



THE TEXAS STATE CHAMBER

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FOR OVER 85 YEARS

February 12, 2016

The Honorable Ken Paxton  
Texas Attorney General  
P.O. Box 125478  
Austin, TX 78711

**RE: RQ-0092-KP**

Dear General Paxton,

As you are aware, Sen. Charles Schwertner and Rep. Todd Hunter have requested your opinion on whether the Texas Any Willing Pharmacy Statute, article 21.52B §2(2) ("Texas AWP" law, adopted in 1991 and determined by the 5<sup>th</sup> Circuit to be preempted by ERISA in 1997), is currently enforceable. I write on behalf of business owners across the State of Texas to voice support for the Texas Department of Insurance's (TDI) view that the Texas AWP law is not enforceable.

I will let others handle the legal analysis of this issue, but clearly the Department of Insurance is correct because the 5<sup>th</sup> Circuit Court of Appeals ruled the mandate to be unenforceable based on ERISA preemption, and that opinion still stands. If the parties who support any willing pharmacy want the State of Texas to take action that will comply with ERISA, then they should ask the Legislature to draft and debate such a bill.

By nature, "Any Willing Pharmacy" and "Any Willing Provider" (AWP) laws increase health care costs, inhibit competition in the private market, and limit choices available to consumers. These laws mandate that a health plan must contract with any pharmacy or provider available, regardless of whether that pharmacy or provider meets a health plan's quality standards, regardless of whether patients already have sufficient access to providers and pharmacies, and regardless of whether doing so will raise costs for consumers and employers. AWP laws represent onerous government mandates that go against foundational free market principles such as competition and choice.

Business owners—the backbone of Texas' economy—would be directly and negatively impacted by the application of the Texas AWP law. Implementing the law would increase costs for employers seeking to provide health care to their employees.

As documented by the Federal Trade Commission and others, AWP mandates remove incentives for providers to offer competitive rates when negotiating to join health plan networks. Fewer providers willing to negotiate and agree to affordable rates means higher health costs across the board. Research shows that AWP laws have increased premiums anywhere from 6 to 21 percent, which translates directly into higher costs for employers providing health care coverage to their employees. With health care spending already accounting for one-sixth of the national economy, now is the time to take steps to **lower** health care costs, not increase them, as the Texas AWP law would do.

This same mandate was proposed by the Obama administration for Medicare Part D, but ultimately abandoned due to the increased costs that would result and Federal Trade Commission warnings that AWP laws reduce private market competition and consumer choice. It's estimated that an Any Willing Pharmacy government mandate in Medicare would have **increased costs by \$21.3 billion over 10 years**. Here in Texas, the Legislature has declined to pass similar AWP mandate legislation on several occasions due to increased costs and limited competition.

As it stands, insured Texans are not experiencing issues in accessing pharmacies. In fact, a recent survey by Kaiser Family Foundation found that 9 out of 10 insured Americans are satisfied with their current health plans and choice of providers, which includes physicians, medical facilities, labs, and pharmacies. Implementing the Texas AWP law—after it has been overturned in the courts, failed to gain traction in the Texas Legislature, and was dismissed because of cost by the current Administration—is a prescription for less competition, fewer choices for consumers, and higher costs for the men and women who create jobs in Texas and seek to provide quality health care to their employees.

Sincerely,

A handwritten signature in black ink that reads "Bill Hammond". The signature is written in a cursive, flowing style.

Bill Hammond  
CEO