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ASSOCIATION OF
ATTORNEYS GENERAL

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February 20, 2024

PRESIDENT-ELECT

John Formella
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The Honorable Mike Johnson
Speaker
U.S. House of Representatives
2468 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Chuck Schumer
Majority Leader
U.S. Senate
322 Hart Senate Office Building
Washington, D.C. 20510

VICE PRESIDENT

William Tong
Connecticut
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The Honorable Hakeem Jeffries
Minority Leader
U.S. House of Representatives
2433 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
317 Russell Senate Office Building
Washington, D.C. 20510

IMMEDIATE PAST
PRESIDENT

Dave Yost
Ohio
Attorney General

RE: Support for Reforming Pharmacy Benefit Managers

Dear Speaker Johnson, Majority Leader Schumer, Minority Leader Jeffries,
and Minority Leader McConnell,

In recent years, our offices and other offices of state attorneys general
have worked to hold Pharmacy Benefit Managers (PBMs) accountable.

The PBMs' original purpose was to protect and negotiate on behalf of
employers and consumers after pharmaceutical manufacturers were
criticized for overpricing medications. Unfortunately, in recent years, the
PBMs have only made the pharmaceutical market more opaque and have
been a cause of rising drug prices.

A small number of PBMs hold significant market power and are reaping
abundant profits at the expense of the patients, employers, and
government payors the PBMs are supposed to help. Pharmaceutical
buyers and sellers have little choice but to employ PBMs, allowing them
to extract both monopoly profits from individuals and monopsony profits
from the market. Moreover, PBMs often dictate reimbursement rates
and rules to independent pharmacies, making it difficult for many to
survive.

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Brian Kane
Executive Director

Our offices and other state attorneys general are very concerned about actions taken by PBMs that have unduly raised drug prices for consumers, and we are engaging on the issue on a number of fronts, including investigation, litigation, and advocating for legislative and policy reforms.

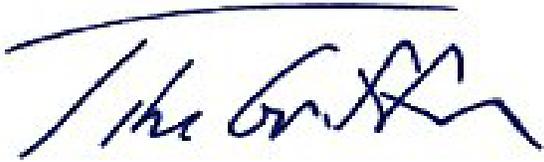
Further, state legislatures have taken action to regulate PBMs with new and amended state laws that are often more stringent than federal law. For example, in 2018 and 2019, respectively, Ohio and Arkansas passed legislation prohibiting spread pricing, in which a PBM charges payors such as Medicare more than they pay the pharmacies supplying the medication, keeping the difference for the PBM. The U.S. House of Representatives also passed legislation barring spread pricing for Medicaid just this month, but it is still awaiting a vote in the Senate.

While state law can provide the basis for oversight of and lawsuits against PBMs, States often face arguments by PBMs that federal jurisdiction and preemption limit states' authority to regulate PBMs. For instance, in response to early State efforts to regulate PBM pricing, a PBM trade association launched a barrage of litigation across the country arguing such regulations were preempted by the Employee Retirement Income Security Act of 1974 and those efforts largely succeeded until, years later, the Supreme Court unanimously rejected that argument in *Rutledge v. PCMA*, 592 U.S. 80 (2020). And now, PBMs routinely try to evade state law and obstruct state regulatory efforts by refusing to disclose data to state regulators as well as their own clients (i.e., health plans operated by employers and the government).

Thus, the FTC and Congress must act to ensure fulsome regulation of PBMs nationwide. Such legislation should reform PBM practices to curtail their ability to unreasonably raise the price of drugs and to require greater transparency. Such transparency should, among other things, require PBMs to produce pricing data to health plans and federal and state regulators in a standardized format. This will enable health plans to negotiate better deals with PBMs and will allow regulators to better hold PBMs accountable.

Proposed legislation to combat high healthcare costs is before Congress and deserves debate and inclusion in much needed reforms. The DRUG Act (S1542/HR6283), Protecting Patients Against PBM Abuses Act (HR2880) and The Lower Costs, More Transparency Act (HR5378), which is in the Senate following recent House passage, are three such bills; and we believe several of the proposals they convey would be an important step toward reforming this industry. With stronger federal law, state and federal regulators can work together to better meet their shared responsibility to hold PBMs accountable and improve the country's health care system overall.

Respectfully,



Tim Griffin
Arkansas Attorney General



Josh Stein
North Carolina Attorney General



Dave Yost
Ohio Attorney General



Michelle Henry
Pennsylvania Attorney General



Treg R. Taylor
Alaska Attorney General



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Ken Paxton
Texas Attorney General

Ariel M. Smith
U.S. Virgin Islands Attorney General

A black ink signature of Sean D. Reyes, written in a cursive style.

Sean D. Reyes
Utah Attorney General

A blue ink signature of Charity Clark, written in a cursive style.

Charity Clark
Vermont Attorney General

A blue ink signature of Jason S. Miyares, written in a cursive style.

Jason S. Miyares
Virginia Attorney General

A blue ink signature of Joshua L. Kaul, written in a cursive style.

Joshua L. Kaul
Wisconsin Attorney General

A blue ink signature of Bridget Hill, written in a cursive style.

Bridget Hill
Wyoming Attorney General

