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Attorney General Holly T. Shikada joins bipartisan coalition to regulate abusive practices of pharmacy benefit managers

HONOLULU - Attorney General Holly T. Shikada joined a bipartisan coalition of 35 attorneys general from across the country in an amicus brief to the Tenth Circuit Court of Appeals supporting Oklahoma's laws that regulate abusive behavior of pharmacy benefit managers (PBMs). Oklahoma's laws are being challenged in the latest of a string of lawsuits by the PBM industry's national lobbying association, Pharmaceutical Care Management Association (PCMA).

Attorney General Shikada and the bipartisan coalition seek to protect Hawai'i consumers by assuring that Hawai'i and all states can regulate PBMs. The amicus brief to the Tenth Circuit, "states have an interest in preserving states' authority to regulate companies doing business in their states, protecting their residents' access to healthcare, and curbing abusive business practices. To advance these interests, nearly all states regulate pharmacy benefit managers." PCMA's broad approach to federal preemption, however, would "severely impede states' abilities to protect their residents and potentially upend licensing and regulatory structures in nearly every state."

"PBMs have in the past engaged in aggressive practices designed to maximize profits to themselves and end up hurting consumers in the form of unnecessary inflated costs," Attorney General Shikada said. "The states must have the right to protect its consumers by regulating PBMs outside of the scope of ERISA and Medicare."

The brief was filed in the case, *PCMA v. Mulready*, which is the second case to reach a federal court of appeals since the U.S. Supreme Court made clear in *PCMA v. Rutledge* in 2020 that PBMs cannot evade state consumer protection regulations under the cloak of ERISA preemption. In *Rutledge*, the Supreme Court held that ERISA preemption is limited to the questions of who receives benefits and what benefits they receive, rejecting PCMA's challenge to Arkansas's pharmacy-reimbursement regulations. The Department was part of a bipartisan coalition of 46 attorneys general who supported Arkansas in an [amicus brief to the Supreme Court](#).

Following *Rutledge*, in 2021 the Department joined another bipartisan coalition of 34 attorneys general in an [amicus brief to the Eighth Circuit Court of Appeals](#) in support of North Dakota's laws regulating PBMs. In that case, *PCMA v. Wehbi*, the Eighth Circuit agreed with the states that ERISA did not prohibit states from generally regulating PBMs to protect consumers, such as by prohibiting PBMs from imposing conditions on pharmacies that reduced consumer choice and pharmacy access. The court also rejected PCMA's sweeping approach to Medicare preemption and upheld several of North Dakota's laws as applied to Part D health plans.

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 competition, limit prescription medication access, and impose various confidentiality requirements.

These business practices have harmed consumers, pharmacies, and states. Rural and independent pharmacies have especially struggled to survive when PBMs impose financially unsustainable conditions. The PBM industry, however, reaps hundreds of billions of dollars annually.

Regulating PBMs in Hawai'i

Hawai'i law protects consumers from abusive practices in the pharmaceutical industry by requiring PBMs to make certain disclosures to pharmacies, regulating PBMs' "maximum allowable costs," and establishing procedures to allow pharmacies to appeal those costs. The broad preemption arguments that PCMA makes in this case could put Hawaii's PBM regulations at risk.

Joining Attorney General Shikada in filing the brief are Minnesota Attorney General Keith Ellison, who led the bipartisan coalition, and the attorneys general of Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, and Washington.

A copy of the amicus brief can be found [here](#).

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