

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ELI LILLY AND COMPANY, and
LILLY USA, LLC

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,

Defendants.

No. 1:21-cv-81-SEB-MJD

DEFENDANTS' REQUEST FOR JUDICIAL NOTICE

Defendants respectfully request that this Court take judicial notice of certain documents related to questions raised and discussion held during oral argument.

During this Court's February 26, 2021 oral argument, in response to Lilly's counsel's presentation regarding contract pharmacies, undersigned counsel informed the Court that a large group of bipartisan lawmakers had written to then-Secretary of HHS Alex Azar urging him to take action because Lilly and other drug manufacturers' restrictions "are in violation of the statutory requirements" and "establish a dangerous precedent." In response to questions from the Court regarding that letter, undersigned counsel wishes to provide the Court a publicly available and judicially noticeable link to the document. *See* Letter to Sec. Azar, *available at* https://mckinley.house.gov/uploadedfiles/congressional_member_340b_letter_to_azar_9.14.20.pdf.

Relatedly, on February 26, 2021—the same day this Court held oral argument—another large, significantly bipartisan group of U.S. Representatives wrote to Acting Secretary of HHS

Cochran explaining that Lilly and other manufacturers’ “unilateral changes” are “in direct conflict with congressional intent and decades of written guidance,” imploring the Acting Secretary to “[b]egin assessing civil monetary penalties on manufacturers,” “[r]equire manufacturers to refund covered entities the discounts they have unlawfully withheld since 2020,” “[h]alt ... any attempt to unilaterally change 340B upfront discounts,” and “[i]mmediately seat the Administrative Dispute Resolution Panel to begin processing disputes.” That letter is publicly available and judicially noticeable as well. See Letter to Acting Sec. Cochran, available at <https://axne.house.gov/sites/axne.house.gov/files/210226%20FINAL%20February%20340B%20Letter.pdf>. Defendants offer this information only to the extent the Court finds it helpful, in light of the Court’s questioning at oral argument.

Dated: March 5, 2021

Respectfully submitted,

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