IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

PHARMACEUTICAL CARE MANAGEMENT ASSOCIATION — **PLAINTIFF**

v. — **CASE NO. 4:15CV00510 BSM**

LESLIE RUTLEDGE, in her official capacity as Attorney General of the State Arkansas — **DEFENDANT**

ORDER

Defendant's motion to dismiss for failure to state a claim [Doc. No. 17] is denied.

I. BACKGROUND

Viewing the record in the light most favorable to plaintiff, the non-moving party, the facts are as follows. Arkansas residents receive their prescription drug benefits through various health plans, including employee benefit plans. Compl. ¶ 17. Pharmacists Benefit Managers ("PBMs") contract with these health plans to administer the health plans' prescription benefits. PBMs also have contracts with pharmacies in all fifty states under which the pharmacies are required to fill the health plans' participants' prescriptions. *Id.* ¶¶ 18, 20. PBMs develop and administer their own unique and confidential Maximum Allowable Cost ("MAC") lists, which they use to set reimbursement rates for pharmacies filling prescriptions for generic drugs and to guarantee pricing terms to the PBMs' customers. *Id.* ¶ 19. A PBM's MAC lists may differ for each of its health plan customers. *Id.* ¶ 27. Moreover, these MAC lists are not specific to the state in which the prescriptions will be

filled, but to the type of health plan in which the beneficiary is enrolled. *Id.* PBMs spend significant time and resources in developing MAC lists. *Id.* ¶ 28.

PBMs and their health plan costumers use MAC list pricing to establish a consistent price for drugs, regardless of the manufacturer, in order to control the cost of such drugs to health plan participants. *Id.* ¶ 26. By placing ceilings on the reimbursements that the PBMs will pay the pharmacies under their agreements, MAC lists seek to motivate and incentivize pharmacies to search for, and purchase, generic drugs at the lowest available prices on the market. *Id.* Pharmacies that contract with PBMs fill prescriptions with drugs purchased from wholesalers or manufacturers. *Id.* ¶ 22. When a health plan participant fills a prescription with a given pharmacy, the pharmacy verifies what health plan is associated with the participant and thereby determines the participant's coverage and co-payment information. *Id.* Subsequently, the relevant health plan's PBM reimburses the pharmacy at a contractually-agreed upon rate, minus the co-pay collected from the participant. *Id.*

The reimbursement prices PBMs use for generic drugs differ from those used for branded drugs. *Id.* ¶ 23. About eighty percent of the prescriptions dispensed in the United States are for generic drugs. *Id.* The MAC methodology is one of the most common ways used by PBMs to pay pharmacies for generic drugs. *Id.* ¶ 24. Almost four-fifths of private employer prescription drug plans use MAC as a cost management tool. *Id.* A MAC list specifies the allowable reimbursement by a PBM for a specific generic drug that is available from multiple manufacturers, but sold at different prices. *Id.* ¶ 25.

On April 2, 2015, the state of Arkansas enacted Act 900 of the 90th general session of the Arkansas General Assembly ("Act 900"). Act 900, which amends Arkansas Code Annotated section 17–92–507, regulating MAC lists, became effective on July 22, 2015. *See* S.B. 688, 90 th Gen. Assemb., Reg. Sess. (Ark. 2015). The relevant revisions to the preexisting MAC lists law are:

(1) Act 900 defines "[p]harmacy acquisition cost" as "the amount that a pharmaceutical wholesaler charges for a pharmaceutical product as listed on the pharmacy's billing invoice." Ark. Code Ann. § 17-92-507 (a)(6).

(2) It provides that a pharmacy benefits manager ("PBM") must:

> [u]pdate its Maximum Allowable Cost List on a timely basis, but in no event longer than seven (7) calendar days from an increase of ten percent (10%) or more in the pharmacy acquisition cost from sixty percent (60%) or more of the pharmaceutical wholesaler doing business in the state or a change in the methodology on which the Maximum Allowable Cost List is based or in the value of a variable involved in the methodology.

Ark. Code Ann. § 17-92-507 (c)(2).

(3) It requires a PBM "to [p]rovide a reasonable administrative appeal procedure to allow pharmacies to challenge maximum allowable costs and reimbursements made under a maximum allowable cost for a specific drug or drugs as: (a) not meeting the requirement of this section or (b) being below the pharmacy acquisition cost." Ark. Code Ann. § 17-92-507 (c)(4)(A)(i).

(4) It requires PBMs to permit the challenging pharmacy to reverse and rebill each claim affected by the inability to procure the drug at a cost that is equal to or less than the

cost on the relevant MAC list where the drug is not available "below the pharmacy acquisition cost from the pharmaceutical wholesaler from whom the pharmacy or pharmacist purchases the majority of prescription drugs for resale." Ark. Code Ann. § 17-92-507(c)(4)(C)(iii).

(5) It provides that a "pharmacy or pharmacist may decline to provide the pharmacy services to a patient or pharmacy benefits manager if, as a result of a Maximum Allowable Cost List, a pharmacy or pharmacist is to be paid less than the pharmacy acquisition cost of the pharmacy providing pharmacist services." Ark. Code Ann. § 17-92-507(e).

Plaintiff Pharmaceutical Care Management Association ("PCMA"), the national trade association representing PBMs, filed this lawsuit on behalf of its members alleging that Act 900: (1) is preempted by the Employee Retirement Income Security Act ("ERISA") and the Medicare Prescription Drug Improvement, and Modernization Act ("MMA"); (2) violates the dormant Commerce Clause; (3) violates the federal and Arkansas contract clauses; and (4) violates the federal and Arkansas due process clause. The attorney general moves to dismiss PCMA's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

II. LEGAL STANDARD

Rule 12(b)(6) permits dismissal when the plaintiff fails to state a claim upon which relief can be granted. To meet the 12(b)(6) standard, a complaint must allege sufficient facts, which when construed as true, entitle the plaintiff to the relief sought. *See Ashcroft v. Iqbal*,

556 U.S. 662, 663 (2009). Although detailed factual allegations are not required, threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, are insufficient. *Id.* In ruling on a motion to dismiss, matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complain may all be considered. *Greenman v. Jessen*, 787 F.3d 882, 887 (8th Cir. 2015).

III. DISCUSSION

A. ERISA Preemption

The attorney general's motion to dismiss is denied because PCMA's complaint sufficiently alleges that Act 900 impermissibly connects with ERISA plans because it disrupts ERISA plan administrators's ability to uniformly administer their plans.

Act 900 is preempted by ERISA if it relates to an employee benefit plan such that it has (1) a connection with or (2) reference to such plan. *Estes v. Fed. Express Corp.*, 417 F.3d 870, 872 (8th Cir. 2005). A state law is preempted because it has a reference to ERISA plans when (1) the law acts immediately and exclusively upon ERISA plans, or (2) when the existence of ERISA plans is essential to the law's operation. *Prudential Ins. Co. of Am. v. Nat'l Park Med. Ctr.*, Inc., 154 F.3d 812, 822 (8th Cir. 1998). PCMA does not allege that Act 900 directly refers to ERISA plans. Importantly, PCMA alleges that Act 900 applies to PBMs' relationships with a broad spectrum of health plans, including but not limited to ERISA plans. As such, it is safe to conclude that Act 900 does not act immediately and exclusively upon ERISA plans. Moreover, Act 900 applies regardless of the existence of

ERISA plans. Accordingly, the existence of ERISA plans is not essential to the operation of Act 900. *See Prudential*, 154 F.3d at 825; *Pharm. Care Mgmt. Ass'n v. Rowe*, 429 F.3d 294, 304 (1st Cir. 2005) (holding that the existence of ERISA plans is not essential to the operation of a state law where the law applies regardless of the existence of ERISA plans, and to a broad variety of health care institutions, including but not limited to ERISA plans). Act 900 therefore does not have an impermissible reference to ERISA plans.

The complaint, however, sufficiently alleges that Act 900 has an impermissible connection with ERISA plans. To determine whether a state law has such a forbidden connection, courts look to "'the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive,' as well as to the nature of the effect of that state law on ERISA plans." *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 147 (2001). "One of the principal goals of ERISA is to enable employers to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits." *Id.* at 148. Uniformity is impossible, however, if plans are subject to different legal obligations in different states. *Id.*

PCMA's complaint alleges that MAC lists are crucial in developing a nationally established network of pharmacies that health plans, including ERISA plans, use to guaranty their participants will fill their drug prescriptions at certain set prices. Accordingly, by allowing pharmacists in Arkansas to decline to fill ERISA plan participants' drug prescriptions at these set prices, Act 900 disrupts the uniformity provided by the PBMs'

network of pharmacies and relied upon by the plans' managers. This may force PBMs to create MAC lists specific to Arkansas, and in turn force ERISA plans to change their administration with regard to their participants filling prescriptions in Arkansas. These allegations sufficiently state a cause of action and the attorney general's motion to dismiss is therefore denied.

B. MMA Preemption

The attorney general's motion to dismiss is denied on PCMA's MMA preemption claim because PCMA's complaint sufficiently alleges that Act 900 is inconsistent with the Centers for Medicare and Medicaid Services' ("CMS") standards, and even if Act 900 was not inconsistent, it specifically regulates MMA plans.

The MMA incorporates the express preemption provision contained in the Medicare Advantage program ("Part C"). *See* 42 U.S.C. § 1395w–112(g); *Do Sung Uhm v. Humana, Inc.*, 620 F.3d 1134, 1148 (9th Cir. 2010). Part C preemption provides that "[t]he standards established under this part shall supersede any State law or regulation (other than State licensing laws or State laws relating to plan solvency) with respect to [MMA] plans which are offered by [MMA] organizations under this part.." 42 U.S.C. § 1395w–26(b)(3). "A 'standard' within the meaning of the [MMA] preemption provision is a statutory provision or a regulation promulgated under the MMA and published in the Code of Federal Regulations." *Uhm*, 620 F.3d at 1149 n. 20.

In its plain language, the statute provides that CMS's standards supersede "any State law or regulation ...with respect to a prescription drug plan offered by a Prescription Drug Plan sponsor ("PDP")." *Uhm*, 620 F.3d at 1149. State laws that are inconsistent with MMA standards are clearly preempted. *Id.* at 1153. Moreover, state laws that are consistent with the MMA may also be preempted when they specifically regulate MMA plans. *See id.* at 1150, 1156; H.R.Rep. No. 108–391, at 557 (2003) (Conf. Rep); 70 Fed. Reg. 4588-01, 4665 (2005).

The parties agree that CMS has developed standards for convenient access to network pharmacies. *See* 42 C.F.R. § 423.120. These standards provide that an MMA "sponsor must have a contracted pharmacy network consisting of retail pharmacies sufficient to ensure that, for beneficiaries residing in each state in a PDP sponsor's service area ...or the entire geographic area of a cost contract, the following requirements are satisfied: (1) that at least 90% of the state's urban resident Medicare beneficiaries live within two miles of a network pharmacy; (2) that at least 90% of the state's suburban resident Medicare beneficiaries live within five miles of a network pharmacy; and (3) that at least 70% of the state's rural resident Medicare beneficiaries live within fifteen miles of a network pharmacy. *Id.*

PCMA's complaint alleges that by empowering Arkansas pharmacies to decline to fill prescriptions at initially contracted prices within the PBMs' pharmacy network, Act 900 allows these pharmacies to violate their contracted obligations to stay within the network. Act 900 thereby allows pharmacies to curtail the pharmacy network created by PBMs for

MMA plan beneficiaries residing in Arkansas, which restricts the convenient access to pharmacies that CMS seeks to achieve. These allegations sufficiently state that Act 900 is inconsistent with CMS's standards. Even assuming these allegations failed to state that Act 900 is inconsistent with CMS's standards, they sufficiently state that Act 900 specifically regulates the size of CMS's required pharmacy network. The attorney general's motion to dismiss is therefore denied.

PCMA's complaint also alleges that CMS has developed a "negotiated price" standard to determine the MMA plan's reimbursement costs and that Act 900 acts with respect to that standard to the extent that it sets reimbursement levels at pharmacy acquisition cost. The attorney general, however, contends that CMS's "negotiated price" standard is merely a reporting standard, not a reimbursement standard. The attorney general's motion to dismiss is denied because, at the motion to dismiss stage, PCMA's allegations must taken as true and viewed in the light most favorable to PCMA.

C. Dormant Commerce Clause

The attorney general's motion to dismiss is denied on this claim because PCMA's complaint sufficiently alleges that Act 900 imposes a burden on interstate commerce.

The dormant Commerce Clause applies to state laws regulating activities that have a substantial effect on interstate commerce such that Congress could regulate the activities. *Nat'l Ass'n of Optometrists & Opticians LensCrafters, Inc. v. Brown*, 567 F.3d 521, 524 (9th Cir. 2009). "A state law that is challenged on dormant Commerce Clause grounds is subject

to a two-tiered analysis." *S. Dakota Farm Bureau, Inc. v. Hazeltine*, 340 F.3d 583, 593 (8th Cir. 2003). Courts must first consider whether the challenged law discriminates against interstate commerce. *Id.* If it does not, courts move to the second inquiry, which is to determine whether the law imposes a burden on interstate commerce that is clearly excessive in relation to its putative local benefits. *Id.*

Discrimination in this context is a differential treatment of in-state and out-of-state economic interests benefitting the former while burdening the latter. *Waste Sys., Inc. v. Dep't of Envtl. Quality*, 511 U.S. 93, 99 (1994). A regulation can discriminate against out-of-state interests (a) facially, (b) purposefully, or (c) in practical effect. *Hazeltine*, 340 F.3d at 593. The plaintiff has the burden of proving discrimination. *See id.* PCMA's complaint does not allege that Act 900 discriminates against interstate commerce either facially, purposefully, or in practical effect. Therefore, the only question is whether it sufficiently alleges that Act 900 imposes a burden on interstate commerce that is clearly excessive in relation to its putative local benefits.

A party challenging a state law under the dormant Commerce Clause must show that the law's burden on interstate commerce exceeds its local benefit. *Hampton Feedlot, Inc. v. Nixon*, 249 F.3d 814, 818 (8th Cir. 2001). In concluding that a regulation burdens interstate commerce, the essential inquiry is whether the regulation imposes a burden on interstate commerce that is such that it severely impedes the smooth flow of commerce between the states. *Burlington N. R. Co. v. State of Neb.*, 802 F.2d 994, 1000 (8th Cir. 1986).

PCMA's complaint alleges that MAC lists implicate the interstate prescription drugs market because many health plans rely on the same MAC lists for beneficiaries both inside and outside of Arkansas. *Id.* ¶ 69. Accordingly, the complaint alleges that Act 900 disrupts the uniformity of the interstate costs of prescription drugs because it requires that every PMB doing business in Arkansas sets MAC lists pricing to match pharmacy acquisition costs as defined by the Act. *Id.* ¶ 70. By doing so, Act 900 disrupts the ability of beneficiaries living outside of Arkansas but traveling for work in Arkansas to fill their prescription at a uniform price. *Id.* ¶ 70–71. These allegations are sufficient to state that Act 900 burdens interstate commerce. *See Cotto Waxo Co. v. Williams*, 46 F.3d 790, 794 (8th Cir. 1995) (holding that the disruption of interstate flow of a product is a burden on interstate commerce).

The remaining issue is to determine whether PCMA's complaint sufficiently alleges that Act 900's burden on interstate commerce exceeds its asserted local benefits. PCMA's complaint alleges that Act 900's local benefits are illusory or minimal at best. It further alleges that, on the contrary, the cost of the increase in prescription drugs prices will ultimately be borne by Arkansas insurers, employers, and consumers. *See* Compl. ¶ 72. On the other hand, the attorney general contends that Act 900 will benefit Arkansas residents because it is designed to help pharmacies remain in business, thereby offering these residents the ability "to obtain life-sustaining prescription drugs locally and conveniently." *See* Br. Supp. of Att'y Gen's Mot. to Dismiss, Doc. No. 18.

Although courts should not second-guess legislative judgment regarding the importance of non-illusory safety justifications in comparison with related burdens on interstate commerce, see *Kassel v. Consol. Freightways Corp. of Delaware*, 450 U.S. 662, 670 (1981), the parties' conflicting allegations regarding Act 900 asserted justification cannot be properly considered without hearing evidence on the issue. *See Burlington N. R. Co.*, 802 F.2d at 1000–01 (holding that this inquiry necessarily involves a sensitive consideration of the weight and nature of the state regulatory concern in light of the extent of the burden imposed on the course of interstate commerce). Dismissal is therefore inappropriate at this stage.

D. Federal and State Contract Clauses

The attorney general's motion to dismiss is denied on this claim because PCMA's complaint sufficiently alleges that Act 900 substantially impairs PMBs' contractual relationships. Further, it would be improper at this stage to consider the attorney general's asserted legitimate public purpose for the Act.

The federal and state constitutions employ identical language forbidding the enactment of laws impairing contractual obligations. *E. Poinsett Cnty. Sch. Dist. No. 14 v. Massey*, 866 S.W.2d 369, 371 (Ark. 1993). Therefore, a similar analysis can be done to determine whether Act 900 violates the federal and state contract clauses. *See Equip. Mfrs. Inst. v. Janklow*, 300 F.3d 842, 849–50 (8th Cir. 2002). The determination involves a three-part inquiry. *Hawkeye Commodity Promotions, Inc. v. Vilsack*, 486 F.3d 430, 436 (8th

Cir. 2007). The first question is whether the state law, in fact, is a substantial impairment on pre-existing contractual relationships. *Id.* The second and third questions come into play only if a substantial impairment exists. *Id.* at 438. The second question is whether the state has a significant and legitimate public purpose for the regulation. *Id.* If it does, "[th]e third question is whether the adjustment of the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption." *Id.* at 439.

1. Substantial Impairment

PCMA's complaint sufficiently alleges that Act 900 substantially impairs PBMs' preexisting contracts. Whether a statute substantially impairs a preexisting contractual relationship depends on: (1) whether a contractual relationship exists; (2) if it does, whether a change in law impairs that relationship; and (3) whether the impairment is substantial. *Vilsack*, 486 F.3d at 436. The parties agree that there are contractual relationship between PBMs and Arkansas pharmacies ("pharmacies contract") that are affected by Act 900. Additionally, PCMA's complaint sufficiently alleges the existence of contractual relationships between PBMs and health plans and employers ("customers contracts"). The remaining questions are whether Act 900 impairs the pre-existing PMBs' contracts, and whether that impairment is substantial.

(a) PCMA's complaint sufficiently alleges that Act 900 impairs PBMs' preexisting contractual relationships.

For this prong, courts must identify what contractual rights, if any, have been impaired. *Janklow*, 300 F.3d at 851. PCMA's complaint sufficiently alleges that Act 900 impairs several terms within pharmacies and customers contracts, including (1) guaranteed dispensing terms, (2) agreed upon pricing structures, and (3) appeals procedures. First, PCMA alleges that Act 900 disrupts guaranteed dispensing terms because it allows pharmacies to refuse to fill the prescriptions of health plans' participants within a pharmacy network. As such, Act 900 allows pharmacies to violate their contractual obligations to dispense drugs within the network pursuant to the pharmacies contracts. Moreover PCMA alleges that Act 900 disrupts their customers contracts because it precludes PBMs's ability to rely on the pharmacy network to guarantee these customers that their participants can get their prescriptions filled by every pharmacy within the network.

Second, PCMA's complaint alleges that MAC lists define the prices set forth in pharmacies and customers contracts. It further alleges that price is a fundamental element of these contracts. Accordingly, it contends that Act 900 impairs these contracts because it eliminates PBMs' ability to rely on MAC lists. Third, PCMA's complaint alleges that Act 900's new appeals procedure disrupts the appeals procedures set forth in the contracts between PBMs and pharmacies. Taken as true, these allegations are sufficient to state that Act 900 impairs PMBs' contractual relationships.

(b) PCMA's complaint sufficiently alleges that these impairments are substantial.

Whether an impairment is substantial depends on the extent to which the parties' reasonable contractual expectations have been disrupted. *Vilsack*, 486 F.3d at 437-38. "Reasonable expectations are affected by the regulated nature of an industry in which a party is contracting." *Id.* Accordingly, courts should consider whether the types of contracts or relationships at issue have been the subject of regulation. *Holiday Inns Franchising, Inc. v. Branstad*, 29 F.3d 383, 384 (8th Cir. 1994). This is the case because "a party's evaluation of the possibility of interference is reflected in the negotiated price, and thus, the value of performance to [that party] is not reduced, if [the party] can more or less accurately value the risk of that interference." *Id.* at 385. Previous regulation, however, does not automatically foreclose the possibility that a contract is substantially impaired. *In re Workers' Comp. Refund*, 46 F.3d 813, 820 (8th Cir. 1995). It is critical to determine how concisely an industry is regulated because there is no substantial impairment if the previous regulation was sufficiently pervasive so as to destroy all reasonable contractual expectations. *Id.*

As discussed in subsection (a), PCMA sufficiently alleges that Act 900 substantially impairs PBMs' contractual relationships. PCMA alleges that PBMs have reasonable expectations that pharmacies within a specific network will fill plan participants' prescription drugs at the price set forth in the pharmacies contracts and customers contracts and determined by MAC lists. PCMA sufficiently alleges that by allowing these pharmacies to refuse to fill plan participants' prescriptions, Act 900 substantially impairs pharmacies contracts and customers contracts. Although MAC lists were regulated by Act 1194, PCMA

alleges that the previous Act was not pervasive enough to destroy PBMs' expectations as set forth above. Although the attorney general disputes PCMA's allegations, and contends that based on Act 1194, PBMs should have foreseen the amendments set forth by Act 900, resolution of this conflict is not proper at this stage.

2. Legitimate Public Purpose and Basis for Adjusting Contractual Rights

When substantial impairment of contracts exists, the burden shifts to the state to demonstrate a significant and legitimate public purpose for its legislation. *In re Workers'*, 46 F.3d at 820. In that the complaint alleges sufficient facts to call into question Act 900's asserted public purpose, see *supra* Part C, this inquiry should not be resolved by a motion to dismiss. *See Nat'l Educ. Ass'n-Rhode Island by Scigulinsky v. Ret. Bd. of Rhode Island Employees' Ret. Sys.*, 890 F. Supp. 1143, 1163 (D.R.I. 1995); *New York State Corr. Officers & Police Benev. Ass'n, Inc. v. New York*, 911 F. Supp. 2d 111, 144 (N.D.N.Y. 2012) (holding that a court is not bound to accept a state's legitimate public purpose on a motion to dismiss). Further, without determining whether Act 900 has a legitimate public purpose, it is impossible to determine whether the adjustments of the contractual rights and responsibilities are reasonable. The attorney general's motion to dismiss is therefore denied.

E. Federal and State Due Process Clauses

The attorney general's motion to dismiss is denied on this claim because PCMA sufficiently alleges that Act 900 fails to give PBMs adequate notice of when their actions become unlawful. A legislation is void for vagueness under due process analysis if it does

not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *Reinert v. State*, 71 S.W.3d 52, 54 (Ark. 2002). To defeat a vagueness challenge, a statute must (1) provide adequate notice of the proscribed conduct, and (2) not lend itself to arbitrary enforcement. *United States v. Birbragher*, 603 F.3d 478, 485 (8th Cir. 2010); *Abraham v. Beck*, 456 S.W.3d 744, 753 (Ark. 2015). A more stringent vagueness test applies to laws that infringe upon fundamental rights, and a less stringent standard for laws that merely regulate business activity. *Abraham*, 456 S.W.3d at 753.

Act 900 requires that a PBM updates its MAC lists no more than seven days after an increase of ten percent or more in pharmacy acquisition costs from sixty percent of wholesalers doing business in Arkansas. Ark. Code Ann. § 17-92-507 (c)(2). PCMA's complaint alleges that PBMs have no ability to obtain such information. Accordingly, PCMA alleges that because PBMs have no way of knowing when they become obligated to update their MAC lists, they have no way of knowing when they are in violation of this provision of Act 900. Regardless of whether a lesser or stricter vagueness standard applies, these allegations sufficiently state that Act 900 fails to provide PBMs adequate notice of when their conduct becomes unlawful. The attorney general's motion to dismiss is therefore denied.

IV. CONCLUSION

For these reasons, the attorney general's motion to dismiss [Doc. No. 17] is denied.

IT IS SO ORDERED this 25th day of November 2015.

UNITED STATES DISTRICT JUDGE