UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

HEALTHCARE DISTRIBUTION ALLIANCE, *Plaintiff*, *v.* MARK D. BOUGHTON, in his official capacity as Commissioner of the Connecticut Department of Revenue Services, and WILLIAM TONG, in his official capacity as Attorney General for the State of Connecticut, *Defendants*.	:	Civil Action No.: 3:25-cv-01724-OAW DECEMBER 16, 2025

SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Plaintiff Healthcare Distribution Alliance ("HDA") respectfully submits this Supplemental brief pursuant to the Court's order of December 9, 2025 (ECF No. 41) and in response to the State's Supplemental Brief ("State Supp. Br.") (ECF No. 43), filed on December 12, 2025.

At the December 9, 2025 preliminary injunction hearing, the State announced a previously unarticulated interpretation of the Drug Price Cap: if title to a covered drug product is transferred outside Connecticut, then the Cap does not apply to a sale by a wholesale distributor to a licensed pharmacy, hospital, medical practice, or other patient-facing organization in Connecticut: "the situs of a transaction will be where the title is taken." Hr'g. Tr. at 38:3–8 (Dec. 9, 2025). Evidently recognizing the grave constitutional questions raised by the Cap,[1] the State invoked the doctrine of "constitutional avoidance" in support of this new interpretation (*id*. at 50:14–15), to which the State adheres in its Supplemental Brief. State Supp. Br. 2.

The State's new interpretation does not change the constitutional defects in the Cap one iota. In fact, the situs test proposed by the State does not narrow the statute at all with respect to distributors because there is no situation (to the knowledge of HDA and its members) where title is transferred outside Connecticut with respect to covered drug products delivered to in-state Connecticut retailers, hospitals, medical practices, and other patient-facing organizations (i.e., distributors' "sell-side customers"). The well settled contractual practice for HDA's members is to deliver healthcare products to their sell-side customers (including those in Connecticut) "Free On Board ('F.O.B.') Destination," so that title does not pass until the drug product is delivered to

[1] "[T]hose who invoke the doctrine [of constitutional avoidance] must believe that the alternative is a serious likelihood that the statute will be held unconstitutional." *Almendarez-Torres v. United States*, 523 U.S. 224, 238 (1998).

the customer inside Connecticut.[2] Britt Supp. Decl. ¶ 3; Reed Supp. Decl. ¶ 3; Van Norman Supp. Decl. ¶ 3. Changing that term would be not just impractical, but operationally impossible for distributors, and the change would face overwhelming sell-side customer opposition. Britt Supp. Decl. ¶ 5–7; Reed Supp. Decl. ¶ 5–7; Van Norman Supp. Decl. ¶ 5–8. Certainly the term could not be altered prior to January 1, 2026. Britt Supp. Decl. ¶ 7; Reed Supp. Decl. ¶ 7; Van Norman Supp. Decl. ¶ 8. Thus, even as purportedly "narrowed" in its scope by the State, the Drug Price Cap is still unconstitutional. If anything, the State's newfound "situs" interpretation only compounds the legal defects in the Cap.[3]

Relief for distributors is more urgent given the resolution of AAM's action. *See* ECF Nos. 39, 40, Case No. 3:25-cv-01757-OAW. As a result, the Drug Price Cap will apply neither to entities that set WAC (out-of-state generic manufacturers) nor to the entities that actually sell drug products to consumers (in-state pharmacies, hospitals, medical practices, and other patient-facing organizations). Instead, the Cap will target the entities stuck in the middle (distributors) that have

[2] At the Court-directed meet-and-confer conference on December 10, counsel for HDA informed the State that Connecticut is the situs of title transfer for products that HDA members ship to their Connecticut sell-side customers and the next day informed the State that HDA would be filing supplemental declarations with this brief to confirm that fact and to substantiate counsel's statements in the December 9 hearing about the burden of changing the industry course of dealing.

[3] At the December 9 hearing, the Court inquired about the drug shortage provision in § 346(a)(2) of the Drug Price Cap. *See* Hr'g Tr. at 18:2-5. Currently, only 76 drugs are designated by HHS as being in shortage. *FDA Drug Shortages*, U.S. Food & Drug Admin., https://www.accessdata.fda.gov/scripts/drugshortages/default.cfm (last visited Dec. 16, 2025). In contrast, the Drug Price Cap applies to *thousands* of drug products. Indeed, since January 1, 2025, manufacturers have raised the WAC of *over 500* covered products. Louissant Decl. (ECF No. 27-5) ¶ 6. Even if all 76 drugs designated as being in shortage were included in the "over 500" figure (and they are not), that means in 2025 WAC has already increased for over 400 covered products not included in the shortage list. Moreover, the latest update to the website cited in the Louissant Declaration now shows that WAC has increased for 664 (not merely 500) covered products in 2025. *See November Monthly Update – Prescription Drug WAC Increases (Excel)*, CalHHS (Nov. 7, 2025), https://data.chhs.ca.gov/dataset/prescription-drug-wholesale-acquisition-cost-wac-increases/resource/b4554543-fec7-46c7-a518-b7d07bd1c1f3.

no control over either WAC or the prices ultimately charged to consumers. Such a Kafkaesque construction puts distributors in the untenable position where they face potentially endless increases in WAC with no recourse (absent injunctive relief). There is not a shred of legislative history indicating that the Governor and legislature intended to enact such an arbitrary and illogical measure. *Cf. State v. Bell*, 33 A.3d 167, 176 (Conn. 2011) (asking "what [the legislature] would have intended in light of the [c]ourt's constitutional holding") (quoting *United States v. Booker*, 543 U.S. 220, 246 (2005)).

This Court should grant HDA's motion for preliminary injunction and invalidate the Drug Price Cap on its face with respect to HDA and its members.

ARGUMENT

I. The State's Newfound Interpretation Does Not Change The Constitutional Defects In The Drug Price Cap.

The State's newfound "situs" interpretation does not change the scope of the Drug Price Cap with respect to distributors, nor does it ameliorate the constitutional flaws. Contrary to the State's conjecture at the December 9 hearing that "it is likely that plaintiffs are considering more transactions to be covered by this law than are in actuality covered by it," Hr'g Tr. at 45:8–10, the reality is that as of January 1, 2026, the Cap will operate exactly as HDA has described, absent relief from this Court. It is undisputed that none of HDA's members has a distribution center in Connecticut. Instead, drug products they distribute to sell-side customers in Connecticut are shipped from distribution centers outside Connecticut. And these deliveries are made "F.O.B. Destination," meaning that title and risk of loss stay with distributors until the products are delivered to the customer. Britt Supp. Decl. ¶ 3; Reed Supp. Decl. ¶ 3; Van Norman Supp. Decl. ¶ 3. HDA's members are not aware of any agreements with Connecticut sell-side customers specifying otherwise. *Id.*

The F.O.B. Destination term is consistent with a long course of dealing between distributors and their sell-side customers, as well as the reasonable commercial expectations of customers. Britt Supp. Decl. ¶ 4; Reed Supp. Decl. ¶ 4–5; Van Norman Supp. Decl. ¶ 4. By delivering F.O.B. Destination, distributors bear the risk of loss or damage until physical delivery. *Id.* Distributors pay for insurance to mitigate that risk, while sell-side customers do not. *Id.* Additionally, distributors are subject to regulatory and compliance obligations under the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, and the Drug Supply Chain Security Act, 21 U.S.C. § 360eee *et seq.*, both of which prescribe detailed rules for the distribution of pharmaceutical products. *See* Britt Supp. Decl. ¶ 4; Reed Supp. Decl. ¶ 3; Van Norman Supp. Decl. ¶ 4–5. Asking Connecticut sell-side customers to assume these added costs and responsibilities would meet with immense resistance. Britt Supp. Decl. ¶ 5; Reed Supp. Decl. ¶ 5; Van Norman Supp. Decl. ¶ 5.

Further, it would be logistically and operationally impossible to change the existing F.O.B. Destination arrangement in the near term. Britt Supp. Decl. ¶ 7; Reed Supp. Decl. ¶ 7; Van Norman Supp. Decl. ¶ 6–8. Many sell-side customer contracts cover multiple years and multiple states at a time. *Id.* A single customer may have multiple locations in different states. *Id.* Distributors would face very substantial administrative burdens if they sought to deliver products under a special arrangement to Connecticut sell-side customers and deliver F.O.B. Destination to all other customers. *Id.* Their distribution facilities outside Connecticut would have to operate under a special exception every time they fulfilled an order for a covered product through delivery to a customer's location in Connecticut. Van Norman Supp. Decl. ¶ 6. To make matters worse, the Drug Price Cap applies to only a subset of healthcare products: off-patent brand-name prescription and generic drugs, and interchangeable biological products. Keeping track of which products could be shipped F.O.B. Destination to Connecticut (and which could not) would be an expensive

administrative nightmare for any distributor. *Id.* ¶ 7. The multi-year nature of customer contracts means that, even if renegotiation of customer contracts were feasible, it would take years before distributors would even be in a realistic position to propose new agreements with Connecticut sell-side customers departing from the F.O.B. Destination term. Britt Supp. Decl. ¶ 7; Reed Supp. Decl. ¶ 7; Van Norman Supp. Decl. ¶ 8. Certainly, no contractual changes are feasible before January 1, 2026. *Id*.

Thus, any suggestion that distributors could avoid application of the Drug Price Cap by changing the F.O.B. Destination term in their customer contracts blinks commercial realities. Even if it were feasible (and it is not), it would impose an unconstitutional Hobson's choice: (i) distributors buying at the *current* WAC could sell at or below the *lower* reference price, or (ii) they could violate the Cap and incur Draconian penalties, or (iii) (as the State now apparently suggests) they could completely overturn their existing business models and jeopardize customer relationships by attempting to alter the F.O.B. Destination term in their contracts and transfer title outside Connecticut, with no assurance that such disruptive measures would avoid the Cap.[4]

The interference with interstate commerce and disruption of distributors' business would be severe. *Healy* and *Brown-Forman* held that putting beer brewers and liquor distillers to a choice between (i) their established business practices of promotional and discount schemes and (ii) compliance with an unconstitutional state price control statute, amounted to an unconstitutional

[4] The State suggests this third option without acknowledging that it, too, could subject distributors to significant penalties under the Drug Price Cap. Section 347 forbids distributors from "withdraw[ing] [an] identified prescription drug from sale *in this state* for purpose of avoiding the civil penalty established in" § 346(b), subject to a $500,000 civil penalty, evidently per "identified prescription drug." Pub. Act No. 25-168, § 347 (emphasis added). At the December 10 meet-and-confer conference, HDA's counsel asked the State whether (even if it were feasible to arrange transfer of title outside Connecticut, and it is not), such action would be deemed "withdraw[ing]" a covered product "from sale in this state" and subjecting the distributor to a $500,000 penalty per drug. The State has not opined on this question.

interference with commerce. *See Healy v. Beer Inst.*, 491 U.S. 324, 339 (1989) (statute impermissibly "deter[ed] volume discounts" and "promotional discounts"); *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 578 (1986) ("Appellant contended that the only way to avoid this dilemma was to stop offering promotional allowances . . . ."). Offering an out-of-state company "the Hobson's choice . . . of discontinuing the promotional allowances altogether" would, as the challengers in those cases argued, and as the "Court agreed," amount to "extraterritorial regulation of interstate commerce in violation of the Commerce Clause." *Healy*, 491 U.S. at 332. The same analysis is applicable here. And a "disrupt[ion] [of] existing . . . business practices" is exactly the kind of irreparable harm that warrants a preliminary injunction. *Nat'l Fuel Gas Distrib. Corp v. Christian*, --- F. Supp. 3d ---, No. 1:25-CV-0525 (GTS/MJK), 2025 WL 2634310, at *13 (N.D.N.Y. June 16, 2025) (granting preliminary injunction in dormant Commerce Clause case).[5]

II. The Drug Price Cap Remains Unconstitutional With Respect To Distributors.

The State offers no new legal arguments regarding the dormant Commerce Clause. *See* State Supp. Br. 2, 4–5 (incorporating by reference arguments made in the State's Opposition memo). It offers no response to HDA's argument at the December 9 hearing that the State's newfound "situs" interpretation does not save the Drug Price Cap because the presence of an in-

[5] *See Nemer Jeep-Eagle, Inc. v. Jeep-Eagle Sales Corp.*, 992 F.2d 430, 435 (2d Cir. 1993) ("[m]ajor disruption of a business" may constitute irreparable harm); Christian, 2025 WL 2634310, at *13 n.8 ("[C]essation of an otherwise-lawful business activity . . . presents Plaintiffs with merely a Hobson's choice."); *Int'l Bus. Machs. Corp. v. Johnson*, 629 F. Supp. 2d 321, 334 (S.D.N.Y. 2009) (major disruption of business constitutes irreparable harm under Second Circuit precedent); *see also FTC v. QYK Brands, LLC*, No. SACV 20-1431 PSG (KESx), 2022 WL 2784416, at *6 (C.D. Cal. June 21, 2022) ("forcing a business renegotiate or abandon existing contracts and lose customer goodwill may constitute irreparable injury in some situations") (citing *FTC v. Qualcomm Inc.*, 935 F.3d 752 (9th Cir. 2019)); *Fox Television Stations, Inc. v. FilmOn X LLC*, 966 F. Supp. 2d 30, 50 (D.D.C. 2013) (citing "damage to [plaintiffs'] contractual relationships").

state sale or transfer of title does not give the State the power to adopt extraterritorial or protectionist legislation. Hr'g Tr. at 10:25–12:18. For that very reason, the Supreme Court found it "irrelevant" that New York's statute in *Brown-Forman* was triggered only by sales within the state. 476 U.S. at 583. The Court added that "[t]he mere fact that the effects of New York's ABC Law are triggered only by sales of liquor within the State of New York therefore does not validate the law." *Id*. at 580. Nor was the price control law in *Healy* saved by the fact that it governed only prices posted in Connecticut. 491 U.S. at 326–30. The Fourth Circuit, in a decision cited by the Supreme Court with approval in *National Pork Producers Council v. Ross*, 598 U.S. 356, 374 (2023), opined that "[e]ven if the [drug price control] Act did require a nexus to an actual sale in Maryland, it is nonetheless invalid because it still controls the price of transactions that occur wholly outside the state." *Ass'n for Accessible Meds. v. Frosh*, 887 F.3d 664, 671 (4th Cir. 2018). *Pork Producers* commented that *Frosh* read prior Supreme Court cases involving state price regulations "in exactly the same way" as the Supreme Court did. 598 U.S. at 374.[6]

If anything, the State's newfound interpretation makes the Drug Price Cap even *more* extraterritorial. The State now tells distributors they can avoid the Cap only by changing their long-established practices and arranging for title to transfer at distribution facilities located outside Connecticut—in other words, to take additional out-of-state actions to avoid the irreparable harm the Cap would otherwise impose. Moreover, if other states adopted the same "situs" test as Connecticut, then distributors would face even more burdens. For example, if New York adopted

[6] In a similar case, New York conceded that an opioid tax cost-pass-through prohibition was unconstitutional because "out-of-state drug purchasers . . . would bear the cost," even though the tax was imposed only on New York sales. *Healthcare Distrib. All. v. Zucker*, 353 F. Supp. 3d 235, 262 (S.D.N.Y. 2018), *rev'd in part on other grounds sub nom., Ass'n for Accessible Meds. v. James*, 974 F.3d 216 (2d Cir. 2020).

a similar statute, a distributor (having moved the situs of title transfer to its New York facility in response to Connecticut's new interpretation) would now find that sales to Connecticut sell-side customers were governed by the New York statute—unless the distributor moved its operations out of New York as well. And so on. In sum, the State is merely piling one extraterritorial feature upon another.

The State wrongly minimizes HDA's argument as an assertion that the Drug Price Cap "might [have] out-of-state effects." State Supp. Br. 2 n.2. HDA has been clear: The Cap is an invalid price control law because it ties Connecticut prices for covered products to a nationwide price index. That is exactly the extraterritorial feature condemned in *Pork Producers*, which reaffirmed that "price control or price affirmation statutes" are invalid if they tie "the price of . . . in-state products to out-of-state prices." 598 U.S. at 374 (quoting *Pharm. Rsch. & Mfrs. of Am. v. Walsh*, 538 U.S. 644, 669 (2003)). The Cap ensures that regardless of how much WAC increases in the rest of the U.S., Connecticut prices will be frozen at the reference price, adjusted for inflation.

Nor does the State have an answer to the point that the Cap displays impermissible in-state favoritism and protectionism in two respects: (1) It is protectionist on the consumer level because it mandates an artificially lower price for Connecticut than the prevailing WAC price in other states and thus "attempts to give local consumers an advantage over consumers in other States." *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 577–78 (1997) (quoting *Brown-Forman*, 476 U.S. at 580)). Even under the State's newfound "situs" interpretation, either consumers in other states will absorb the costs not borne by Connecticut or (perhaps more likely) other states will respond by enacting their own price caps mandating even lower prices, setting off an "artificial race between legislatures to set the lowest" reference price for drugs. *Pharm. Rsch.*

& Mfrs. of Am. v. District of Columbia, 406 F. Supp. 2d 56, 70 (D.D.C. 2005), *aff'd sub nom., Biotech. Indus. Org. v. District of Columbia*, 496 F.3d 1362 (Fed. Cir. 2007) (striking down D.C. drug price regulation).

(2) The Cap is also protectionist on the commercial level because it does not apply to the downstream entities in Connecticut that actually sell covered products to consumers, *i.e.*, in-state retailers, medical practices, hospitals, and other patient-facing organizations. *See Frosh*, 887 F.3d at 671 ("[T]he retailers that sell the drug directly to the consumer cannot be held liable under the Act; only '[a] manufacturer or wholesale distributor' is prohibited from 'engag[ing] in price gouging.'") (second and third alterations in original). In addition, a distributor that does a disproportionate amount of business in Connecticut will be put at a competitive disadvantage in other states vis-à-vis other distributors because it will be saddled with extra costs that Connecticut has pushed onto it. *Cf.* Van Norman Supp. Decl. ¶ 6–7 (discussing costly administrative burdens). Thus, the Cap creates a perverse incentive for distributors not to sell drug products in Connecticut but rather to focus their business on other jurisdictions where they can earn a fair return. Surely the State does not favor such an incentive that imperils patient access to important medicines.

III. The Appropriate Remedy Is To Strike Down The Drug Price Cap On Its Face With Respect To HDA And Its Members.

The State suggests that its newfound "situs" interpretation defeats a facial challenge to the Cap under *National Shooting Sports Foundation, Inc. v. James*, 144 F.4th 98 (2d Cir. 2025). *See* State Supp. Br. 2–3. The State is wrong. The new interpretation does not create constitutional applications of the Cap; it merely (supposedly) narrows the scope of the Cap, without rendering the Cap valid as to transactions within its purview. For example, if title to a covered product were transferred to a Connecticut sell-side customer outside Connecticut, the Cap would not be triggered by subsequent shipment to the Connecticut customer, per the State's newfound interpretation. But

such a scenario is not an example of the Cap's permissible application; it is simply an example where the Cap does not apply.

As we have shown, the Cap, even as purportedly narrowed, remains unconstitutional (as impermissibly extraterritorial and protectionist) in every single one of its applications to distributors. Manufacturers set WAC on a national basis, distributors operate on an interstate basis, and no distributor even has a Connecticut facility. Every time the Cap comes into play, it targets the out-of-state pricing of covered drugs and products in violation of the Commerce Clause. It is invalid on its face under *James*, because it "regulates wholly extraterritorial conduct *in every application of the statute*." 144 F.4th at 116. Similarly, *Brown-Forman* involved a claim "that the statute must be declared unconstitutional on its face," *Brown-Forman Distillers Corp. v. State Liquor Auth.*, 479 N.E.2d 764, 768 (N.Y. 1985), and the Supreme Court concluded that the New York price control law "on its face violate[d] the Commerce Clause." 476 U.S. at 585. The same is true here.[7]

CONCLUSION

HDA's motion for preliminary injunction should be granted.

Dated: December 16, 2025
Hartford, Connecticut

Respectfully submitted,

/s/ Thomas J. Finn

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[7] The State suggests that HDA could petition the Department of Revenue Services for a declaratory ruling as to whether the Drug Price Cap would apply to a given set of facts. State Supp. Br. 4 n.5. That is little solace. The Cap's constitutional defects inhere in every application. The availability of a declaratory ruling to address the State's speculative hypotheticals as to the scope of the Cap does not address the Cap's fundamental flaws.

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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2025, a copy of the foregoing document was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated below. Parties may access this filing through the Court's CM/ECF System.

By: */s/ Thomas J. Finn*
Thomas J. Finn (ct20929)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Healthcare Distribution Alliance, *Plaintiff*, v. Mark D. Boughton, in his official capacity as Commissioner of the Connecticut Department of Revenue Services, and William Tong, in his official capacity as Attorney General for the State of Connecticut, *Defendants*.	**Case No. 3:25-cv-1724 (OAW)**

SUPPLEMENTAL DECLARATION OF MICHELLE BRITT IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I, Michell Britt, am over 18 years of age and hereby declare as follows:

1. I am the Senior Vice President, Retail Independent Sales in Pharmaceutical & Specialty Distribution at Cardinal Health, Inc. ("Cardinal Health") and provide this declaration based on my own personal knowledge.

2. Cardinal Health distributes pharmaceutical products to licensed pharmacies, hospitals, clinics, long-term care facilities, and other healthcare providers in Connecticut. But Cardinal Health does not have a distribution center in Connecticut. Instead, products we distribute in Connecticut are shipped from distribution centers outside Connecticut.

3. Per Cardinal Health's customer contracts, Cardinal Health sells pharmaceutical products "Free On Board (FOB) Destination,"[1] meaning that title to the products transfers from Cardinal Health to its customer at the time and place of delivery to the customer. Therefore, Cardinal Health bears the risk of any damage, loss and theft until the goods reach Cardinal Health's customer.[2] To my knowledge, none of Cardinal Health's customer contracts provide for a transfer of title at a different time and place.

4. The FOB Destination term in Cardinal Health's customer contracts is a fundamental part of our relationship with our customers. Because Cardinal Health bears the risk of loss, damage and theft until physical delivery, Cardinal Health (and not the customer) pays for insurance to mitigate those risks. Additionally, Cardinal Health is subject to record maintenance and reporting obligations to the U.S. Drug Enforcement

[1] "Free on Board (insert named port of loading)" is a common "incoterm" associated with shipping contracts. *Know Your Incoterms*, Int'l Trade Admin., https://www.trade.gov/know-your-incoterms (last visited Dec. 11, 2025). "Incoterms" are "widely-used terms of sale . . . which define the responsibilities of sellers and buyers. Incoterms specify who is responsible for paying for and managing the shipment, insurance, documentation, customs clearance, and other logistical activities." *Id.*

[2] *See also Free on Board (FOB) Explained: Who's Liable for What in Shipping?*, Investopedia (Sept. 17, 2025) ("FOB Destination means the seller retains the risk of loss until the goods reach the buyer."), https://www.investopedia.com/terms/f/fob.asp#:~:text=Free%20on%20Board%20(FOB)%20indicates,the%20seller%20ships%20the%20product.

Administration ("DEA") for certain drug products (such as controlled substances) before and through delivery to the customer.[3]

5. Cardinal Health's customers would almost certainly be unwilling to change the FOB Destination term in their contracts, which would result in them taking title to covered products outside of Connecticut and before physical delivery. Such a change would require in-state Connecticut retailers, hospitals, clinics, long-term care facilities, medical practices, and other healthcare providers to assume the risk of loss or damage to, or theft of, pharmaceutical products before they physically receive them. Each of those customers would likely need to obtain insurance on their own to mitigate those risks. The collective cost for our customers would likely be greater (and in some cases, substantially greater) than what Cardinal Health itself currently bears with respect to its insurance and risk-mitigation measures, because Cardinal Health is able to achieve efficiencies that individual customers are not. Therefore, changing the FOB Destination term would increase business costs for Connecticut retailers, hospitals, and medical practices, likely resulting in greater passed-down costs to Connecticut patients.

[3] *See* 21 U.S.C. § 822, 827; 21 C.F.R. §§ 1304.04, 1304.33; *see also* 21 C.F.R. §§ 1304.33(d) u7j(covering Schedule I–V controlled substances) and 1301.74(c) (covering theft and loss of controlled substances).

6. Changing the FOB Destination term would also likely require Cardinal Health and its Connecticut retailers, hospitals, and medical practice customers to incur additional costs in assessing any potential changes to their documentation and reporting obligations under DEA regulations.[4]

7. Cardinal Health's customer contracts are typically multi-year, and many of our contracts are multi-state rather than state-specific. For our customers with multi-state operations, we structure our contractual relationships through national agreements that apply uniformly across states. Accordingly, renegotiating existing contracts to provide that Cardinal Health's customers take title to covered products outside of Connecticut and before physical delivery to retailers, hospitals, and medical practices in Connecticut, would be commercially unreasonable, severely disrupting national agreements and imposing substantial time and cost burdens to Cardinal Health as well as its customers in and outside of the state. Certainly, no contractual changes to change the situs of title transfer could take place before January 1, 2026.

[4] *E.g.*, 21 C.F.R. § 1304.33 (requiring "[a]cquisition/distribution reports [to] provide data on each acquisition to inventory . . . and each reduction from inventory").

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 15, 2025.

Michelle Britt (Dec 15, 2025 14:42:56 EST)

Michelle Britt
Senior Vice President, Retail Independent Sales
Pharmaceutical & Specialty Distribution
Cardinal Health, Inc.

HDA CT CAH Supplemental Declaration.Final

Final Audit Report 2025-12-15

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Healthcare Distribution Alliance,

Plaintiff,

v.

Mark D. Boughton, in his official capacity as Commissioner of the Connecticut Department of Revenue Services, and William Tong, in his official capacity as Attorney General for the State of Connecticut,

Defendants.

DECLARATION

Case No. 3:25-cv-1724 (OAW)

SUPPLEMENTAL DECLARATION OF CHRISTOPHER REED IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I, Christopher Reed, am over 18 years of age and hereby declare as follows:

1. I oversee distribution operations at Cencora, Inc. and provide this declaration based on my own personal knowledge.

2. As I explained in my declaration in this case dated October 19, 2025,[1] Cencora distributes pharmaceutical products to licensed pharmacies, hospitals, and other healthcare providers in Connecticut. But Cencora does not have a distribution center in Connecticut; rather, products we distribute in Connecticut are shipped from distribution centers outside the state.

3. Our contracts with our Connecticut customers do not provide that title is taken outside of Connecticut. Rather, our customer contracts provide that Cencora sells pharmaceutical products "FOB Destination," meaning that title does not pass until

[1] *See* ECF No. 27-3.

the customer receives it. Until delivery occurs, Cencora retains title, bears all risk of damage or loss (against which Cencora generally carries insurance), and is subject to record maintenance and reporting obligations to the U.S. Drug Enforcement Administration ("DEA") for certain drug products (including controlled substances) before and through delivery to the customer. I am not aware of any contracts with Connecticut customers that are not FOB Destination.

4. FOB Destination provides our customers with important benefits. Because Cencora bears the risk of loss or damage until physical delivery, we pay for insurance to mitigate that risk. We also handle the DEA recordkeeping and reporting requirements.

5. Cencora would likely face immense resistance from our Connecticut retailer, hospital, and other healthcare provider customers if we attempted to amend or renegotiate the FOB Destination term in their contracts. Such a change would require the customers to assume the risk of damage or loss prior to delivery and would likely force them to arrange their own insurance, which would increase their costs. Changing the FOB Destination term would also impose greater DEA record-retention and reporting burdens on Connecticut retailers, hospitals, and medical practices, which will further increase their business costs.[2]

6. For these reasons, I do not believe that many of our customers would be willing to agree to change the FOB Destination term voluntarily. Cencora would need to

[2] *See e.g.*, 21 C.F.R. § 1304.33 (requiring "[a]cquisition/distribution reports [to] provide data on each acquisition to inventory . . . and each reduction from inventory").

make significant concessions in the negotiation process to persuade our customers to accept that change, causing Cencora financial harm.

7. Moreover, our customer contracts are typically multi-year, and many of our contracts apply to customers spanning several states. Accordingly, it would take at least a few years to amend our contracts to change the FOB Destination term (even if agreement could be reached), given the number of Connecticut customers we have and the length of time remaining on many of their existing contracts. Certainly, no contractual changes regarding the situs of title transfer could occur before the Drug Price Cap takes effect on January 1, 2026.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 11, 2025.

Reed, Christopher (a107264)

Digitally signed by Reed, Christopher (a107264)
Date: 2025.12.11 16:06:05 -04'00'

Christopher Reed, Vice President

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Healthcare Distribution Alliance, *Plaintiff*, v. Mark D. Boughton, in his official capacity as Commissioner of the Connecticut Department of Revenue Services, and William Tong, in his official capacity as Attorney General for the State of Connecticut, *Defendants*.	**DECLARATION** **Case No. 3:25-cv-1724 (OAW)**

SUPPLEMENTAL DECLARATION OF CHRISTOPHER VAN NORMAN IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I, Christopher Van Norman, am over 18 years of age and hereby declare as follows:

1. I am the Senior Vice President, Supply Chain Operations at McKesson Corporation ("McKesson") and provide this declaration based on my own personal knowledge.

2. As I explained in my declaration in this case dated October 20, 2025,[1] McKesson distributes pharmaceutical products to licensed pharmacies, hospitals, clinics, long-term care facilities, and other patient-facing organizations in Connecticut. But McKesson does not have a distribution center in Connecticut. Instead, products we distribute in Connecticut are shipped from distribution centers outside Connecticut.

[1] *See* ECF No. 27-4.

3. Under its agreements with sell-side customers (such as licensed pharmacies, hospitals, clinics, long-term care facilities, and other patient-facing organizations), McKesson generally delivers pharmaceutical products "F.O.B. Destination," meaning that title and risk of loss stay with McKesson until the products are delivered to the customer, even if the customer pays shipping and handling charges. To my knowledge, McKesson has no customer agreements with any sell-side Connecticut customers specifying a different delivery term or otherwise providing for a transfer of title at a different time and place.

4. F.O.B. Destination is consistent with a long course of dealing between McKesson and its sell-side customers, as well as the reasonable commercial expectations of customers. By delivering F.O.B. Destination, McKesson bears the risk of loss or damage until physical delivery. McKesson pays for insurance to mitigate that risk, while its sell-side customers do not. Additionally, McKesson is subject to regulatory and compliance obligations under the Controlled Substances Act and the Drug Supply Chain Security Act. These laws, and extensive regulations promulgated under them, prescribe detailed rules for the distribution of pharmaceutical products.

5. McKesson would likely face immense resistance from its Connecticut sell-side customers if it attempted to persuade them to change the F.O.B. Destination term in their contracts with McKesson. Such a change would require McKesson's Connecticut customers to assume the risk of damage or loss prior to delivery and would likely force them to purchase insurance to mitigate that newfound risk. It could also increase the regulatory burden to them under the Controlled Substances

Act and the Drug Supply Chain Security Act. All of these changes would increase burdens and costs for McKesson's sell-side customers.

6. Further, it would be extremely difficult as a practical matter to change the existing F.O.B. Destination arrangement. Many of McKesson's customer contracts cover multiple years and multiple states at a time. A single customer may have multiple locations in different states. McKesson does not have a distribution facility in Connecticut and thus would face very substantial administrative burdens if it sought to deliver products under a special arrangement to Connecticut sell-side customers and deliver F.O.B. Destination to everyone else. McKesson's various facilities outside Connecticut would have to operate under a special exception every time they fulfilled an order for a covered product through delivery to a customer's location in Connecticut.

7. To make matters worse, the Connecticut Drug Price Cap applies to only a small subset of the healthcare products that McKesson distributes: off-patent brand-name prescription and generic drugs, and interchangeable biological products. An on-patent brand-name prescription drug or biological product is currently exempt from the Drug Price Cap, but it would become subject to the Cap once its patent expires. A generic drug that becomes commercially available after January 1, 2025, would also become subject to the Cap. Keeping track of which products could be shipped F.O.B. Destination to Connecticut (and which could not) would be a major administrative challenge for any distributor.

8. The multi-year nature of many sell-side customer contracts would also limit the ability of McKesson to effect prompt changes in the F.O.B. Destination term. While McKesson could in theory seek renegotiation of the F.O.B. Destination term before the contractual

term expired, customers otherwise in compliance with the contracts would be within their contractual rights to refuse. Hence, there would likely be substantial delay before McKesson would even be in a realistic negotiating position to seek departures from the F.O.B. Destination term in multi-year contracts. Certainly, no contractual changes would be feasible before January 1, 2026.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 12/15/2025.

Signed by:
Christopher Van Norman
CC08473C37F840F...

Christopher Van Norman