

ARKANSAS INSURANCE DEPARTMENT

**IN RE ACT 1103 OF 2021
PHARMACEUTICAL RESEARCH &
MANUFACTURERS OF AMERICA**

AID ORDER # 2021- 50

ORDER ON DECLARATORY PROCEEDING IN RE ACT 1103 OF 2021

Comes now the Arkansas Insurance Department (“Department”), by and through its attorney, Booth Rand, and, for its Order, states the following findings:

1. On July 29, 2021, in AID Order #2021-37, the Department granted a request for a Declaratory Ruling from the Pharmaceutical Research and Manufacturers of America (“PhRMA,” hereafter, “Petitioner”) pertaining to reviewing the State’s ability to enforce two provisions in Act 1103 of 2015, the “340B Drug Pricing Nondiscrimination Act” (hereafter, “Act 1103”) enacted by the Arkansas Legislature: Ark. Code Ann. § 23-92-604(c)(1) and Ark. Code Ann. § 23-92-604(c)(2).

2. During the course of the Declaratory proceeding at the Arkansas Insurance Department (“Department”), Petitioner filed for declaratory relief in United States District Court for the Eastern District of Arkansas, in No. 4:21-cv-864-BRW, seeking declaratory rulings pertaining to the validity of Ark. Code Ann. § 23-92-604(c)(1) and Ark. Code Ann. § 23-92-604(c)(2).

3. On October 5, 2021, Petitioner, in the Department proceeding, filed “Petitioner’s Notice Regarding Need For Hearing on September 29, 2021 Brief and Further Stay,” withdrawing its request for a hearing and an additional stay.

4. The Arkansas Insurance Commissioner (“Commissioner”) finds that a duplicate or parallel declaratory proceeding is not legally feasible given that any ruling by the United States District Court would ultimately be controlling over any ruling made in the Department declaratory proceeding.

WHEREFORE, the Commissioner shall expire the Department proceeding on October 26, 2021, and shall temporarily continue the stay on enforcement of Act 1103, sections: Ark. Code Ann. § 23-92-604(c)(1) and Ark. Code Ann. § 23-92-604(c)(2) until October 26, 2021, as ordered in AID Order #2021-37, all pending actions or requirements Ordered in the Department proceeding, including briefing on issues, are ended on the date this Order is signed.

10-58021
DATE

Alan McClain
ALAN McCLAIN
Insurance Commissioner
State of Arkansas