February 20, 2024

The Honorable Mike Johnson  The Honorable Chuck Schumer  
Speaker  Majority Leader  
U.S. House of Representatives  U.S. Senate  
2468 Rayburn House Office Building  322 Hart Senate Office Building  
Washington, D.C. 20515  Washington, D.C. 20510

The Honorable Hakeem Jeffries  The Honorable Mitch McConnell  
Minority Leader  Minority Leader  
U.S. House of Representatives  U.S. Senate  
2433 Rayburn House Office Building  317 Russell Senate Office Building  
Washington, D.C. 20515  Washington, D.C. 20510

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.
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,

Tim Griffin
Arkansas Attorney General

Josh Stein
North Carolina Attorney General

Dave Yost
Ohio Attorney General

Michelle Henry
Pennsylvania Attorney General

Treg R. Taylor
Alaska Attorney General

Kris Mayes
Arizona Attorney General

Rob Bonta
California Attorney General

Phil Weiser
Colorado Attorney General

William Tong
Connecticut Attorney General

Kathleen Jennings
Delaware Attorney General
Brian Schwalb  
District of Columbia Attorney General

Ashley Moody  
Florida Attorney General

Christopher M. Carr  
Georgia Attorney General

Anne E. Lopez  
Hawaii Attorney General

Kwame Raoul  
Illinois Attorney General

Kris Kobach  
Kansas Attorney General

Aaron M. Frey  
Maine Attorney General

Anthony G. Brown  
Maryland Attorney General

Andrea Joy Campbell  
Massachusetts Attorney General

Dana Nessel  
Michigan Attorney General

Keith Ellison  
Minnesota Attorney General

Lynn Fitch  
Mississippi Attorney General
Sean D. Reyes
Utah Attorney General

Charity Clark
Vermont Attorney General

Jason S. Miyares
Virginia Attorney General

Joshua L. Kaul
Wisconsin Attorney General

Bridget Hill
Wyoming Attorney General