

Drug Industry Challenges State Law

Community Health Centers of Arkansas fears its members' budgets would lose a total of \$1 million annually if a drug industry's lawsuit challenging the constitutionality of a state law succeeds.

CHCA, which represents 11 members in Arkansas, filed a motion last month to intervene in a federal lawsuit brought by the **Pharmaceutical Research & Manufacturers of America**. The suit challenges an Arkansas law involving the federal **340B** drug discount program.

Under the program, which **Congress** passed in 1992, drug makers are required as a condition of their participation in the Medicaid and Medicare Part B insurance programs to provide discounts on their drugs to certain health care providers, including those that serve the disadvantaged.

"So it's a lot of low-income individuals who these providers serve," said **Ron Connelly** of **Powers Pyles Sutter & Verville** of Washington, D.C., who is representing CHCA and **Piggott Community Hospital**, which asked to intervene in the case. Its motion to intervene is pending.

"Many of these very small health care providers don't have pharmacies," Connelly said. And Piggott Community Hospital is barred by Arkansas law from having its own pharmacy.

Those providers, however, participate in the 340B drug discount program by ordering the drugs and having them shipped to a local pharmacy, where the patients can pick up their prescriptions.

"And that's been going on for pretty much just as long as the 340B drug discount program has been in place," Connelly said.

But about a year and a half ago, some drug manufacturers began changing their policies and stopped shipping the discounted drugs to the providers' contracted local pharmacies, he said.

"So after several months of this, the federal government started cracking down on these drug manufacturers and ordered them to comply with their obligation to sell discounted drugs to these health care providers, regardless of where the drugs were going to be shipped," he said.

The drug manufacturers started suing the federal government over allegations that they have no obligation to provide discounted drugs when they're going to be shipped anywhere other than to the health provider itself.

Lanita White, chief executive officer of CHCA, said in an affidavit filed in the case that COVID-19 has made things worse for its members.



Law Mark Friedman

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"Many patients have lost insurance and would not have access to critical, life-saving medication without support from the 340B program," she said.

Then stepped in the **Arkansas Legislature**. In May 2021, it approved Act 1103, which says a drug company must ship the discounted drugs to health care providers' contracted local pharmacies. "Arkansas isn't weighing into the pricing issue, which is a federal issue," Connelly said. "The Arkansas law is a distribution law."

In September, PRMA, which represents pharmaceutical research companies, filed suit in U.S. District Court in Little Rock. It wants a judge to say that Act 1103 is unconstitutional because it encroached upon the federal 340B program.

PRMA named **Alan McClain**, commissioner of the **Arkansas Insurance Department**, and Attorney General **Leslie Rutledge**, both in their official capacities, as defendants. An attorney representing PRMA, **Philip Perry** of **Latham & Watkins** of Washington, D.C., didn't return a call for comment.

White said in the affidavit that if the law is declared unconstitutional, CHCA members would have to cut services or trim salaries to make up for the lost drug discount savings and revenue it receives.

The Arkansas Insurance Department set a public hearing last week on the proposed rule to implement Act 1103, but the meeting was scheduled after *Arkansas Business*' deadline.

Connelly said that Arkansas was the first state to pass such a law and believes other states are considering similar legislation.

"We believe that Arkansas is within its rights to regulate drug distribution in this way," he said. "And we expect that the law will be upheld and will open the possibility that other states will enact similar laws."

A bench trial in the PRMA lawsuit is scheduled for Jan. 3, before U.S. District Judge **Billy Roy Wilson**. ■



Lanita White

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- 1. Anchors Away at KATV, KTHV: Courtney, Jaeger Depart**
Amanda Jaeger heads to Walmart Inc.; Alyson Courtney to help her daughters with acting opportunities.
- 2. Walton, Koch Ranked High on List of Richest Women**
Walmart heir Alice Walton worth \$65.3 billion; UCA alum Julia Koch worth \$60 billion.
- 3. Lyon College Plans Dental, Veterinary Schools**
If successful, new schools would make them the first of their kind in Arkansas.
- 4. Arkansas Business Announces 2022 40 Under 40 Honorees**
Annual highlight of the state's rising leaders. See more at arkansasbusiness.com/40.
- 5. Tacos for Life Property Sold for \$4.5M**
Alan Bubbus leads sale of WLR retail/restaurant project to Virginia company.



Judy B.

AR is the only state in the nation without a dental school. It is sorely needed. as I'm sure the Veterinary school is sorely needed as well.



Stan P.

Finally Arkansas will have a Veterinary College. Now people have to go to Starksville MS or Columbia MO for their pets and livestock special needs...



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