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March 4, 2024

The Honorable Joseph R. Biden
President of the United States of America
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear President Biden:

I am writing to provide my insight and expertise as a health care professional and Member of Congress on the Energy and Commerce Committee and Doctors Caucus to the White House event taking place today on reforming pharmacy benefit managers (PBMs).

As a pharmacist for over four decades, I have seen firsthand the rising costs of prescription drugs and the impact it has had on patients and families. I was the one who was on the other side of the counter telling the patient how much their insulin costs. I was the one who watched the senior citizens trying to decide whether they were going to buy insulin or buy groceries. I was the one who watched a mother cry because she couldn't afford the medication for her child. I was the one who watched all this happen, and I knew that behind the curtain PBMs were, and still are, the root cause of high prescription drug costs and inaccessible health care.

You don't have to take my word for it. Reports from the GAO, MedPAC, and HHS OIG confirm the role PBMs have in increasing health care costs. Patients are being deprived of billions in discounts at the pharmacy counter.[1] According to a recent report from the GAO, Part D beneficiaries pay more than their insurers for 79 of the 100 most highly rebated drugs under the program.[2] Further, PBMs are often paying pharmacies they own more for drugs than they are paying independent pharmacies. That's why it's critical for this Administration to work with Congress to reform the harmful PBM practices that are making health care inaccessible and unaffordable for millions of Americans.

PBMs are supposed to act as middlemen between pharmacies, drug manufacturing companies, and health insurance plans to administer prescription drug benefits. Unfortunately, they have vertically integrated, creating health care conglomerates that control pricing with little competition. The three largest PBMs - CVS Caremark, Express Scripts, and OptumRx - control over 80% of the market.[3] They own or are owned by insurers and have vertically consolidated their businesses to own everything and everyone between themselves and the patients, including doctors, pharmacies, group purchasing organizations, and more.[4] Using their size, leverage, and

[1] https://www.medpac.gov/wp-content/uploads/2023/06/Jun23_MedPAC_Report_To_Congress_SEC.pdf
[2] https://www.gao.gov/products/gao-23-105270
[3] https://www.drugchannels.net/2023/05/the-top-pharmacy-benefit-managers-of.html
[4] https://www.drugchannels.net/2023/05/mapping-vertical-integration-of.html

negotiating power, PBMs play a large role in determining which prescription drugs are covered by insurance plans and how much they cost, while keeping themselves mostly hidden from the American public.

PBMs have stated that their role in the marketplace is to control costs. However, over the past twenty years the cost of health care has steadily risen by almost 5% annually.[5] Employers experienced a 1,553% increase in drug benefit costs over that same time for employer-sponsored insurance benefits offered to employees.[6] Fast forward to 2021, health care costs eclipsed $4 trillion annually, amounting to roughly $13,000 per person.[7] In 2006, PBMs took on an expanded role in "negotiating" drug prices. This resulted in a 313% increase in the cost of prescription drugs.[8] If PBMs argue they keep drug costs low, then the question naturally arises: why have drug costs gone up so much?

In fact, Pharmaceutical Care Management Association even claims that PBMs make health care more affordable and accessible for all Americans. Yet, the Wall Street Journal recently reported that PBMs are charging patients 24 times what manufacturers charge for a drug and force patients to buy those drugs at pharmacies PBMs own, thus increasing their profits.[9] Take the cancer drug Gleevec, for example. It went generic in 2016 and can be bought today for as little as $55 a month. However, many patients are paying more than 100 times that. Another example is a $10,000 brand-name drug for prostate cancer that is preferred on a formulary, while its $450 generic counterpart was either not covered at all or relegated to the specialty tier.[10] We also know that the three largest PBMs exclude more than 1,150 medicines from their formulary, the vast majority of which are generic cheaper alternatives,[11] essentially blocking them from patients.

As many experts have noted, PBMs are not just PBMs anymore. They have been allowed to consolidate and reach into almost every aspect of our health care system at the expense of patients. PBMs are mail-order pharmacies. PBMs own prescribers and physician practices. PBMs own specialty pharmacies. PBMs also own retail pharmacies, such as CVS Caremark.

The chart below from the Drug Channels Institute shows the extent of the vertical integration involved.[12] Note that the integration includes mergers with health providers too, not just insurers and pharmacies. This integration presents opportunities for PBMs to lock competing pharmacies, insurers, or even providers out of the market. With less competition, PBMs can continue raising prices and stealing profits from other entities, again leading to increased drug costs.

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[5] https://www.healthsystemtracker.org/brief/how-does-medical-inflation-compare-to-inflation-in-the-rest-of-the-economy/#:~:text=While%20medical%20care%20prices%20have,%25%20and%205%25%20each%20year.

[6] Centers for Medicare & Medicaid Services, Office of the Actuary, National Health Statistics Group.

[7] https://www.cms.gov/data-research/statistics-trends-and-reports/national-health-expenditure-data/historical#:~:text=U.S.%20health%20care%20spending%20grew,spending%20accounted%20for%2018.3%20percent.

[8] Robin Feldman, The devil in the tiers, Journal of Law and the Biosciences, Volume 8, Issue 1, January-June 2021, lsaa081, https://doi.org/10.1093/jlb/lsaa081

[9] https://www.wsj.com/health/healthcare/generic-drugs-should-be-cheap-but-insurers-are-charging-thousands-of-dollars-for-them-ef13d055

[10] Ibid

[11] https://www.xcenda.com/insights/skyrocketing-growth-pbm-formulary-exclusions-concerns-patient-access

[12] https://www.drugchannels.net/2023/05/mapping-vertical-integration-of.html

PBMs have also merged with specialty pharmacies, which were established to manage the extreme growth of specialty medication use and the extra precautions required to dispense them. Specialty medications are complex drugs that treat chronic, difficult-to-treat, or rare conditions. These medications have driven large spikes in health spending in recent years. They often have high prices and usually require special handling, storage, additional training for pharmacists, and intensive patient monitoring.

PBMs that own specialty pharmacies participate in a practice called "patient steering," where the PBM forces patients, through their insurance networks, to use a specialty pharmacy the PBM owns. The PBM unilaterally decides what medications will be covered as part of a patient's drug formulary. This presents an opportunity for PBMs to spike costs because patients have limited options to access the medication elsewhere.

We've heard countless stories about how these middlemen drive up drug prices and steer patients to use their own pharmacies, forcing independent pharmacies out of business. In fact, in 2023 there were over 300 independent pharmacy net closures – almost one a day.[13] Pharmacists are some of the most accessible health care professionals in America—95% of Americans live within five miles of a pharmacy. Pharmacists are also among the most highly trusted health care professionals. Patients count on our training and expertise to stay healthy and informed. Yet, PBMs' anti-competitive business practices are putting independent pharmacies out of business and removing patients' access to care. We now have "pharmacy deserts" in rural and underserved communities, where the neighborhood pharmacy may be the only health care provider for miles.

In fact, there are 2,200 fewer retail pharmacies than there were four years ago.[14] That's affecting the accessibility, affordability, and quality of health care, counter to the efforts of policymakers.

[13] https://ncpa.org/sites/default/files/2024-02/2.27.2024-NCPAtoCMS-DIRconcerns-surveyresults.pdf
[14] https://ncpa.org/sites/default/files/2024-02/2.27.2024-NCPAtoCMS-DIRconcerns-surveyresults.pdf

That is why it's so important that this Administration works with Congress to reform the way PBMs operate and protect pharmacies from some of the most egregious practices of PBMs.

Last year, my office rushed to action when we heard that Cigna/Express Scripts was planning to remove almost 15,000 local independent pharmacies from the military's TRICARE network, depriving our servicemembers and veterans of access to their trusted local health care provider.[15] Plain and simple, PBMs' market consolidation and integration has enabled these unfair and deceptive practices, resulting in decreased competition and higher prices.

For years, PBM practices in Medicaid managed care have obscured the true costs of prescription drugs, wasted hundreds of millions of taxpayers' dollars, and devastated community pharmacies by engaging in a practice known as "spread pricing." In spread pricing, PBMs charge state Medicaid managed care programs more for prescription drugs than they reimburse pharmacies, allowing the PBMs to pocket the difference, or the "spread," as excess profit. In 2018, it was discovered through a groundbreaking audit in Ohio that PBMs overcharged the Medicaid managed care program over $200 million in hidden spread pricing mark-ups, which were revealed to be as much as six times the going rate for PBM services.[16] Ohio fired those PBMs and sued one, resulting in nationwide settlements that are expected to reach $1.4 billion by year's end.[17]

Thankfully, the Federal Trade Commission (FTC) unanimously launched a 6(b) inquiry into the prescription drug middleman industry, requiring the six largest PBMs to provide information and records regarding their business practices.[18] As I have always been fond of saying, sunlight is the best disinfectant. Since the announcement of the inquiry, the FTC has retracted all previous advocacy statements related to PBMs because they no longer reflect current market realities.[19] Additionally, Chair Lina Khan has publicly acknowledged the dangers of PBMs and agreed that PBMs reduce patients' access to life-saving drugs.[20]

The consolidation and vertical integration of our health care system is not limited to PBMs; hospitals, physicians, and health insurer markets have become increasingly consolidated as well. There have been almost 1,800 hospital mergers between 1998 and 2021, leading to about 2,000 fewer hospitals throughout the country.[21] Larger health systems are also buying physician

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[15] https://newsroom.tricare.mil/News/TRICARE-News/Article/3186908/tricare-pharmacy-network-changes-may-affect-independent-pharmacy-customers#:~:text=Starting%20Oct.,to%20more%20than%2040%2C000%20pharmacies.

[16] https://ohioauditor.gov/news/pressreleases/details/5042

[17] https://stories.usatodaynetwork.com/sideeffects/state-report-pharmacy-middlemen-reap-millions-from-tax-funded-medicaid/

[18] https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-launches-inquiry-prescription-drug-middlemen-industry

[19] https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-votes-issue-statement-withdrawing-prior-pharmacy-benefit-manager-advocacy

[20] https://www.ftc.gov/news-events/events/2022/04/ftc-justice-department-listening-forum-firsthand-effects-mergers-acquisitions-health-care

[21] https://ldi.upenn.edu/our-work/research-updates/hospital-consolidation-continues-to-boost-costs-narrow-access-and-impact-care-quality/

practices at record rates. More than 80,000 physician practices were acquired in 2018, a marked increase over the more than 35,000 acquired in 2012.[22]

Take UnitedHealth Group as an example. This conglomerate has a stronghold on every type of health care service. It is the single largest employer of physicians, while also one of the biggest insurance companies, meaning it gets to choose how much to pay the doctors who rival its own. It also controls its PBM, its own mail-order pharmacy, and recently acquired a hospice and home health service provider.

Undoubtedly, these companies will say their moves to acquire other businesses and grow are intended to save money. However, I recently asked the Director of the Congressional Budget Office, Phill Swagel, to name one example of a health care consolidation that has benefited patients and taxpayers. He responded with, "Sir, I cannot think of one example."

Again, I urge this Administration to work with Congress to reform the harmful PBM practices that are making health care inaccessible and unaffordable for millions of Americans. I believe this is a perfect opportunity to show the American people that we care about them and are working towards solutions that increase the accessibility, affordability, and quality of health care.

Sincerely,

Earl L. "Buddy" Carter
Member of Congress

[22] https://revcycleintelligence.com/news/hospital-acquisitions-of-physician-practices-rose-128-since-2012