

# Congress of the United States

Washington, DC 20515

June 26, 2024

Dr. Lester Martinez-Lopez  
Assistant Secretary of Defense for Health  
Affairs  
1200 Defense, Pentagon  
Washington, DC 20301

Lieutenant General Telita Crosland  
Director, Defense Health Agency  
7700 Arlington Boulevard Suite 5101  
Falls Church, VA 22042-5101

Dear Assistant Secretary Martinez-Lopez and Lieutenant General Crosland,

We write to express our concerns with the Department of Health Agency's (DHA's) decision to continue its exclusive contract with Cigna-owned Express Scripts – the second largest pharmacy benefit manager (PBM) in the country – to administer TRICARE's pharmacy program, which serves 9.6 million beneficiaries.<sup>1</sup> Since the DHA granted Express Scripts its exclusive TRICARE contract in 2009,<sup>2</sup> the company has consistently leveraged its market power to squeeze independent pharmacies and steer TRICARE beneficiaries to their own mail-order pharmacy,<sup>3</sup> and used other tactics to increase costs for service members and taxpayers.<sup>4</sup>

Cigna purchased Express Scripts for \$67 billion in 2018, combining its health insurance business with the PBM and its giant mail-order pharmacy, Accredo.<sup>5</sup> As a PBM, Express Scripts sets reimbursement rates at pharmacies and bills insurers when its enrollees fill their prescriptions. However, because Cigna also owns Accredo, it can effectively keep much of its business in-house, using its PBM to steer patients to its own pharmacy while disadvantaging competitors.<sup>6</sup> For example, Express Scripts appears to routinely under-reimburses pharmacies at cancer clinics for expensive cancer drugs.<sup>7</sup> When pharmacies reject Express Scripts' predatory terms, patients

<sup>1</sup> TRICARE, “Covered Services,” <https://www.tricare.mil/pharmacy>; Congressional Research Service, “TRICARE's 5<sup>th</sup> Generation Pharmacy Contract: TPharm5,” November 29, 2022, <https://crsreports.congress.gov/product/pdf/IN/IN12053>.

<sup>2</sup> The Columbus Dispatch, “Military beset by PBM hassles,” Marty Schladen, September 28, 2019, <https://www.dispatch.com/story/news/politics/elections/2019/09/28/military-beset-by-pbm-hassles/2657431007/>.

<sup>3</sup> *Id.*; Senator Cotton letter to Acting Assistant Secretary of Defense for Health Affairs Mullen, September 29, 2022, [https://www.cotton.senate.gov/imo/media/doc/tricare\\_letter.pdf](https://www.cotton.senate.gov/imo/media/doc/tricare_letter.pdf).

<sup>4</sup> Senator Elizabeth Warren letter to HHS Inspector General Grimm, November 22, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.11.21%20Letter%20to%20HHS%20OIG%20regarding%20MLR%20evasion.pdf>.

<sup>5</sup> Fierce Healthcare, “Cigna closes \$67B Express Scripts acquisition, promising affordability and choice,” Evan Sweeney, December 20, 2018, <https://www.fiercehealthcare.com/payer/cigna-closes-67b-express-scripts-acquisition>.

<sup>6</sup> Senator Elizabeth Warren letter to HHS Inspector General Grimm, November 22, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.11.21%20Letter%20to%20HHS%20OIG%20regarding%20MLR%20evasion.pdf>.

<sup>7</sup> The Columbus Dispatch, “PBM rules can delay life-or-death drugs,” Marty Schladen, May 12, 2019, <https://www.dispatch.com/story/lifestyle/health-fitness/2019/05/12/pbm-rules-can-delay-life/5179433007/>; The Columbus Dispatch, “Express Scripts putting veterans, active military at risk, cancer clinics say,” Marty Schladen, March 9, 2020, <https://www.dispatch.com/story/news/columns/the-daily-briefing/2020/03/09/express-scripts->

are forced to use Accredo's mail-order pharmacy, which is prone to delays and safety issues, but drives more profits to parent company Cigna.<sup>8</sup>

This anti-competitive gaming is particularly evident in TRICARE. In August 2022, Express Scripts offered pharmacies that compete with Accredo such usurious contract terms that nearly 15,000 pharmacies left the TRICARE network, forcing 400,000 active-duty and retired military families to decide between searching for a new in-network pharmacy or simply opting into Accredo's mail-order option.<sup>9</sup> According to one expert familiar with the situation "The Defense Department is allowing contractors to hold up pharmacies to say, 'Either you accept a money-losing contract or take the blame for not serving veterans.'"<sup>10</sup>

Following overwhelming public pressure from lawmakers and the public, Express Scripts reopened its pharmacy network in late 2022.<sup>11</sup> However, the terms of the contract remained extortionate, "result[ing] in significant losses for nearly every prescription filled."<sup>12</sup> As a result, fewer than 5,000 pharmacies rejoined, leaving a total of roughly 10,000 pharmacies that were now out of TRICARE's network.<sup>13</sup> Indeed, this exodus of independent and retail pharmacies can be catastrophic for TRICARE beneficiaries, especially those with complex medical conditions who are ill-served by mail-order pharmacies. For example, in a House oversight hearing in September 2023, President of the National Community Pharmacists Association Hugh Chancy described the harms of Express Scripts' steering practices on one patient: "She is blind and we hand-deliver her medications to her home in specialty packaging. With Tricare's changes, she was forced to go to the mail order without the specialty packaging and her elderly husband... must drive 40 miles round trip to the pharmacy."<sup>14</sup>

In addition to inflicting well-documented harms on competing pharmacies and TRICARE beneficiaries, Express Scripts may also be using its TRICARE contract to overcharge taxpayers. Last year, a *Wall Street Journal* investigation found that Express Scripts charged commercial insurers 27.4 times more for a selection of generic drugs at Accredo compared to Cost Plus, an independent pharmacy that the *Wall Street Journal* used as a baseline.<sup>15</sup> Similarly, in West Virginia, where Express Scripts manages the pharmacy benefit for West Virginia's public

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[putting-veterans-active/1554069007/](https://www.fiercehealthcare.com/providers/pharmacies-slam-cigna-and-express-scripts-shrinking-tricare-network-15k).

<sup>8</sup> The Columbus Dispatch, "Military beset by PBM hassles," Marty Schladen, September 28, 2019, <https://www.dispatch.com/story/news/politics/elections/2019/09/28/military-beset-by-pbm-hassles/2657431007/>; Fierce Healthcare, "Pharmacies slam Cigna and Express Scripts for shrinking TRICARE network by 15k," Robert King, December 7, 2022, <https://www.fiercehealthcare.com/providers/pharmacies-slam-cigna-and-express-scripts-shrinking-tricare-network-15k>.

<sup>9</sup> The American Prospect, "Prescription Drug Middleman Potentially Profiting off Veteran," David Dayen, October 19, 2022, <https://prospect.org/health/prescription-drug-middleman-potentially-profiting-off-veterans/>.

<sup>10</sup> *Id.*

<sup>11</sup> Military Times, "More pharmacies rejoin Tricare network. Are there enough?" Karen Jowers, January 11, 2023, <https://www.militarytimes.com/pay-benefits/military-benefits/health-care/2023/01/12/more-pharmacies-rejoin-tricare-network-are-there-enough/>.

<sup>12</sup> Senator James Lankford letter to DHA, Express Scripts, and Cigna, January 3, 2023, [https://www.lankford.senate.gov/wp-content/uploads/media/doc/2023-1-3%20Sen.%20Lankford%20TRICARE%20Pharmacy%20Program%20Letter%20to%20DHA,%20ESI,%20Cigna\[2\].pdf](https://www.lankford.senate.gov/wp-content/uploads/media/doc/2023-1-3%20Sen.%20Lankford%20TRICARE%20Pharmacy%20Program%20Letter%20to%20DHA,%20ESI,%20Cigna[2].pdf).

<sup>13</sup> *Id.*

<sup>14</sup> House Committee on Oversight and Accountability, "The Role of Pharmacy Benefit Managers in Prescription Drug Markets Part II: Not What the Doctor Ordered," September 19, 2023, <https://www.govinfo.gov/content/pkg/CHRG-118hrg53520/html/CHRG-118hrg53520.htm>.

employees, the PBM charged insurers 100 times more for a selection of expensive specialty drugs at Accredo than it charged for those same drugs at competing pharmacies.<sup>16</sup> And in Massachusetts in 2022, Express Scripts agreed to pay the state \$3.2 million after allegedly overcharging the workers' compensation insurance system.<sup>17</sup> We are concerned that Express Scripts may be employing these same tactics to overcharge TRICARE – a taxpayer-funded program – for drugs dispensed at Accredo, leveraging its TRICARE contract to underpay competitors and overpay its related companies.<sup>18</sup>

For these reasons, we believe DHA's exclusive contract with Express Scripts may be harming TRICARE beneficiaries, independent pharmacies, and American taxpayers. Under DHA's TPharm5 contract – which details TRICARE's "firm-fixed-price, incentive/award fee contract" with Express Scripts – the agency may elect to revise terms or exit the exclusive agreement with Express Scripts each year until the contract period ends in December 2029.<sup>19</sup> As such, to better understand DHA's oversight of Express Scripts, as well as the likelihood that the agency continues its TPharm5 contract until its conclusion, we respectfully request answers to the following questions by no later than July 2, 2024.

1. How does DHA verify that Express Scripts is following all of the network adequacy requirements of TPharm5, including the requirement that there is at least one pharmacy within 15 minutes driving time of 90 percent of TRICARE beneficiaries?<sup>20</sup>
  - a. Please include a copy of the findings of any audits of this requirements.
  - b. Please list any violations of the network terms since 2009.
  - c. Please describe how DOD assures that Express Scripts does not use its PBM power to drive TRICARE beneficiaries to select the mail order option instead of in-network community pharmacies for brand name maintenance medications, after their second fill, as has been in proposed pilot programs over the last 7 years?
2. How many pharmacies are in TRICARE's network today?
  - a. Please list the number of in-network pharmacies for each year since 2009 disaggregated by retail and independent pharmacies.
3. Express Scripts has been found to deny coverage of expensive specialty drugs, resulting in care denials and burdensome appeals processes for TRICARE beneficiaries.<sup>21</sup> How does DHA track these denials?

<sup>15</sup> Senator Elizabeth Warren letter to HHS Inspector General Grimm, November 22, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.11.21%20Letter%20to%20HHS%20OIG%20regarding%20MLR%20evasion.pdf>.

<sup>16</sup> Ohio Capital Journal, "Contractor for WV public employees system pays itself way more for some drugs than necessary," Marty Schladen, February 6, 2024, <https://ohiocapitaljournal.com/2024/02/06/contractor-for-w-v-public-employees-system-pays-itself-way-more-for-some-drugs-than-necessary/>.

<sup>17</sup> Mass.gov, "Pharmacy Benefits Manager To Pay \$3.2 Million for Alleged Failure To Follow Pricing Procedures for Workers' Compensation Prescriptions," November 7, 2022, <https://www.mass.gov/news/pharmacy-benefits-manager-to-pay-32-million-for-alleged-failure-to-follow-pricing-procedures-for-workers-compensation-prescriptions>.

<sup>18</sup> The Wall Street Journal, "U.S. Probes High Generic Drug Prices," Jennifer Calfas, April 16, 2024, <https://www.wsj.com/livecoverage/stock-market-today-earnings-04-16-2024/card/u-s-probes-high-generic-drug-prices-7L04Lg6yABfMAwOXtQfW>.

<sup>19</sup> Congressional Research Service, "TRICARE's 5<sup>th</sup> Generation Pharmacy Contract: TPharm5," November 29, 2022, <https://crsreports.congress.gov/product/pdf/IN/IN12053>.

<sup>20</sup> *Id.*

4. Has TRICARE conducted any pricing reviews to determine if Express Scripts is charging more for drugs through Accredo than it charges for these drugs at independent pharmacies?
  - a. If so, what did these reviews find?
5. How much does Express Scripts charge per prescription for each of the ten most frequently prescribed products when they are for purchases through Accredo? How much does it charge for these same prescriptions when they are purchased through independent pharmacies? Please list prices for each drug individually.

Sincerely,



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Elizabeth Warren  
United States Senator



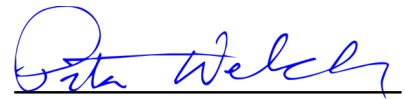
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Earl L. "Buddy" Carter  
Member of Congress



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Mike Rounds  
United States Senator



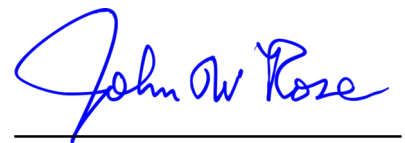
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Peter Welch  
United States Senator



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Katie Porter  
Member of Congress



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John Rose  
Member of Congress

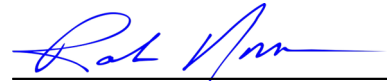
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<sup>21</sup> The Columbus Dispatch, "Express Scripts putting veterans, active military at risk, cancer clinics say," Marty Schladen, March 9, 2020, <https://www.dispatch.com/story/news/columns/the-daily-briefing/2020/03/09/express-scripts-putting-veterans-active/1554069007/>.



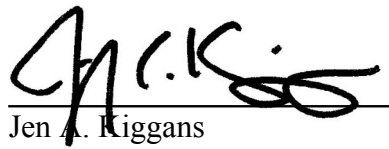
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Diana Harshbarger  
Member of Congress



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Ralph Norman  
Member of Congress



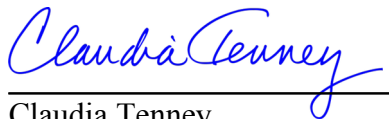
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Jen A. Kiggans  
Member of Congress



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Adrian Smith  
Member of Congress



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Claudia Tenney  
Member of Congress



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Donald G. Davis  
Member of Congress



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Neal P. Dunn, M.D.  
Member of Congress



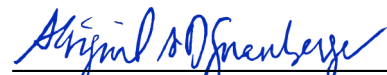
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Mike Flood  
Member of Congress



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Madeleine Dean  
Member of Congress



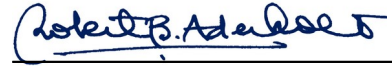
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Abigail Davis Spanberger  
Member of Congress



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Stephanie Bice  
Member of Congress



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Robert B. Aderholt  
Member of Congress



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Becca Balint  
Member of Congress



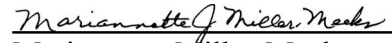
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James Comer  
Member of Congress



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Rick W. Allen  
Member of Congress



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Mariannette Miller-Meeks,  
M.D.  
Member of Congress



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Bruce Westerman  
Member of Congress



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Dusty Johnson  
Member of Congress

CC Department of Defense Inspector General Robert P. Storch