



DEPARTMENT OF THE ATTORNEY GENERAL

DAVID Y. IGE
GOVERNOR

CLARE E. CONNORS
ATTORNEY GENERAL

For Immediate Release

News Release 2020-24

March 2, 2020

Hawaii Attorney General Joins Bipartisan Coalition in Defending States' Rights to Regulate the Rising Cost of Prescription Drugs

HONOLULU – Hawaii Attorney General Clare E. Connors today joined a bipartisan coalition of 46 attorneys general led by California Attorney General Becerra, in filing an amicus brief in the United States Supreme Court supporting states' rights to regulate and address the rising cost of prescription drugs.

In *Rutledge v. Pharmaceutical Care Management Association*, the attorneys general argue that in order to protect the well-being of consumers, states must regulate pharmacy benefit managers, also known as PBMs. PBMs act as middlemen between pharmacies, drug manufacturers, health insurance plans, and consumers. Their position gives them some power to manipulate the market as they develop and maintain prescription drug formularies, contract with pharmacies, negotiate discounts with drug manufacturers, and process and pay prescription drug claims. Today's brief supports the state of Arkansas' position that federal law does not prevent states from regulating PBMs. The brief argues that regulation of the prescription drug market, including PBMs, is a critical tool for states to protect residents and address the access and affordability of prescription drugs.

"Pharmacy Benefit Managers are middlemen in delivering prescription drugs to our communities," said Attorney General Connors. "Given that role, it is critical that the states maintain their ability to regulate these entities to ensure that our communities have access to affordable medication."

In 2015, the state of Arkansas implemented a law that regulated the reimbursement rates PBMs pay to pharmacies. Under the law, PBMs must raise their reimbursement rate for a drug if that rate falls below the pharmacy's wholesale costs. The law also created an appeals process for pharmacies to challenge these reimbursement rates. The law was challenged by the Pharmaceutical Care Management Association, a PBM trade association, which argued that the Employment Retirement Income Security Act

prevents the state of Arkansas from implementing the law. Arkansas has asked the Supreme Court to reverse a lower court judgment that held the law invalid.

In today's filing, the California-led coalition of attorneys general argue that state laws regulating pharmacy benefit managers are not restricted by federal law. Regulation is critical to the states' ability to improve the transparency of prescription drug marketplaces and to protect consumers' access to affordable prescription drugs, especially those in underserved, rural and isolated communities. To date, nearly every state has enacted laws that regulate PBMs in some way, including 44 new or amended laws in the last five years. In addition, the attorneys general assert that the regulation of pharmacy benefit managers promotes healthcare access and affordability for residents – taking away a state's ability to regulate would create confusion and uncertainty in the market and harm patients.

In filing today's brief, Attorney General Connors joins the attorneys general of: Alabama, Alaska, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin, and the District of Columbia.

A copy of the brief is available [here](#).

#

For more information, contact:

Krishna F. Jayaram
Special Assistant to the Attorney General
(808) 586-1284
Email: atg.pio@hawaii.gov
Web: <http://ag.hawaii.gov>
Twitter: @ATGHlgov