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**LIPA CHALLENGES EXPRESS SCRIPTS IN FEDERAL COURT OVER ALLEGED
UNLAWFUL PREEMPTION OF PROVIDER FEE**

Express Scripts Argues Withholding Medicare Prescription Provider Fee is Legal; Judge Expected to Render Decision in the Coming Weeks

LAKE CHARLES, LA (February 26, 2021) -- Louisiana Independent Pharmacies Association (LIPA) sued Express Scripts, Inc. (ESI) in federal court alleging the nation's second-largest pharmacy benefit manager (PBM) is unlawfully failing to reimburse Louisiana's independent pharmacies a fee it should be paying on Medicare prescriptions dispensed to state residents.

The suit was filed last summer, after Express Scripts issued a provider update in May 2020 announcing it would not reimburse pharmacies the state's mandatory 10-cent provider fee on Medicare prescriptions. Under state law, if the PBM does not pay the fee, the pharmacy must pay or risk falling out of compliance with state regulation. Judge James Cain of the U.S. District Court of Western Louisiana presides over *LIPA vs. Express Scripts*, which seeks to determine the validity of La. R.S. § 46:2625(A)(1), a law requiring in-state and out-of-state pharmacies to collect and remit a 10-cent per prescription "provider fee" to the Louisiana Department of Health (LDH) for every prescription filled for a state resident. LDH allocates the aggregate pharmacy provider fees and other medical provider fees to the State's Medicaid program. Fees collected by LDH are matched by the federal government, thus helping to fund Louisiana Medicaid.

ESI moved to dismiss LIPA's lawsuit, arguing that the Medicare preemption language is clear and that Medicare preempts the state statute requiring the reimbursement.

"Express Scripts used a very broad interpretation of the CMS law to defend their actions, saying Medicare statute preempts them from having to pay the provider fee required by Louisiana state law," said LIPA's attorney J.R. Whaley, principal at Baton Rouge-based Whaley Law Firm. "We believe Medicare statute does not specifically preempt or in any way exempt ESI from its responsibility to pay the provider fee as our state law requires."

While seemingly nominal, the provider fees add up to thousands of dollars per month in state revenues that would also go unmatched at the federal level. Judge Cain heard oral arguments on February 25, 2021 on ESI's Motion to Dismiss. LIPA expects Judge Cain to render a decision in the coming weeks.

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