

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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March 1, 2023

Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore MD, 21244

Dear Administrator Brooks-LaSure,

The Committee on Oversight and Accountability is continuing to investigate the role Pharmacy Benefit Managers (PBM) play in pharmaceutical markets. CVS Health's CVS Caremark, Cigna's Express Scripts, and United Health Group's Optum Rx control an estimated 80 percent of the PBM marketplace.¹ In Committee Republicans' December 2021 report, we highlighted initial findings that large PBM consolidation has negatively impacted patient health, increased costs for consumers, forced manufacturers to raise their prices, and created conflicts of interest which distort the market and limit high quality care for patients.² The Centers for Medicare and Medicaid Services (CMS) oversees the largest federal contracts with PBMs through the Medicare and Medicaid programs. In light of the central role of PBMs in pharmaceutical markets, we request that you provide documents and communications.

PBMs engage in self-benefiting practices at multiple levels of the payment and supply chain as they retain control over drug prices, rebates, pharmacy reimbursements, insurers, pharmacy networks, and formularies.³ PBMs use "fail first" policies which require patients to fail on the PBM's preferred drug before they can take the drug originally prescribed. These policies can worsen patients' health, by forcing them to take medications which do not work for them.⁴ Additionally, lengthy delays for prior authorizations can cause suffering or even death as patients wait for PBMs to approve life-saving medications their doctors prescribe.⁵ PBMs enact these policies to get higher rebates from pharmaceutical manufacturers at the expense of patients. PBMs also engage in spread pricing, where PBMs pay pharmacies a lower amount than they

¹ Josh Mader, *Pharmacy Benefit Managers: Market Landscape and Strategic Imperatives*, HIRO, (2021).

² H. Comm. on Oversight & Reform, *Staff Report: A View from Congress: Role of Pharmacy Benefit Managers in Pharmaceutical Markets*, 117th Cong. (Dec. 10, 2021).

³ *Pharmacy Benefit Managers and Their Role in Drug Spending*, THE COMMONWEALTH FUND (Apr. 22, 2019); *Pharmacy Benefit Managers*, NAT'L ASS'N OF INS. COMM'RS (Apr. 11, 2022).

⁴ *What is Fail First? And Why it Matters*, FAIL FIRST HURTS.

⁵ Aaron Tallent, *Oncologists Say Prior Authorization is Causing Delays in Care*, OBR ONCOLOGY (Mar. 25, 2022); *What is Prior Authorization*, CIGNA (2021).

charge to a health plan sponsor, such as the government in cases of Medicare and Medicaid, while pocketing the difference.⁶ PBMs also force pharmacies to pay retroactive rebates and fees including Direct and Indirect Remuneration (DIR) fees months or even years later, shifting costs from PBMs to beneficiaries and the government.

PBMs appear to be continuing to utilize their market leverage to increase their own financial gain. They have been caught overcharging Medicaid programs in Ohio, Kentucky, Illinois, and Arkansas by more than \$415 million.⁷ Specifically, accusations were settled in these and other states: Kansas for \$27.6 million, New Hampshire for \$21.2 million, and New Mexico for \$13.7 million.⁸ Each of the three largest aforementioned PBMs has a lengthy history of overcharging and failing to reimburse Medicaid related expenses and drug costs.

Specifically in 2019, CVS Health was sued by the U.S. Department of Justice for the fraudulent billing of Medicare and other government programs for outdated prescriptions for disabled and elderly individuals.⁹ In 2014, CVS Caremark agreed to pay \$6 million to settle allegations that they knowingly failed to reimburse Medicaid for prescription drug costs.¹⁰ CVS even agreed in 2013 to pay the federal government and five states – Arkansas, California, Delaware, Louisiana, and Massachusetts – a total of \$4.25 million to settle allegations that the company knowingly fail to reimburse Medicaid for prescription drugs costs.¹¹ Recently in April 2022, the state of Louisiana sued OptumRx for alleged overcharging of the state Medicaid program by billions of dollars.¹² The Aids Healthcare Foundation (AHF) sued Express Scripts in July 2022 alleging that Express Scripts manipulated Medicare star ratings to ensure pharmacies get unfairly low scores, a process which allowed Express Scripts to “claw back” Medicare benefits from pharmacies to go towards its bottom line.¹³ According to AHF, there have been 14 different violations across nine states.¹⁴

We refuse to ignore the harmful role that PBMs are playing in the pharmaceutical marketplace. Greater transparency in the PBM industry is vital to determine the impact PBM tactics are having on patients and the pharmaceutical market. To assist Committee Republicans

⁶ *Spread Pricing 101*, NAT’L CMTY PHARMACISTS ASS’N.

⁷ Catherine Candisky, *State Report: Pharmacy Middlemen Reap Millions from Tax-funded Medicaid*, THE COLUMBUS DISPATCH, (2018); *see also* Lisa Gillespie, *Pharmacy Middlemen Overcharged Medicaid \$123.5 Million, State Says*, Louisville Public Media, (Feb. 23, 2019); *see also* Samantha Liss, *Centene Reaches \$72M Settlement with Illinois, Arkansas for Alleged Medicaid Overcharges*, HEALTHCARE DIVE, (Oct. 1, 2021).

⁸ Bridgette A. Keller & Hassan Shaikh, *PBM Regulatory Roundup (Fall 2022): State Medicaid Enforcement Efforts Continue as Legislative Activity Slows Down*, MINTZ (Nov. 14, 2022).

⁹ Rebecca Pifer, *CVS Long-Term Care Pharmacy Sued by DOJ Over Fraudulent Prescribing Practices*, HEALTHCARE DIVE (Dec. 17, 2019).

¹⁰ Jonathan Stempel, *CVS’ Caremark Unit Settles U.S. False Claims Allegations*, REUTERS (Sep. 26, 2014).

¹¹ U.S. Dep’t of Justice, Press Release, *CVS’ Caremark Will Pay \$4.25 Million for Allegedly Denying Medicaid Claims for Reimbursement of Prescription Drug Costs* (Dec. 2, 2013).

¹² Nona Tepper, *Louisiana sues UnitedHealthcare, OptumRx for Alleged Medicaid Drug Overcharging*, MODERN HEALTHCARE (Apr. 20, 2022).

¹³ Paige Minemyer, *AIDS Healthcare Foundation Sues Express Scripts over Medicare ‘Clawbacks’*, FIERCE HEALTHCARE (Jul. 14, 2022).

¹⁴ *Id.*

Administrator Brooks-LaSure

March 1, 2023

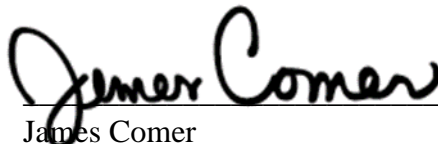
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in investigating the role of PBMs in pharmaceutical markets, please provide the following documents and information no later than March 15, 2023:

1. All documents and information regarding the accounting of rebates, fees, or other similar charges received by CVS Caremark, Optum Rx, or Express Scripts, or related entities, related to the Medicare or Medicaid program;
2. All documents and information regarding the accounting of rebates, fees, or other similar charges received by CVS Caremark, Optum Rx, or Express Scripts, or related entities, related to the Medicare or Medicaid program;
3. All contracts between CMS with CVS Caremark, Optum Rx, or Express Scripts or related entities;
4. All documents and communications related to oversight by CMS of CVS Caremark, Optum Rx, or Express Scripts or related entities implementation and execution of Medicare or Medicaid contracts;
5. All documents and communications related to the recoupment of payments made improperly to CVS Caremark, Optum Rx, or Express Scripts or related entities within the Medicare or Medicaid programs.

Thank you for your consideration of this important issue. To make arrangements to deliver documents or ask any related follow-up questions, please contact Committee on Oversight and Accountability Majority Staff at (202) 225-5074. The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive style with a large, prominent "J" and "C".

James Comer

Chairman

Committee on Oversight and Accountability

cc: The Honorable Jamie B. Raskin, Ranking Member
Committee on Oversight and Accountability