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CHCA requests voice in drug industry lawsuit against the state

Community Health Centers seek to protect discounts, vital programs for low-income and rural Arkansans

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Community Health Centers of Arkansas today filed a request to intervene in a federal lawsuit with significant implications for health care providers across the state and for patients who can't afford life-saving drugs. It's become a national test case.

Starting in the summer of 2020, pharmaceutical manufacturers placed multiple conditions on a drug discount program called 340B. These restrictions make it harder for the uninsured or underinsured to obtain much-needed medicine to ensure their quality of life.

Additionally, the restrictions cut at least \$1 million a year from the budgets of Community Health Centers across the state, money used to operate medical programs that benefit at-risk and rural Arkansans.

"Manufacturers are literally making profits on the backs of our most vulnerable and financially burdened patients. Their actions are making it much more difficult to keep our clinics open. And, they're doing this in the middle of a pandemic, which is just awful," said Dr. Lanita S. White, chief executive officer of CHCA.

Responding to the manufacturers' actions, the Legislature overwhelmingly passed, and Gov. Asa Hutchinson signed, Act 1103 of 2021. CHCA, the Arkansas Pharmacists Association, and the Arkansas Hospital Association each supported the legislation.

Most notably, Act 1103 requires manufacturers to honor 340B discounts on prescriptions dispensed at community-based pharmacies. Most CHCs don't have in-house pharmacies. They rely heavily upon contract pharmacies to serve the health care needs of their patients.

Act 1103 places the Arkansas Insurance Department in charge of enforcement.

But the pharmaceutical industry is continuing to force some patients to use only one pharmacy that may be dozens of miles away, limiting patient access and choice. Some patients must change their medicine or face the possibility of going without.

On September 29, 2021, in U.S. District Court in Little Rock, the Pharmaceutical Research and Manufacturers of America (PhRMA) filed suit against the Insurance Department and Attorney General Leslie Rutledge in her official capacity. PhRMA seeks to strike the section in Act 1103 pertaining to contract pharmacies. PhRMA alleges the state has no right to regulate the 340B drug program.

CHCA maintains that caselaw is clear that states can help ensure that programs approved by Congress are followed.

"PhRMA wants to circumvent the will of the Arkansas Legislature and Governor. Arkansans deserve better," said William von Oehsen of the Powers Pyles Sutter & Verville firm of Washington, which is representing CHCA in the case. The Steel Wright Gray firm of Little Rock is local counsel.

CHCA is asking U.S. District Judge Billy Roy Wilson to grant a request to intervene. Joining CHCA in the request is Piggott Community Hospital, a critical access hospital

dependent on contract pharmacies to serve their patients. The hospital is also represented by the Powers and Steel firms.

Intervention in the case will allow parties directly affected by the 340B restrictions, such as CHCs, to more fully present their points to the court.

Lawsuits in multiple other states pertaining to 340B restrictions by manufacturers are also pending. No other state has passed a law as strong as Arkansas' Act 1103, but several other states are seeking to follow Arkansas' lead. CHCs across the country have taken a keen interest in the Arkansas case.

Notably, 340B discounts are not funded by the government or taxpayers. Congress set up 340B as a condition for the pharmaceutical industry to participate in the Medicaid and Medicare program. In exchange for participation in that lucrative market, they provide discounts through 340B.

The federal Health and Human Services Department has taken the stance that the drug manufacturers' actions are illegal and contract pharmacy discounts must be honored.

About: CHCs are non-profit organizations fueled 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 **240,000 people** a year at more than **160 sites**. Nationally, nearly **1,400** CHCs serve **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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