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AUGUST 17, 2015

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Drug Middlemen Lobbying Group Sues State of Arkansas

*Group Challenges Arkansas Prescription Drug Law that
Ensures Fair Treatment of Patients and Pharmacies*

Little Rock, Arkansas – The federal lobbying group for the prescription drug middlemen, known as pharmacy benefit managers (PBMs), has filed a lawsuit against the state of Arkansas in United States District Court for the Eastern District of Arkansas. The lawsuit challenges the constitutionality, among other claims, of Arkansas Act 900 of 2015.

Act 900 of 2015 establishes appeals standards for Arkansas pharmacies when the prescription drug middlemen, PBMs, set the reimbursement rates for generic medications below the drug acquisition cost of the pharmacies. PBMs arbitrarily set the pricing for generic medications. Generic drug pricing is completely controlled by the PBMs with the pharmacy having zero idea of how much they will be paid until they process a claim. A recent survey of the pharmacy owner membership of the Arkansas Pharmacists Association indicated during the past year 11% of all of their generic prescriptions processed by PBMs were paid below their acquisition cost of the drug product.

In many instances, PBMs intentionally charge their clients (often large employers) an amount greater than what is paid to the pharmacy. This creates a “spread” and it is a perverse incentive for the PBM to pay the pharmacy as little as possible while continuing to charge their clients much higher rates. This practice was detailed in an in-depth *Fortune* magazine article in October 2013.*

PBMs have created a monopoly on the prescription drug transaction in the American marketplace. They decide which pharmacies are allowed to participate in a network, they set the reimbursement rates for the pharmacies, they process the prescription claims and capture all claims data from pharmacies, and they own their own mail order pharmacies that often aggressively market to patients that use traditional retail pharmacies. In addition to these functions, PBMs also are the middlemen who establish formularies for patients and decide which medications are paid for, typically based on rebate dollars they secure from pharmaceutical manufacturers. Despite the fact that they deal with billions of dollars of other people’s money, the PBMs’ middlemen business practices are virtually unregulated in every state in the US.

“PBMs have accused Arkansas of granting a ‘blank check’ to pharmacies with the passage of Act 900,” Arkansas Pharmacist Association CEO Mark Riley said. “In reality, it’s the PBMs that have given themselves a blank check to choose their own profits through their deceptive practices at the expense of Arkansas employers, pharmacies and consumers.”

Act 900 of 2015 was a necessary law that places basic protections in law for retail pharmacies in Arkansas from the deceptive and predatory pricing behavior of PBMs. By ensuring that pharmacies are not reimbursed below their costs, it ensures patient access to the retail pharmacy of their choice throughout Arkansas. Arkansas’s retail pharmacies, chain and independent, are an integral part of Arkansas’s economy and healthcare delivery system in every county of the state, employing over 9,000 Arkansans and representing almost \$3 billion of annual revenue.

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The Arkansas Pharmacists Association, founded in 1882, is the statewide professional association representing approximately 2,200 pharmacists in Arkansas. APA strives to further the professional advancement of pharmacists, advocate the value of pharmacy, and safeguard the health and well-being of every Arkansan. Its mission is to advance a professional and business environment for Arkansas pharmacists to be successful and fulfilled in serving patients.

*Fortune Magazine, October 10, 2013.