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FOR IMMEDIATE RELEASE

July 22, 2026
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Attorney General Griffin Files Suit against Drug Manufacturers for Illegally Limiting Patient Access

Griffin: 'Drug manufacturers embarked on a coordinated campaign to limit patient access while blatantly ignoring Arkansas law. I won't stand for it and am bringing this lawsuit today to ensure Arkansas patients are always put first'

LITTLE ROCK – Attorney General Tim Griffin issued the following statement announcing a lawsuit his office filed to hold drug manufacturers accountable for violating Act 1103 of 2021 and engaging in unconscionable business practices that undermined access to 340B drug discounts in Arkansas:

"Today I am announcing a lawsuit I have filed against 22 defendants: 13 drug manufacturers, their related entities, and one data management firm. Drug manufacturers embarked on a coordinated campaign to limit patient access while blatantly ignoring Arkansas law. I won't stand for it and am bringing this lawsuit today to ensure Arkansas patients are always put first.

"For nearly 35 years, drug manufacturers that participate in Medicare and Medicaid have been required to sell prescription drugs at substantially discounted prices to certain healthcare providers, known as covered entities, under the federal 340B Drug Pricing Program. Many Arkansas hospitals and community clinics rely on the savings from 340B to stretch limited healthcare dollars. Those savings help providers keep clinics open, serve uninsured patients, offer specialty services, and expand care in rural communities.

“The 340B program was established in 1992, and as pharmaceutical companies increased drug prices and the 340B program expanded, the discounts required under the 340B program grew larger. Rather than honoring those discounts, many manufacturers adopted a series of restrictions that made it increasingly difficult for healthcare providers to obtain discounted drugs.

“In response, Arkansas enacted Act 1103 in 2021, the first law in the nation designed to protect healthcare providers’ ability to access 340B discounts through local pharmacies. Drug manufacturers sued to stop Act 1103, but they lost. Instead of simply following the law, manufacturers developed new restrictions that continued to interfere with providers’ access to discounted drugs and the savings those discounts generate for Arkansas patients and communities. Every dollar lost through these restrictions is a dollar that can’t be used for patient care.

“Since Act 1103’s passage, drug manufacturers have failed to comply with its explicit terms for contract pharmacies and instead, actively undermined those protections. Through a series of burdensome and unlawful restrictions, they reduced healthcare providers’ access to 340B savings and the resources available to serve Arkansas patients. This lawsuit seeks to stop these unconscionable practices that are harming healthcare providers, patients, and communities across Arkansas.

“Many Arkansans depend on one or more prescription drugs to maintain their health and quality of life, and they can’t afford the high prices that are passed down when manufacturing companies refuse to follow the law. I am proud to stand up for Arkansas consumers and hold these companies accountable.”

Background

In 1992, the United States Congress enacted the 340B Drug Pricing Program to improve healthcare access for low-income and uninsured patients. Under that program, certain healthcare providers, known as “covered entities,” are entitled to purchase outpatient drugs from drug manufacturers at substantially discounted prices. The discounted drugs lower costs for covered entities and permit them to stretch their resources to reach more eligible patients and provide greater services.

Over time, as the costs of providing 340B discounted drugs increased, drug manufacturers tried to find ways to circumvent their obligations, and therefore their costs, under the 340B Program. One method numerous drug manufacturers used was refusing to provide 340B discounted drugs to covered entities that use contract pharmacies to deliver drugs to their patients. In Arkansas, that restriction prevented most covered entities from obtaining 340B discounted drugs for their patients.

In response to the devastating effects these manufacturer restrictions had on covered entities and healthcare in Arkansas, in 2021, the Arkansas General Assembly passed Act 1103 to protect Arkansas covered entities' access to 340B discounted drugs. Act 1103 was the first state law in the country to make it unlawful for drug manufacturers to prohibit covered entities from using contract pharmacies or to deny 340B drug pricing to contract pharmacies used by covered entities.

Drug manufacturers challenged Act 1103 as unconstitutional and lost, both at the federal district and appellate levels. The companies then sought other ways to restrict covered entities' access to 340B drugs that were not directly prohibited by Act 1103, such as by requiring covered entities to provide claims data or medical data to receive 340B discounted drugs. Each drug manufacturer adopted similar restrictions with little variance. These restrictions changed frequently, making covered entities' compliance with those numerous policies not only burdensome, but practically impossible. Those restrictions directly undermined the public policy embodied in Act 1103.

Arkansas brings this action against 13 drug manufacturers (and related entities) and data management firm Second Sight Solutions, LLC, which assisted these drug manufacturers in their unlawful conduct. The complaint alleges two counts, based on two violations of the Arkansas Deceptive Trade Practices Act. The drug manufacturers and related entities named in the lawsuit are AbbVie, Inc.; Amgen, Inc.; Amgen Manufacturing, Limited; AstraZeneca LP; AstraZeneca Pharmaceuticals LP; Boehringer Ingelheim Pharmaceuticals, Inc.; Bristol Myers Squibb Company; Eli Lilly and Company; Genzyme Corporation; GlaxoSmithKline LLC; Immunex Corporation; Johnson and Johnson; Merck & Co., Inc.; Novartis Ag; Novartis Pharmaceuticals Corporation; Novo Nordisk A/S; Novo Nordisk, Inc.; Pfizer, Inc.; Sanofi-Aventis U.S. LLC; Sanofi S.A.; and Sanofi US Services Inc.

The first count of the lawsuit alleges that the manufacturer defendants imposed unreasonable and unlawful conditions on Arkansas covered entities to receive 340B discounted drugs, and those conditions harmed the covered entities and their patients. In short, the drug companies engaged in unconscionable trade practices that prioritized profits over patients.

The second count alleges that all defendants knowingly facilitated or assisted these unconscionable practices by coordinating and jointly implementing the manufacturers' individual restrictions through use of a web platform operated by Second Sight Solutions, LLC.

The State is seeking civil penalties for each violation of the Arkansas Deceptive Trade Practices Act, injunctive relief prohibiting the continued use of these restrictions in Arkansas, and costs.

To read the complaint, click here.

About Attorney General Tim Griffin

Tim Griffin was sworn in as the 57th Attorney General of Arkansas on January 10, 2023, having previously served as the state's 20th Lieutenant Governor from 2015-2023. From 2011-2015, Griffin served as the 24th representative of Arkansas's Second Congressional District, where he served on the House Committee on Ways and Means, House Armed Services Committee, House Committee on Foreign Affairs, House Committee on Ethics and House Committee on the Judiciary while also serving as a Deputy Whip for the Majority.

Griffin is currently an officer in the Arkansas Army National Guard and holds the rank of colonel. Griffin served as an officer in the U.S. Army Reserve Judge Advocate General's (JAG) Corps for more than 28 years. In 2005, Griffin was mobilized to active duty as an Army prosecutor at Fort Campbell, Kentucky, and served with the 101st Airborne Division (Air Assault) in Mosul, Iraq.

His previous assignments include serving as the Commander of the 2d Legal Operations Detachment in New Orleans, Louisiana; the Commander of the 134th Legal Operations Detachment at Fort Bragg, North Carolina; and as a Senior Legislative Advisor to the Under Secretary of Defense for Personnel and Readiness at the Pentagon. Griffin earned a master's degree in strategic studies as a Distinguished Honor Graduate from the U.S. Army War College, Carlisle Barracks, Pennsylvania.

Griffin also served as U.S. Attorney for the Eastern District of Arkansas, and Special Assistant to the President and Deputy Director of Political Affairs for President George W. Bush; Special Assistant to Assistant Attorney General Michael Chertoff, Criminal Division, U.S. Department of Justice; Special Assistant U.S. Attorney, U.S. Attorney's Office, Eastern District of Arkansas; Senior Investigative Counsel, Government Reform and Oversight Committee, U.S. House of Representatives; and Associate Independent Counsel, Office of Independent Counsel David M. Barrett, In re: HUD Secretary Henry Cisneros.

Griffin is a graduate of Magnolia High School, Hendrix College in Conway, and Tulane Law School in New Orleans. He attended graduate school at Oxford University. He is admitted to practice law in Arkansas (active) and Louisiana (inactive). Griffin lives in Little Rock with his wife, Elizabeth, a Camden native, and their three children.

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