**Illinois Attorney General Kwame Raoul**
**Written Testimony for October 29, 2024**
**Senate Judiciary Committee Hearing on Prescription Drug Pricing**

## Overview of Issue

Good morning. Thank you, Chairman Durbin, for inviting me to speak on this important issue.

As Attorney General, I take seriously my office's fundamental function to protect the health and wellness of Illinois residents. High prescription drug prices harm Illinois patients by obstructing access to treatments needed to sustain their health and wellbeing. Without access to affordable medications, medical conditions worsen, patients' overall health outcomes decline, and for some patients it can be fatal.

According to the U.S. Department of Health and Human Services, from January 2022 to January 2023, more than 4,200 drug products had price increases, of which 46% were larger than the rate of inflation. With these ever-increasing costs, patients may stop taking critical medications as prescribed or eventually abandon treatment altogether.

In addition to the direct burden on Illinois consumers, high prescription costs also impact States because they are significant payors of health care services. State dollars pay for prescription drugs used by state employees and their dependents, people housed by corrections, and Medicaid beneficiaries. In Illinois, about 3.9 million people are enrolled in Medicaid.

Pharmaceutical companies and Pharmacy Benefit Managers (PBMs) must be more transparent about their pricing and business practices. They should also be held accountable for unnecessary and overly burdensome increases in the prices of prescription drugs. The original purpose of PBMs was to negotiate on behalf of employers, government payors, and consumers to minimize overpricing by manufacturers. Instead, PBMs have made the pharmaceutical market more opaque by driving up prescription drug prices.

My office and those of other state attorneys general have worked to hold PBMs accountable. However, before expounding on the actions my office has taken, I do have to mention that the scope of what I can share and answer is limited. Due to litigation and investigations that are subject to confidentiality agreements, I am restricted from commenting on certain pending matters.

I want to emphasize that I have used multiple tools available to go after bad actors in the industry. We have used our authority under the Illinois Consumer Fraud and Deceptive Business Act, the Illinois False Claims Act, and Antitrust laws to target the prescription affordability crisis from every possible angle.

**Pharmacy Benefit Managers (PBMs)**

PBMs profit from fees charged to market participants and by reimbursing pharmacies less than the PBM is paid by plans for dispersing medications.

We believe PBMs have engaged in practices that drive up their own profits at the expense of patients and the State actors who have contracted with them. My office has uncovered practices that have allowed PBMs to largely overcharge State agencies through their contracts with the State, and I have been successful in bringing money back to Illinois through these investigations.

As a PBM for Illinois' Medicaid program, a Centene subsidiary, Envolve, and other subsidiaries delivered pharmacy benefits to Illinois state agencies, such as the Illinois Department of Healthcare and Family Services. We initiated an investigation that determined that Centene allegedly submitted inaccurate pharmaceutical reimbursement requests that failed to accurately disclose the cost of pharmacy services. In addition, requests for reimbursement did not disclose available pharmaceutical discounts and improperly inflated dispensing fees. On September 27, 2021, my office, on behalf of the State, executed a settlement agreement that required Centene to pay the State a total of $56,717,652.

As recently as June 24, 2024, my office recovered $45 million to the State through a settlement agreement with CVS after an investigation under the False Claims Act showed that CVS, as a PBM contracted with the State, improperly failed to pass rebates back to the State from April 1, 2020, through September 30, 2023.

PBMs have been largely unregulated and, as recently as earlier this year, I joined a bipartisan group of AGs calling on Congress to reform the way PBMs do business. Federal legislation is needed to curb undue price increases and to increase transparency around the way PBMs operate and set prices.

In the absence of federal regulation, states have passed their own regulations, which have been met with pushback from the industry. There is a petition pending in front of the US Supreme Court to determine whether federal laws (ERISA and Medicaid) preempt State laws that regulate PBMs. This past summer, my office joined a bipartisan coalition of states urging the Court to review a decision from the 10$^{th}$ Circuit, holding that federal laws preempt Oklahoma laws regulating PBMs. The coalition seeks to protect consumers by assuring that states can regulate PBMs as part of our efforts to address access and affordability of prescription drugs.

**Insulin Pricing Scheme**

In December 2022, my office originally filed a complaint in Cook County against PBMs and manufacturers alleging violations of the Illinois Consumer Fraud and Deceptive Business Practices Act for engaging in an insulin pricing scheme. Our case is now joined

in an MDL (Multi District Litigation), pending in the U.S. District Court for the District of New Jersey.

We alleged in the complaint that the manufacturer and PBM defendants have agreed to artificially inflate the reported prices for diabetes medications and that PBMS have given the manufacturers preferred placement, resulting in increased utilization of those products. The complaint alleges that the insulin pricing scheme has caused the costs of insulin to skyrocket. To be clear, insulin costs these manufacturers less than $2 per unit to produce, yet prices can range from $300 and $700 per unit.

**Antitrust Litigation**

My Antitrust Bureau investigates the conduct of brand drug manufacturers who engage in illegal activities to delay the entry of generic competitors, which drives up prices for consumers. Such activities could include agreements with generic drug companies to delay entry into the market ("pay for delay"), product-hopping schemes, (where the brand manufacturer makes minor changes to the drug to secure extended patent rights while baselessly disparaging the off-patent version to limit generic competition), and exclusive contracting schemes, which prevent generic companies from accessing the components needed to manufacture the drug.

My Antitrust Bureau is working with nearly all other states on litigation against the generic drug industry for engaging in price-fixing conspiracies involving hundreds of generic drugs (in an MDL, pending in the District of Connecticut). We have filed multiple complaints against generic drug manufacturers alleging that they engaged in widespread, long-running conspiracies to artificially inflate and manipulate prices, reduce competition, and unreasonably restrain trade to numerous generic prescription drugs. The drugs span all types, including tablets, capsules, suspensions, creams, gels, ointments, and classes, including statins, ace inhibitors, beta blockers, antibiotics, anti-depressants, contraceptives, non-steroidal anti-inflammatory drugs, and treat a range of diseases and conditions from basic infections to diabetes, cancer, epilepsy, multiple sclerosis, HIV, ADHD, and more.

The state coalition has already settled with several individuals and two corporations who have agreed to provide monetary relief and substantial cooperation.

In 2023, my Bureau, in partnership with the FTC and several other state AGs, was able to secure a settlement agreement with Amgen, one of the world's largest biopharmaceutical drug companies, to address the potential competitive harm that would result from Amgen's purchase of Horizon Therapeutics.

The settlement resolved the potential anticompetitive acquisition and prevents Amgen from engaging in anticompetitive actions to disadvantage any product that would compete

with these drugs. The agreement requires Amgen to submit annual compliance reports, and a monitor is in place to oversee compliance.

**Conclusion**

These are examples of how my office has worked to rein in the ongoing problem of prescription drug overpricing.

I am thankful to this committee for shining a light on these challenges, and I hope that we can collectively work on behalf of patients, employers, and government payors to reduce the price of prescription drugs.