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Hawaii Attorney General Connors Joins a Bipartisan Coalition of 34 Attorneys General in Amicus Brief Supporting the Regulation of Pharmacy Benefit Managers

HONOLULU – Hawaii Attorney General Clare E. Connors joined a bipartisan coalition of 34 attorneys general from across the country, led by Minnesota Attorney General Keith Ellison, in an amicus brief to the Eighth Circuit Court of Appeals in support of North Dakota laws that regulate abusive behavior of pharmacy benefit managers (PBMs). These laws have been challenged by the PBM industry's national lobbying association.

The case, *Pharmaceutical Care Management Association (PCMA) v. Wehbi*, is on remand from the U.S. Supreme Court, which vacated the Eighth Circuit's previous decision that ERISA preempts North Dakota's laws regulating PBMs. The Supreme Court directed the Eighth Circuit to reconsider the case in light of the Supreme Court's December 2020 decision in *Pharmaceutical Care Management Association v. Rutledge*. In *Rutledge*, the Supreme Court rejected the Eighth Circuit's ERISA analysis and held that Arkansas had authority to impose various cost regulations on PBMs: for example, Arkansas could require PBMs to reimburse pharmacies for at least the amount pharmacies pay to acquire a drug, as other states do. Attorney General Connors was one of 46 attorneys general who supported Arkansas in *Rutledge* in an amicus brief to the Supreme Court.

As Attorney General Connors and the coalition wrote in the amicus, they "have an interest in preserving states' authority to regulate companies doing business in their states and in protecting their residents' access to healthcare and shielding them from abusive business practices. To advance these interests, nearly all states regulate pharmacy benefit managers." PCMA's broad approach to federal preemption would "severely impede states' abilities to protect their residents and potentially upend licensing and regulatory structures in nearly every state."

"When transactions between pharmacies and pharmacy benefit managers occur behind closed doors, someone needs to ensure the interests of the consumer are protected," Attorney General Connors said. "The state does this through its regulatory authority and

takes action when PBMs attempt to inflate the cost of medications essential for the health and safety of our residents.”

Hawaii’s laws governing PBMs were enacted in 2015, and regulate many of the same PBM-pharmacy interactions as the North Dakota law at issue in this case. For example, Hawai’i law addresses fees that PBMs can charge pharmacies, disclosures that PBMs must make to contracting pharmacies regarding drug costs, and also requires procedures for pharmacies to appeal a PBM’s reimbursement rates.

Abusive business practices of PBMs

PBMs are intermediaries in the prescription pharmaceutical industry between prescription drug plans, pharmacies, and drug manufacturers. PBMs profit from fees charged to market participants and by reimbursing pharmacies less than the PBM is paid by plans for dispensing medications. PBMs have imposed self-serving protections that reduce reimbursement rates to pharmacies, maximize rebates to PBMs, and impose various confidentiality requirements. For example, PBMs have tried to prevent pharmacies from even telling consumers the actual cost of drugs, while the industry reaps hundreds of billions of dollars annually.

These business practices have harmed consumers, pharmacies, and states. Rural and independent pharmacies have especially struggled to survive when PBMs impose financially unsustainable conditions.

PBMs have been largely unregulated for decades and are still largely unregulated at the federal level. States like North Dakota and others have stepped up and paved the way for PBM regulation to protect consumers and pharmacies.

Background to North Dakota case

In the absence of meaningful federal regulations, North Dakota — like many states — passed laws regulating PBM-pharmacy interactions. The North Dakota laws at issue address several PBM business practices, including regulating certain fees that PBMs can charge pharmacies, what pharmacists may discuss with patients, and which drugs pharmacists are authorized to dispense.

In *Wehbi*, PCMA sued various North Dakota officials, alleging that federal law (ERISA and Medicare Part D) preempt these laws. On cross-motions for summary judgment, the district court rejected nearly all of PCMA’s arguments and ruled in North Dakota’s favor. PCMA appealed to the Eighth Circuit, which held that ERISA preempted North Dakota’s laws. The U.S. Supreme Court has vacated that decision in light of its decision in *Rutledge*. On remand, the 8th Circuit court will decide whether ERISA or Medicare preempts North Dakota’s laws.

Joining Attorney General Connors and Minnesota Attorney General Ellison on the brief are the attorneys general of Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Maine, Maryland,

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Massachusetts, Michigan, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, and Washington.

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

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