



U.S. District Court sides with state on affordable prescription drug access law

Ruling concerns the 340B program, provides hope for Arkansas patients, hospitals, and Community Health Centers

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In a major victory for Community Health Centers (CHCs) and their patients, a federal judge has upheld a state law aimed at helping to ensure that Arkansas residents have access to affordable prescription drugs.

Judge Billy Roy Wilson of the Eastern District of Arkansas issued an [order](#) this week rejecting the first of two constitutional challenges by the pharmaceutical industry regarding [Act 1103 of 2021](#).

The state law is the first of its kind nationally.

It was passed to shield Arkansas CHCs and other safety net health care providers from drug manufacturers' restrictive policies. The industry has been blocking access to low-cost drugs that the providers would otherwise be entitled to purchase and dispense under a federal drug discount program known as 340B.

"This is wonderful news for CHCs, hospitals and patients across this great state," said Dr. Lanita S. White, chief executive officer of Community Health Centers of Arkansas (CHCA). "This has been a long and difficult fight, but we're in this for the long haul. We're thankful the Arkansas Legislature passed Act 1103 to hold the pharmaceutical industry accountable."

Arkansas is leading the way standing up to the industry in what has been a critical national health care issue for more than two years.

The 340B program was established by federal law in 1992 to help hospitals and clinics serving large numbers of uninsured and underinsured patients obtain the medications they need at no cost to taxpayers.

Starting in the summer of 2020, pharmaceutical manufacturers placed multiple conditions on the sale of 340B drugs across the country. The restrictions not only harm patients but cut revenue from CHCs and certain hospitals. The funds from 340B are used to operate medical programs that benefit at-risk and rural Arkansans.

Responding to the manufacturers' actions, the Legislature overwhelmingly passed, and Gov. Asa Hutchinson signed, Act 1103. CHCA, the Arkansas Pharmacists Association, and the Arkansas Hospital Association each supported the legislation.

Specifically, the law requires manufacturers to ship 340B drugs to community pharmacies that have been contracted by 340B hospitals and CHCs to dispense the low cost drugs on their behalf.

In September 2021, the Pharmaceutical Research and Manufacturers of America (PhRMA) filed suit against the state. PhRMA seeks to strike the section in Act 1103 that protects 340B distribution to these contract pharmacies.

CHCA intervened in the lawsuit to protect the interests of CHCs and their patients. Joining CHCA in the motion to intervene was Piggott Community Hospital, a critical access hospital dependent on contract pharmacies to serve their patients.

"This decision by Judge Wilson offers a path forward for states across the country struggling with how to protect CHCs, hospitals, and their patients from the unilateral and unlawful restrictions adopted by a growing number of drug manufacturers," said William von Oehsen, a principal in the Powers Pyles Sutter & Verville PC firm in Washington, which represents CHCA and Piggott Community Hospital. "This is a victory for hospitals and CHCs, not just in Arkansas, but everywhere."

PhRMA claimed that Act 1103 wrongly asserts state authority over aspects of a federal program.

Wilson rejected PhRMA's argument and sided with CHCA, Piggott Community Hospital, and the Arkansas Insurance Department in defense of Act 1103.

Next, Wilson will consider PhRMA's second constitutional claim against Act 1103, namely, that the statute violates the federal Commerce Clause. The judge has asked the parties to propose a briefing schedule for addressing the second claim. The Insurance Department and the intervenors (CHCA and Piggott Community Hospital) are already preparing their responses.

Last month, Act 1103 was used for the first time when an Arkansas hospital filed a complaint with the Insurance Department asking the agency to invoke its new investigatory and enforcement powers against a drug manufacturer.

The [complaint](#) was filed by White River Medical Center, a hospital in Batesville, against Novo Nordisk Inc. of Plainsboro, N.J. According to the complaint, Novo Nordisk in January 2021 began restricting distribution of drugs under the 340B program through pharmacies that contracted with White River Medical Center, which is part of White River Health.

The hospital has lost more than \$1 million in contract pharmacy revenue as a result of Novo Nordisk's restrictions. Patients have been forced to either change medication or change pharmacies.

About: CHCs are non-profit organizations funded by patient revenue and federal grants meant to expand health care access for low-income, minority, and rural populations. CHCs provide many services including primary care, dental, behavioral health, and health education. CHCA provides advocacy, training, and support for CHCs in Arkansas.

Altogether, **12 CHCs** in Arkansas (including 11 member CHCA organizations) serve more than **285,000 people** a year at more than **190 sites**. Nationally, nearly **1,400** CHCs serve more than **30 million patients** a year.

For more information on Community Health Centers in Arkansas, please visit:

<http://www.chc-ar.org/>

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