

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

LOUISIANA INDEPENDENT  
PHARMACIES ASSOCIATION

Civil Action No. \_\_\_\_\_

Plaintiff

vs.

EXPRESS SCRIPTS, INC (ESI)

Defendant

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**COMPLAINT FOR DECLARATORY JUDGMENT**

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NOW INTO COURT, through undersigned counsel, comes Plaintiff, Louisiana Independent Pharmacies Association, a Louisiana non-profit corporation with its registered office in the City of Baton Rouge, Parish of East Baton Rouge who respectfully represents the following upon information and belief:

**NATURE OF ACTION**

1.

This is a request for declaratory judgment by the Louisiana Independent Pharmacies Association (LIPA) on behalf of its members against Express Scripts, Inc. (ESI). Pursuant to 28 U.S.C. § 2201-2202, LIPA asks this Court to determine whether or not Medicare preempts La. R.S. § 46:2625 and La. R.S. § 22:1860.1.

2.

La. R.S. § 46:2625(A)(1), as part of Louisiana's Medicaid plan, requires each in-state and out-of-state pharmacy to remit ten cents (\$.10) to the Louisiana Department of Health (LDH) on each prescription filled for a Louisiana citizen. LDH then uses those funds (along

with other fees from other medical providers) to match resources from the federal government to fund the State's Medicaid program.

3.

La. R.S. § 46:2625(A)(2) provides that the “ten cent provider fee” is an allowable cost for purposes of insurance or third party reimbursements. La. R.S. § 22:1860.1 specifically states that a health insurer or its agent has the obligation to reimburse a pharmacy for fees remitted by the pharmacy in compliance with R.S. § 46:2625.

4.

ESI, the country's largest pharmacy benefits manager, takes the position that the “ten cent provider fee” is preempted by Medicare. In a May 12, 2020 communication to Louisiana pharmacies, ESI states that “Due to federal preemption, Express Scripts is not required to reimburse pharmacies the \$0.10 fee for claims paid by Medicare (MA Plans or Part D Plans).”<sup>1</sup> Thus, ESI will not reimburse Louisiana pharmacies this amount (even though Louisiana pharmacies are obligated to remit the ten cents on each prescription it fills, regardless of payor source, to LDH). Presumably, ESI is also not remitting the ten cent fee to LDH on prescriptions its mail order pharmacy fills for Louisiana Medicare recipients either.

5.

Thus, despite the fact that pharmacies are required to remit ten cents to the LDH on every prescription filled, regardless of payor source, ESI refuses to reimburse pharmacies the ten cent fee on Medicare prescriptions, As shown below, the Louisiana Department of

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<sup>1</sup> Exhibit 1, May 12, 2020 “Reminder on the appropriate use of tax submission fields for reimbursement of Louisiana fees and taxes”

Insurance also agrees that the ten cent fee is due and should be reimbursed to pharmacies. The contrary positions taken by LDH and LDI, on the one side, and ESI, on the other, on two specific statutes — La. R.S. § 46:2625 and La. R.S. 22:1860.1 — require the filing of this action since Louisiana independent pharmacies are caught in the middle.

### **THE DEFENDANT**

6.

The defendant in this action is:

Express Scripts, Inc. (“ESI”), a foreign corporation authorized and doing business in this State. ESI is a Delaware corporation with its principal place of business in St. Louis, Missouri, with its principal business establishment in Louisiana at 501 Louisiana Avenue, Baton Rouge, LA 70802.

### **JURISDICTION AND VENUE**

7.

This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

8.

Venue properly lies within this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to this action occurred in this district and ESI is subject to personal jurisdiction with respect to the action in question.

### **LOUISIANA INDEPENDENT PHARMACIES**

9.

LIPA is a member-based organization which advocates on behalf of the needs, issues, and concerns of Louisiana independent pharmacies. Since 2001, LIPA has been providing

services that benefit its membership of independent pharmacies in order to promote and advance the interests of the Louisiana independent pharmacy community.

10.

Louisiana independent pharmacies are small business entrepreneurs as well as multi-dimensional health care providers. Independent pharmacists play a critical role in Louisiana's health care delivery system. Independent pharmacists are focused on improving the overall quality of health care in their communities in order to realize the best possible outcomes. As such, independent pharmacies represent a vital resource to their patients. Oftentimes, the independent pharmacies serve historically underserved or rural areas and are the only healthcare providers in many communities across Louisiana. Louisiana independent pharmacies historically fill 45% of all prescriptions filled in Louisiana.

11.

In furtherance of its mission on behalf of Louisiana independent pharmacies, LIPA seeks a declaration of the rights, status and other legal relations by, between, and among LIPA's members and ESI pursuant to 28 U.S.C. § 2201-2202. A declaratory judgment proceeding will promote the simple, expedient resolution of whether Medicare preempts La. R.S. § 46:2625 and La. R.S. 22:1860.

**OVERVIEW OF THE ISSUES TO BE DECIDED HERE**

12.

The Louisiana Legislature has recognized the important role that pharmacies play in healthcare and has passed numerous statutes that impact Louisiana pharmacies. One such statute is La. R.S. § 46:2625. That statute puts the onus of Louisiana pharmacies to collect ten cents for every prescription filled and to remit that money to the LDH. LDH then uses

those funds to help draw down federal dollars to help fund Louisiana's Medicaid program. But the ten cents is not to come from the pharmacies. Instead that is an allowable cost that is to be reimbursed by plan sponsors. While it is believed that ESI typically reimburses pharmacists for the ten cent fee on most prescriptions, it refuses to do so for Medicare plans, taking the position that Medicare preempts the state statutes. If ESI is correct, the LIPA member pharmacies should not have to remit the ten cent prescription to LDH. If ESI is incorrect, then LIPA member pharmacies should be reimbursed the cent fee on Medicare prescriptions. And ESI should remit ten cents to LDH on each Medicare prescription it fills for Louisiana Medicare recipients. But this Court should rule one way or the other.

### **THE TEN CENT PROVIDER FEE AND ITS PURPOSE**

13.

In 1992, the Louisiana Legislature passed Act 260, which included, among other things, an authorization for LDH to impose fees for healthcare services provided by the Medicaid program on various healthcare providers. The operative provisions of Act 260 became effective on June 10, 1992.

14.

In pertinent part, La. R.S. § 46:2625 A.(1) now reads:

A. (1) The Department of Health and Hospitals is hereby authorized to adopt and impose fees for health care services provided by the Medicaid program on every nursing facility, every intermediate care facility for people with developmental disabilities, every pharmacy in the state of Louisiana and certain out-of-state pharmacies, dispensing physicians, and medical transportation providers. The amount of any fee shall not exceed the total cost to the state of providing the health care service subject to such fee. In addition, the amount of the fees imposed under the rules and regulations adopted shall not exceed the following:

•••

- (c) Ten cents per out-patient prescription.
- (d) Ten cents per out-patient out-of-state prescription.

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