

Opinion No. 2021-082

August 4, 2022

The Honorable John Payton
State Representative
P. O. Box 181
Wilburn, AR 72179-0181

Dear Representative Payton:

This is in response to your request for an opinion from this office concerning the Arkansas Unfair Practices Act, codified at Ark. Code Ann. § 4-75-201, *et seq.* (Repl. 2011 and Supp. 2021), as it relates to pharmacy benefits managers, pharmaceutical manufacturers, and insulin rebates. In this regard, you have asked the following questions:

- 1) Can a pharmacy benefits manager or a pharmaceutical manufacturer be in violation of the Unfair Practices Act due to the insulin rebates received in this state?
- 2) Are insulin rebates offered by pharmaceutical manufacturers “unearned discounts” under § 4-75-208(a)?

RESPONSE

I must respectfully decline to issue an opinion on your questions because of pending litigation, the outcome of which could directly affect the issues you have raised.¹ It is the long-standing policy of the Attorney General’s office, as a member of the

¹ See *State of Ark. ex rel. Rutledge v. Eli Lilly and Co., et al.*, No. 4:22-CV-00549 (E.D. Ark. originally filed in Pulaski Cir., 17th Div., May 11, 2022).

executive branch, to decline to issue opinions on matters that are pending before the courts for resolution.²

I regret that I cannot be of assistance in this matter. Please do not hesitate to contact me if I may be of future assistance in some other respect.

Sincerely,

LESLIE RUTLEDGE
Attorney General

² See, e.g., Ops. Att’y Gen. 2016-027, 2015-140 (and opinions cited therein).