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February 20, 2024

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IMMEDIATE PAST  
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## **RE: Support for Reforming Pharmacy Benefit Managers**

Dear Speaker Johnson, Majority Leader Schumer, Minority Leader Jeffries,  
and Minority Leader McConnell,

In recent years, our offices and other offices of state attorneys general  
have worked to hold Pharmacy Benefit Managers (PBMs) accountable.

The PBMs' original purpose was to protect and negotiate on behalf of  
employers and consumers after pharmaceutical manufacturers were  
criticized for overpricing medications. Unfortunately, in recent years, the  
PBMs have only made the pharmaceutical market more opaque and have  
been a cause of rising drug prices.

A small number of PBMs hold significant market power and are reaping  
abundant profits at the expense of the patients, employers, and  
government payors the PBMs are supposed to help. Pharmaceutical  
buyers and sellers have little choice but to employ PBMs, allowing them  
to extract both monopoly profits from individuals and monopsony profits  
from the market. Moreover, PBMs often dictate reimbursement rates  
and rules to independent pharmacies, making it difficult for many to  
survive.

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**Brian Kane**  
Executive Director

Our offices and other state attorneys general are very concerned about actions taken by PBMs that have unduly raised drug prices for consumers, and we are engaging on the issue on a number of fronts, including investigation, litigation, and advocating for legislative and policy reforms.

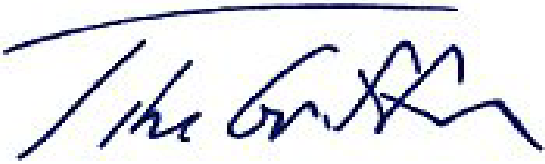
Further, state legislatures have taken action to regulate PBMs with new and amended state laws that are often more stringent than federal law. For example, in 2018 and 2019, respectively, Ohio and Arkansas passed legislation prohibiting spread pricing, in which a PBM charges payors such as Medicare more than they pay the pharmacies supplying the medication, keeping the difference for the PBM. The U.S. House of Representatives also passed legislation barring spread pricing for Medicaid just this month, but it is still awaiting a vote in the Senate.

While state law can provide the basis for oversight of and lawsuits against PBMs, States often face arguments by PBMs that federal jurisdiction and preemption limit states' authority to regulate PBMs. For instance, in response to early State efforts to regulate PBM pricing, a PBM trade association launched a barrage of litigation across the country arguing such regulations were preempted by the Employee Retirement Income Security Act of 1974 and those efforts largely succeeded until, years later, the Supreme Court unanimously rejected that argument in *Rutledge v. PCMA*, 592 U.S. 80 (2020). And now, PBMs routinely try to evade state law and obstruct state regulatory efforts by refusing to disclose data to state regulators as well as their own clients (i.e., health plans operated by employers and the government).

Thus, the FTC and Congress must act to ensure fulsome regulation of PBMs nationwide. Such legislation should reform PBM practices to curtail their ability to unreasonably raise the price of drugs and to require greater transparency. Such transparency should, among other things, require PBMs to produce pricing data to health plans and federal and state regulators in a standardized format. This will enable health plans to negotiate better deals with PBMs and will allow regulators to better hold PBMs accountable.

Proposed legislation to combat high healthcare costs is before Congress and deserves debate and inclusion in much needed reforms. The DRUG Act (S1542/HR6283), Protecting Patients Against PBM Abuses Act (HR2880) and The Lower Costs, More Transparency Act (HR5378), which is in the Senate following recent House passage, are three such bills; and we believe several of the proposals they convey would be an important step toward reforming this industry. With stronger federal law, state and federal regulators can work together to better meet their shared responsibility to hold PBMs accountable and improve the country's health care system overall.

Respectfully,



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Arkansas Attorney General



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