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APRx Files Suit to End Non-Competitive Humana Rx Plan

HOUSTON --- Texas-based **American Pharmacies (APRx)** yesterday filed a federal suit against the **U.S. Department of Health and Human Services** in an effort to stop HHS from allowing illegal, anticompetitive preferred pharmacy provider networks that violate the Medicare Act's mandate for fair competition.

The suit was filed in the Houston Division of the U.S. District Court's Southern District. It names HHS, HHS Secretary Kathleen Sebelius the Centers for Medicare and Medicaid Services and CMS Administrator Donald M. Berwick as defendants.

When Congress added the Part D Prescription Drug Benefit to Medicare in 2003, it included the **"Any Willing Pharmacy Requirement"** to ensure the fair participation of all pharmacy providers: "[a] prescription drug plan shall permit the participation of any pharmacy that meets the terms and conditions under the plan." This **statutory provision** was intended to ensure fair competition among Rx providers and allow patients to maintain pharmacy relationships and pay network prices without switching pharmacies.

However, CMS issued a **"Preferred Pharmacy Rule"** in 2006 allowing Prescription Drug Plans (PDPs) to discriminate among pharmacies in order to steer patients to preferred in-network providers. Although the rule was adopted in 2006, PDPs only recently started creating preferred pharmacy networks. **The Humana-Walmart-Preferred Rx Plan** that took effect in January is the first such large-scale plan, charging far lower patient co-payments for both generic and brand-name drugs than non-preferred pharmacies in the same network are allowed to charge. Humana's PDP allows Wal-Mart to charge a \$2 co-pay for a 30-day supply of preferred generic drugs, compared to \$10 for non-preferred pharmacies in the plan. The Walmart co-pay is \$6 for 90 days of preferred generics; non-preferred pharmacies must charge \$30.

The lawsuit asserts that CMS' network-within-a-network model violates the Any Willing Pharmacy Requirement by allowing preferential treatment of some in-network pharmacies above others. The lawsuit asks the federal court to declare the Preferred Pharmacy Rule illegal and order it set aside.

Because Medicare patients are often a large percentage of a typical pharmacy's sales, the Humana-Walmart plan is already harming community pharmacies and the choices of their patients.

"CMS is ignoring Congress' statutory imperative to keep a level playing field and protect patient choice," APRx President Mike Gohlke said. "The Preferred Pharmacy Rule illegally stifles competition by giving preferential treatment to one provider with whom we can't effectively compete."

American Pharmacies is a multi-state member-owned buying cooperative for independent pharmacies that is based in Corpus Christi. Founded in 2002, APRx is a leading political and legal advocate for members in Texas, Arkansas, Louisiana, New Mexico, Oklahoma, Missouri, Mississippi and Tennessee.

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