

Drug Discount Dispute

Arkansas hospitals fear they'll miss out on millions of dollars if an appeal by pharmaceutical manufacturers is successful.

Page 8

SPOTLIGHT: MUNICIPAL TRENDS



Executive Q&A: Mayor Jennifer Hobbs

The mayor of Wynne says she's amazed at the support her tornado-devastated community has received.

Page 26

MORE INSIDE

City & County Sales Tax Receipts
Pages 15-17

Receiver named for shopping center
Page 3



Staple, the lobby bar at The Louis, serves up drinks for guests of the boutique hotel and visitors to Wilson.

Wilson, Arkansas

Delta Draw

BY GEORGE WALDON
george@abpg.com

The pace of transforming the farm company town of Wilson into an upscale tourism destination picked up significantly this year. The Louis began taking reservations earlier this month, and the initial phase of the boutique hotel hosted its first overnight guest on May 5.

"This is the first of many things happening," said Jeff Kmiec, CEO of Wilson City LLC, which owns 95% of property in the town.

The Grange at Wilson Gardens began

plating meals on May 23, and a May 27 ribbon-cutting was set to mark the ceremonial opening of the Tin House private golf club on the outskirts of Wilson.

More attractions and activities are on tap for the historic northeast Arkansas town once owned by Lee Wilson & Co. and currently home to about 710 residents.

The uptown changes to Wilson's amenity package are part of an ongoing project to reimagine the small Delta com-

WILSON

CONTINUED ON PAGE 12

Clarksville's Bold Move: Hydrogen

• **Already a leader** in municipal solar power, Clarksville has teamed with Syntex Industries in planning the state's first hydrogen plant.

• **The city says** the plan is key to attracting large, energy-hungry employers.

BY KYLE MASSEY
kmassey@abpg.com

In a quarter-century of municipal leadership, Chris Claybaker rarely championed a city project as bold and meaningful as Clarksville's deal to build Arkansas' first hydrogen production and power plant.

The former Camden mayor and Berryville economic developer retired from city government in August and now is a development principal with Syntex Industries LLC, the Little Rock company that announced an agreement with the city of Clarksville this month to build the plant. He described a \$150 million first phase of a three- or four-phase project that could add up to a billion-dollar investment.

"We're really excited about the chance to be part of the energy transition for cities to become carbon neutral," said Claybaker, a former president of the Arkansas Municipal League. "I'm starting to get that sense of accomplishment

CLARKSVILLE

CONTINUED ON PAGE 10

Join us at this year's 40 Under 40 celebration. [P24]

arkansasbusiness.com/40

40/40
Arkansas Business

“The program’s intent is for hospitals to be able to use those savings for whatever that community needs.”

Jodiane Tritt, executive vice president, Arkansas Hospital Association

Dr. Lanita S. White,
chief executive officer
of Community Health
Centers of Arkansas.



STEVE LEWIS

Discount Drugs

Millions at stake for hospitals and health centers

BY MARK FRIEDMAN
mfriedman@abpg.com

Arkansas hospitals and community health centers say they will miss out on millions of dollars for improving patient care if pharmaceutical manufacturers succeed in a case before the 8th U.S. Circuit Court of Appeals.

The appeal involves Pharmaceutical Research & Manufacturers of America’s challenge of Arkansas’ 2021 legislation regulating the federal 340B Drug Pricing Program. The program allows community health centers and about 50 qualified hospitals in Arkansas to buy discounted prescription drugs from manufacturers. Hospitals and community health centers use the money they derive

from the discounted drugs to improve patient care.

Since most Arkansas hospitals are prevented by state law from having an in-house pharmacy, they contract with a pharmacy to dispense the discounted drugs.

That became a concern for drug manufacturers in recent years. PhRMA said that the number of contracted pharmacies has skyrocketed nationwide since 2010.

The 31-member association, based in Washington, D.C., also alleged that the 340B program has drifted away from its intended safety-net purpose. “Instead, it has become less about patients and more about boosting the bottom lines of hospitals and for-profit pharmacies,” according to PhRMA.

“In fact, we’ve seen little to no evidence patients are actually benefiting from the program.”

Jodiane Tritt, executive vice president of the Arkansas Hospital Association, disagreed. “People keep throwing shade at the program by saying hospitals are abusing the program by taking the savings and using them for other things,



Jodiane Tritt

other than passing the savings on to patients,” she said. “The program’s intent is for hospitals to be able to use those savings for whatever that community needs.”

Starting in July 2020, a PhRMA

member declined to provide a drug discount for one of its medications if the drug was distributed to patients at a contract pharmacy, according to a friend of the court brief from the American Hospital Association, Arkansas Hospital Association and 340B Health, a nonprofit that represents hospitals and health systems that participate in the discount program.

The drug manufacturer later expanded its policy to cover nearly all its medications, according to the brief. “Recognizing an opportunity to pad their profits, 20 other major drug companies soon followed suit,” the filing said.

To curb the manufacturers’ attempt to limit the number of contract pharmacies a hospital could use, the Arkansas General Assembly in 2021 passed the 340B Drug Pricing Nondiscrimination Act, Act 1103, which prevents drug manufacturers from limiting where providers can ship their discounted drugs.

Shortly after the act passed, PhRMA sued the Arkansas Insurance Department in U.S. District Court in Little Rock, saying the legislation violates the U.S. Constitution.

In December, U.S. District Judge Billy Roy Wilson of the Eastern District of Arkansas denied PhRMA’s challenge and upheld the constitutionality of the state law. PhRMA has appealed Wilson’s decision.

Dr. Lanita White, chief executive officer of Community Health Centers of Arkansas, applauded Wilson’s ruling.

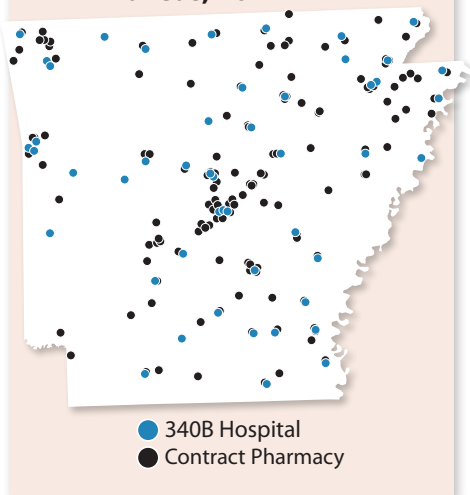
“The 340B program has a significant effect on the budgets of community health centers,” she said. She said the money from the drug program allows CHCs to supplement their budgets and provide medical services, such as dental and prenatal care, to help at-risk and rural Arkansans.

Jefferson Comprehensive Care System Inc., a nonprofit community health center that serves about 8,000 patients in Jefferson and Pulaski counties, receives about 5% of its \$12 million annual budget from the 340B drug pricing program to provide access to health care regardless of a person’s ability to pay, said its CEO, Sandra Brown.

JCCS contracts with about 15 pharmacies, making it convenient for patients to get access to the medications wherever they are, Brown said.

Ben Barylske, CFO of St. Bernards Healthcare of Jonesboro, said 340B money generates millions of dollars annually for the nonprofit system to provide more health services, such as cancer treatment and dialysis, to patients in rural areas.

Locations of 340B Hospitals and Contract Pharmacies in Arkansas, 2022



“All those are very expensive and require very expensive drugs,” he said. “So to be able to help do that, that 340B program is a blessing for us.”

PhRMA's Concerns

In 1992, Congress passed the 340B Drug Pricing Program with bipartisan support.

The program requires pharmaceutical companies to give discounts on drugs to qualifying hospitals that have a disproportionate share of indigent patients compared with the national average and rural health providers in exchange for having their drugs covered by Medicare and Medicaid.

In the early years of the 340B program, the discounted drugs were available to eligible patients through an in-house pharmacy, or if that wasn't available, “through a single outside ‘contracted pharmacy,’” according to PhRMA's filing at the 8th Circuit.

But starting in 2010, after guidance from the Health Resources & Service Administration, a U.S. Department of Health & Human Services' agency, pharmacy chains “started bargaining their way into 340B to profit from the discounts intended to benefit covered entities and the vulnerable populations they serve,” PhRMA said.

It said the number of contract pharmacy arrangements with providers soon soared, with some health care organizations entering into contracts with tens or hundreds of pharmacies across the country, PhRMA said.

When working with a contracted provider, a pharmacy receives a prescription fill fee.

To combat that increase, drug manufacturers then created policies on how they would deliver the discounted drugs to the pharmacies. In some cases, they would allow a hospital to have only one contracted pharmacy.

PhRMA said that judges in other jurisdictions have ruled that the 340B program doesn't require manufacturers to extend discounts to as many contract pharmacies as a provider

wants.

PhRMA said that Arkansas' Act 1103 “requires manufacturers to deliver 340B-discounted drugs to any and all contract pharmacies in Arkansas, without limitations.”

It argues that Arkansas doesn't have the authority to set the conditions for participating in the federal program.

“The Supremacy Clause of the U.S. Constitution does not allow States to alter exclusive and comprehensive federal programs at all, much less in ways that threaten program vitality, as Act 1103 does here,” PhRMA said in its filing.

PhRMA named Alan McClain, the commissioner of the Arkansas Insurance Department, as the defendant in the case because the AID is supposed to enforce Act 1103. The AID has stayed enforcement while the case is pending.

Continued Restrictions

Meanwhile, manufacturers have continued with restrictions to the 340B program, said Jennifer Crask, general counsel at Contract Pharmacy Insight, a 340B consulting company based in Thayer, Missouri.

“More manufacturers have issued their own restrictions or have revised earlier restrictions,” she said. “So that continues.”

Larry Burns, president of CPI, said that the manufacturers are “making their own rules.”

“Very few of them are consistent one with another,” he said. “As an operational matter, it's extremely complicated to manage.”

Brent Beaulieu, chief financial officer for Baptist Health of Little Rock, the largest hospital network in the state, said the manufacturers' restrictions on the 340B program are resulting in missed revenue of between \$1 million and \$1.5 million annually “right now.”



Brent Beaulieu

He said hospitals on eight of nine Baptist Health campuses qualify for the 340B program.

The program resulted in \$3.7 million in revenue in 2022 from contracted pharmacies, and \$15.8 million from discounted drugs for patients who were treated in the Baptist Health hospitals.

Baptist Health uses the money from the program for a variety of projects that include providing free health screenings and expanding care at its rural health clinics.

“We do so much community benefit and charity care and provide things in our communities, largely because we're not for profit,” Beaulieu said. “But in addition, these [340B] funds help us achieve a lot of those things.” ■

FRIDAY | **ELDRIDGE & CLARK LLP**

Reported by *Securities Data Company* – Friday, Eldredge & Clark served as bond counsel on more Arkansas bond issues, aggregating more in principal amount in each year since 1994 than any other firm practicing public finance in Arkansas.

THE LEADER IN BOND COUNSEL SERVICES

FRIDAYFIRM.COM

LITTLE ROCK | ROGERS



Arkansas doesn't
slow down
between issues.

Neither do we.

Stay informed with our Daily Report
and Breaking News emails
delivered directly to your inbox.

SIGN UP AT: arkansasbusiness.com/dailyreport

**Arkansas
Business**

