.; OPTUMRX, INC.,

Defendants-Appellants.

No. 25-5866

Appeal from the United States District Court for the Eastern District of Kentucky at Lexington.
No. 5:24-cv-00303—Karen K. Caldwell, District Judge.

Decided and Filed: September 18, 2026

Before: SUTTON, Chief Judge; GIBBONS and DAVIS, Circuit Judges.

COUNSEL

ON BRIEF: Christopher G. Michel, Jonathan G. Cooper, Michael J. Lyle, QUINN EMANUEL URQUHART & SULLIVAN, LLP, Washington, D.C., Lisa M. Geary, Gregory P. Graham, QUINN EMANUEL URQUHART & SULLIVAN, LLP, New York, New York, Brian D. Boone, Caitlin Van Hoy, Matthew P. Hooker, ALSTON & BIRD LLP, Charlotte, North Carolina, Matthew P. McGuire, ALSTON & BIRD LLP, Raleigh, North Carolina, for Appellants. Matthew F. Kuhn, John H. Heyburn, Jacob M. Abrahamson, OFFICE OF THE KENTUCKY ATTORNEY GENERAL, Frankfort, Kentucky, Elizabeth Smith, MOTLEY RICE, Washington, D.C., Frederick C. Baker, MOTLEY RICE, Mount Pleasant, South Carolina, for Appellee.

OPINION

SUTTON, Chief Judge. The Commonwealth of Kentucky filed this lawsuit in state court, alleging that a group of healthcare firms contributed to Kentucky's opioid crisis by conspiring with drug manufacturers to increase the supply of prescription opioids. The defendant firms include two Pharmacy Benefit Managers that negotiate with drug manufacturers to provide prescription drug coverage for federal employees. The Pharmacy Benefit Managers removed the case to federal court under the federal officer removal statute. Kentucky moved to remand, arguing that its complaint effectively disclaimed liability for any conduct the firms undertook at the behest of a federal officer. The district court agreed and granted Kentucky's motion. In view of our decision in *Ohio ex rel. Yost v. Ascent Health Services, LLC*, 165 F.4th 999 (6th Cir. 2026), we reverse.

I.

Express Scripts and Optum are Pharmacy Benefit Managers—PBMs, for short. They serve as the prescription drug market's middlemen, the intermediaries between drug manufacturers and health plans. PBMs administer prescription-drug benefits on behalf of their clients, which include federal and commercial plan sponsors. As part of that process, they help their clients develop formularies—lists of prescription drugs that health insurance plans cover—and negotiate discounts, often in the form of rebates, from drug companies seeking to list their products on the PBM's formulary. Express Scripts serves plan sponsors that insure federal workers under the Federal Employees Health Benefits Act. It also provides PBM and mail-order pharmacy services for the Department of Defense's TRICARE program. Optum contracts with the Veterans Health Administration to provide pharmacy benefit services to veterans and their families.

Kentucky sued the PBMs and several related companies in state court. The Commonwealth claims that the PBMs flooded its prescription drug market with opioids, violating state consumer protection law and creating a public nuisance. The PBMs did so,

Kentucky alleges, by negotiating with drug manufacturers to give opioids "preferred placement on national formularies" in exchange for rebates, fees, and other payments. R.30 ¶ 11. Kentucky seeks several forms of relief, including a declaration that the PBMs willfully violated state law, civil monetary penalties, a permanent injunction, and a court order requiring abatement of a public nuisance.

Express Scripts and Optum removed the case to federal court under the federal officer removal statute. *See* 28 U.S.C. § 1442(a)(1). Kentucky moved to remand, and the district court granted its motion. Soon after, this court decided *Ohio ex rel. Yost v. Ascent Health Services, LLC*, 165 F.4th 999 (6th Cir. 2026). In the *Yost* lawsuit against nearly identical defendant PBMs, we rejected Ohio's similar effort to avoid federal jurisdiction by disclaiming its intent to hold the PBMs liable for federally controlled conduct. *Id.* at 1008–09.

II.

Section 1442 allows a state-court defendant to remove a lawsuit against "any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office." 28 U.S.C. § 1442(a)(1). The statute permits removal if the defendant establishes that: (1) he is a federal officer or a person "acting under" a federal officer, (2) the lawsuit targets conduct "for or relating to any act under color of [federal] office," and (3) the lawsuit "involves a colorable federal defense." *Id.*; *Yost*, 165 F.4th at 1004. A notice of removal requires a "short and plain statement of the grounds for removal." 28 U.S.C. § 1446(a). When reviewing a remand to state court, we credit the removing defendant's "plausible factual allegations," *Chevron USA Inc. v. Plaquemines Par.*, 608 U.S. 1, 12 (2026), and give fresh review to a district court's remand order, *Hudak v. Elmcroft of Sagamore Hills*, 58 F.4th 845, 851 (6th Cir. 2023).

The three factors require us to permit removal of this case to federal court.

Person acting under an officer of the United States. The PBMs are persons who acted under an officer of the United States. The PBMs count as "person[s]" under the statute. *Bennett v. MIS Corp.*, 607 F.3d 1076, 1085 (6th Cir. 2010); *see Watson v. Philip Morris Cos.*, 551 U.S. 142, 147–48 (2007). A person acts under a federal officer when he makes "an effort to assist, or

to help carry out" the federal superior's own "duties or tasks," and his relationship to the federal superior is "characterized by 'subjection, guidance, or control.'" *Yost*, 165 F.4th at 1004 (quoting *Watson*, 551 U.S. at 151–52). Such a relationship "typically arises when a private contractor performs a task that the Government itself would [otherwise] have had to perform." *Id.* (alteration in original) (quotation omitted).

The PBMs all "act[ed] under" a federal officer. 28 U.S.C. § 1442(a)(1). Start with Express Scripts. The Federal Employees Health Benefits Act charges the Office of Personnel Management with administering a "comprehensive" health insurance program for federal employees. *Coventry Health Care of Mo., Inc. v. Nevils*, 581 U.S. 87, 91 (2017) (quotation omitted). To discharge that duty, the Office contracts with commercial insurance carriers—the federal plan sponsors—and instructs them to subcontract with PBMs to secure coverage. *See* 5 U.S.C. § 8902(a); *Yost*, 165 F.4th at 1005. Negotiating prescription drug coverage comes with the Office's duty to "negotiat[e] and regulat[e]" federal health plans. *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 683 (2006). If PBMs stopped playing this "key role," *Yost*, 165 F.4th at 1005, the government would have to find its own seat at the bargaining table. In dealing with drug manufacturers on behalf of federal plan sponsors, Express Scripts thus helps the Office "carry out its FEHBA duties" by handling a duty it would otherwise have to perform. *Id.* (quotation omitted); *see Watson*, 551 U.S. at 154.

PBMs are not left to their own devices when they assist with these core federal duties. FEHBA vests the Office of Personnel Management with "broad administrative and rulemaking authority over" the federal employee health insurance program. *Coventry Health*, 581 U.S. at 91. OPM regulations set forth explicit parameters for the contractual relationship between PBMs and federal health plans, and the Office oversees the PBMs' negotiations with drug manufacturers through audits and mandatory disclosure schemes. *See Yost*, 165 F.4th at 1005; *see, e.g.*, 48 C.F.R. §§ 1602.170-16(a), 1604.7201, 1646.201, 1652.204-74, 1652.204-70, 1652.246-70. PBMs that work with federal health plans thus remain subject to the Office's extensive "contractual control" and supervision. *Yost*, 165 F.4th at 1005. That reality suffices to show that Express Scripts acts under a federal officer when it negotiates with drug manufacturers.

Express Scripts also acts under a federal officer when it administers TRICARE benefits for the Department of Defense. *See id.* The TRICARE statute requires the Defense Secretary to "establish an effective, efficient, integrated pharmacy benefits program." 10 U.S.C. § 1074g(a)(1). The Department of Defense, in turn, contracts with Express Scripts to provide pharmacy benefit services for TRICARE members. As *Yost* explained, the TRICARE contract subjects Express Scripts to the Department's "guidance" and "control" at every turn, 165 F.4th at 1005 (quotation omitted)—including in administering TRICARE's uniform formulary, establishing and maintaining a nationwide retail pharmacy network, managing TRICARE members' prescription drug benefits, and dispensing medications through its mail-order pharmacies.

The record reveals a similar relationship of control and supervision between Optum and the Veterans Health Administration. Optum provides PBM services to the Veterans Health Administration and administers the agency's formulary. Optum's contract sets forth specifications for contract performance and requires weekly communication between the company and the agency's representatives. The agency consistently monitors Optum's contract performance, oversees Optum to ensure compliance with the contract's requirements and restrictions, and conducts inspections to evaluate outcomes. All of this shows that Optum, too, acts under federal control in performing these PBM functions.

Because the PBMs' provision of pharmacy benefit services furthers the government's legal obligations and occurs under federal guidance, the PBMs satisfy § 1442's "acting under" prong when they negotiate with drug manufacturers and administer pharmacy benefits for federal health plans. *Id.*

For or relating to any act under federal office. The Commonwealth's complaint challenges conduct "for or relating to" the performance of federal duties. 28 U.S.C. § 1442(a)(1). The phrase "relating to" casts a wide net. It means "to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with." *Plaquemines*, 608 U.S. at 11 (quotation omitted). A lawsuit can relate to federally supervised acts even where the defendant's federal duties neither "specifically required" nor "strictly caused" the challenged conduct. *Id.* For removal purposes, a sufficient connection exists when

the relationship between the defendant's federal duties and his challenged conduct is more than "tenuous, remote, or peripheral." *Id.* at 12 (quotation omitted). And a plaintiff does not sever that relationship simply by "disavow[ing] any attempt to recover based on the defendant's indivisible federal conduct." *Yost*, 165 F.4th at 1008.

Kentucky's lawsuit challenges conduct that relates to an act under color of federal office. The Commonwealth alleges that the PBMs contributed to the opioid crisis by leveraging their position in the prescription drug supply chain to give prescription opioids preferred formulary treatment in exchange for lucrative rebates and fees from drug manufacturers. The connection between that allegation and the PBMs' federally controlled conduct is anything but "tenuous, remote, or peripheral." *Plaquemines*, 608 U.S. at 12 (quotation omitted). As the PBMs point out, there is little to no daylight between their federal and non-federal conduct as it pertains to negotiations with drug manufacturers. The PBMs "deliberately conduct[] a single negotiation on behalf of all of their clients" without distinguishing between federal and non-federal plans. *Yost*, 165 F.4th at 1010. The resulting agreements govern all rebates paid by drug manufacturers to the PBMs; the terms of the discount and fee arrangements do not depend on the plan sponsor's identity, federal or otherwise.

All in all, Kentucky seeks to impose liability based on the PBMs' indivisible federal conduct, just as Ohio did in *Yost*. *See id.* at 1010–11. The Commonwealth's claims as a result straightforwardly "relat[e] to" the work that the PBMs perform for federal agencies. 28 U.S.C. § 1442(a); *Yost*, 165 F.4th at 1010.

Colorable federal defense. The PBMs also raise colorable federal defenses. "A key premise of § 1442 is to permit federal defenses to be tried in federal court." *Yost*, 165 F.4th at 1011; *see Mesa v. California*, 489 U.S. 121, 137 (1989). Because the statute does not require a defendant to "win his case before he can have it removed," *Willingham v. Morgan*, 395 U.S. 402, 407 (1969), a removing party needs only to "raise[] a colorable" federal defense, *Bennett*, 607 F.3d at 1085.

The PBMs advance two colorable federal defenses. They first claim that, under *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988), they are immune from state tort liability for

acts they performed in furtherance of their FEHBA, TRICARE, and VHA contracts. Whether this immunity defense extends beyond the context of military procurement contracts remains an open question in this circuit. But as *Bennett* explained, "it is at least plausible" to conclude that it might. 607 F.3d at 1090. That suffices.

The PBMs also raise colorable federal preemption defenses. Any contract terms of the FEHBA plans that "relate to the nature, provision, or extent of coverage or benefits" displace state law on matters that "relate[] to health insurance or plans." 5 U.S.C. § 8902(m)(1). To the same end, a state law "relating to health insurance, prepaid health plans, or other health care delivery or financing methods shall not apply to any contract entered into pursuant to [TRICARE] by the Secretary of Defense." 10 U.S.C. § 1103(a). The sweeping phrase "relate to," little surprise, conveys "a broad pre-emptive purpose." *Coventry Health*, 581 U.S. at 95–96 (quotation omitted); *see Plaquemines*, 608 U.S. at 11. Kentucky's complaint states that the PBMs violated state law by (among other things) "creat[ing] and offer[ing] national formularies where opioid placement was based on" rebates and fees rather than "the safety and efficacy of the drugs." R.30 ¶ 357. Prescription drugs, including opioids, are a "benefit[]." 5 U.S.C. § 8902(m)(1); *Yost*, 165 F.4th at 1012. Laws that seek to regulate how the PBMs negotiate formulary placement thus arguably have a "connection with" the benefits that FEHBA contracts provide. *Plaquemines*, 608 U.S. at 11; *Yost*, 165 F.4th at 1012. As applied to Express Scripts' provision of pharmacy benefits under TRICARE, a colorable argument likewise exists that Kentucky's laws "relat[e] to health insurance." 10 U.S.C. § 1103(a); *see Yost*, 165 F.4th at 1012.

So too for Optum's preemption defenses. The Employee Retirement Income Security Act preempts state laws that "relate to any employee benefit plan" by having an impermissible "connection with or reference to such a plan." *Rutledge v. Pharm. Care Mgmt. Ass'n*, 592 U.S. 80, 86 (2020) (quotation omitted) (quoting 29 U.S.C. § 1144(a)). The Act expressly preempts laws that require (or forbid) certain benefit plan structures, as well as those that "force an ERISA plan to adopt a certain scheme of substantive coverage." *Id.* at 86–87 (quotation omitted). Here, too, a colorable argument exists that ERISA preempts Kentucky's claims because they take aim at how Optum structures its "standard formulary offerings" for ERISA plans. R.30 ¶ 261; *see Pharm. Care Mgmt. Ass'n v. Mulready*, 78 F.4th 1183, 1198 (10th Cir. 2023) (holding

Oklahoma's PBM regulations ERISA-preempted on similar grounds). To the extent Kentucky law conflicts with federal standards for health plans covered by Medicare Part D, Optum has a colorable argument that the plans preempt the Commonwealth's claims. *See* 42 U.S.C. § 1395w-112(g) (incorporating Medicare Part C's preemption provision "with respect to . . . prescription drug plans" covered by Part D); *Mulready*, 78 F.4th at 1206 (holding that "Part D's standards preempt all state laws concerning Part D plans").

Several courts of appeals have weighed in on some—and in a few cases all—of these issues. Five circuits have concluded that a complaint targeting PBM services performed holistically for federal and non-federal clients necessarily targets federal conduct. *See Puerto Rico v. Express Scripts, Inc.*, 119 F.4th 174, 194 (1st Cir. 2024); *Cnty. of Westchester v. Express Scripts, Inc.*, No. 24-1639, 2026 WL 2589574, at *7 (2d Cir. Sep. 2, 2026); *Cnty. Bd. of Arlington Cnty. v. Express Scripts Pharmacy, Inc.*, 996 F.3d 243, 252–54, 256–57 (4th Cir. 2021); *Griffin v. Optum, Inc.*, 175 F.4th 897, 904–05 (8th Cir. 2026); *Yost*, 165 F.4th at 1006–09. Five circuits have rejected a like-situated government's efforts to sidestep § 1442 by disclaiming reliance on the federally controlled aspects of PBMs' indivisible federal conduct. *See Puerto Rico*, 119 F.4th at 193–94; *Cnty. of Westchester*, 2026 WL 2589574, at *7–8; *West Virginia ex rel. Hunt v. CaremarkPCS Health, L.L.C.*, 140 F.4th 188, 194–96 (4th Cir. 2025); *Griffin*, 175 F.4th at 904–05; *Yost*, 165 F.4th at 1006–09. And two circuits have embraced all of these conclusions in precisely today's setting: government lawsuits arising from the opioid crisis that target the PBMs' indivisible rebate negotiations and formulary placement practices. *See Cnty. of Westchester*, 2026 WL 2589574, at *9; *Griffin*, 175 F.4th at 903–05; *cf. Arlington Cnty.*, 996 F.3d at 252–53, 257 (holding § 1442 satisfied where mail-order pharmacy defendants sought removal based on subcontracts with PBMs to dispense prescription opioids for the TRICARE program).

Kentucky's lawsuit, in sum, relates to the PBMs' federally controlled actions and involves colorable federal defenses. Because Kentucky seeks to impose liability based on indivisible federal conduct, the Commonwealth's disclaimer does not alter our removal analysis. The PBMs properly removed the case under § 1442.

III.

Kentucky disputes little of this. The Commonwealth's main argument on appeal is that, because *Yost* came out after the district court's decision, we should remand the case to the district court to allow it to apply *Yost* in the first instance. We appreciate the point, as that is often what we do. *See Fair Hous. Ctr. of Metro. Detroit v. Singh Senior Living, LLC*, 124 F.4th 990, 993 (6th Cir. 2025). But in cases like this one, where the dispute turns "principally [on] a question of legal theory rather than historical fact," *Yost*, 165 F.4th at 1013, there is little benefit to sending the case back to a factfinder when no material facts remain to be found.

Here, as in *Yost*, the issue is whether the conduct Kentucky seeks to regulate "flows from an integrated system that draws on negotiation on behalf of all of [the PBMs'] clients, federal and commercial alike." 165 F.4th at 1012–13. And here, as in *Yost*, the answer is yes.

Kentucky protests that its allegations are not confined to the indivisible rebate and formulary dynamics we addressed in *Yost*. Because its complaint reaches conduct that *Yost* did not examine—the PBMs' alleged failure to implement diversion controls for opioids dispensed through their mail-order pharmacies, for instance—Kentucky hypothesizes that it could amend the complaint to solve its *Yost* problem on remand. Perhaps yes; perhaps no. But the argument does not change matters either way. Even now, Kentucky remains free (with the district court's leave) to excise from its complaint any claims giving rise to federal jurisdiction. *See* Fed. R. Civ. P. 15(a)(2); *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 25–26, 30 (2025). But as it stands, Kentucky's current complaint targets conduct that supports removal jurisdiction as to each of the relevant claims. The reality that Kentucky could amend the complaint in the future or the reality that the current complaint discusses *other* conduct makes no difference today.

We reverse and remand.