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ATTORNEY GENERAL RAOUL DEFENDS STATES' RIGHTS TO REGULATE PHARMACY BENEFIT MANAGERS

Chicago — Attorney General Kwame Raoul today joined a bipartisan coalition of 34 attorneys general in filing an amicus brief in support of North Dakota laws that regulate abusive behavior by pharmacy benefit managers (PBMs).

"Pharmacy benefit managers engage in dangerous and unfair business practices that harm consumers as well as pharmacies and contribute to the larger issue of prescription drug access and affordability of," Raoul said. "I am committed to continuing to fight on behalf of consumers to stop unfair conduct by drug companies."

The case, Pharmaceutical Care Management Association (PCMA) v. Wehbi, is on remand from the U.S. Supreme Court, which vacated the 8th Circuit's previous decision that the Employee Retirement Income Security Act of 1974 (ERISA) preempts North Dakota's laws regulating PBMs. The Supreme Court directed the 8th 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 8th Circuit's ERISA analysis and held that Arkansas had authority to impose various cost regulations on PBMs.

PBMs in the prescription pharmaceutical industry are intermediaries 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.

PBMs have been largely unregulated for decades and are still largely unregulated at the federal level. To date, nearly every state has enacted laws that regulate PBMs in some way, including Illinois, which requires PBMs to regularly disclose pricing information.

In today's brief, Raoul and the coalition state that they have an interest in preserving states' authority to regulate companies doing business in their states, protecting their residents' access to health care and shielding them from abusive business practices. To advance these interests, nearly all states regulate pharmacy benefit managers. Raoul and the coalition argue that the PCMA's broad approach to federal preemption of the regulation of PBMs would severely impede states' abilities to protect their residents and potentially upend licensing and regulatory structures in nearly every state.

Joining Raoul in the brief are the attorneys general of Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, 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.