

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<https://oversight.house.gov>

March 1, 2023

David Joyner
President
CVS Caremark
One CVS Drive
Woonsocket, RI 02895

Dear Mr. Joyner,

The Committee on Oversight and Accountability is continuing to investigate the role Pharmacy Benefit Managers (PBM) play in pharmaceutical markets. The largest PBM, CVS Caremark, an arm of CVS Health, along with Cigna Express Scripts and UnitedHealth Group's Optum Rx, control 80 percent of the PBM market.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 This issue remains a top priority while Americans are currently plagued with historically high inflation and rising health care costs. In light of the central role PBMs play in our pharmaceutical markets, we request 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 patient's health, by forcing 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 charge to a health plan sponsor, such as the government in cases of Medicare and Medicaid,

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).

while pocketing the difference.⁶ In 2017 alone, PBMs and their pharmacies made as much as \$4.2 billion by charging the Medicaid program more than they were paying the pharmacies.⁷ 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.

CVS Caremark appears to be continuing to leverage its size for financial gain. CVS Caremark has been engaged in a number of lawsuits regarding their controversial PBM practices. In April 2022, the Minnesota Department of Commerce initiated an enforcement action against CVS Caremark for violations of the Pharmacy Benefit Manager Act, seeking to fine the company \$1.25 million and stop violative PBM practices.⁸ The department alleged that CVS Caremark violated state laws protecting patient choice by requiring patients to fill maintenance medications at CVS retail pharmacies or Caremark-owned mail-order pharmacies.⁹ In January 2022, CVS agreed to pay \$4.8 million to the Oklahoma Insurance Department for alleged violations of Patient's Right to Pharmacy Choice Act.¹⁰ In December 2019, CVS and its Omnicare business were sued by the Department of Justice over alleged fraudulent billing of Medicare and other government programs for outdated prescriptions for disabled and elderly individuals.¹¹ In September 2014, CVS also agreed to pay \$6 million to settle United States allegations that it knowingly failed to reimburse Medicaid for prescription drug costs.¹²

The focus of the pharmaceutical marketplace should be on the patient. Greater transparency is needed to determine the impact PBMs' tactics are having on patients and the pharmaceutical market. To assist the Committee in further understanding the role of PBMs in pharmaceutical markets, please provide the following documents and information no later than March 15, 2023:

1. All documents and communications related to formulary design and management relating to:
 - a. Commercial plans;
 - b. Medicare;
 - c. Medicaid;
 - d. Federal Employee Health Benefit Program;

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

⁷ Robert Langreth, David Ingold, Jackie Gu, *The Secret Drug Pricing System Middlemen Use to Rake in Millions*, Bloomberg (Sep. 11, 2018).

⁸ *State moves to fine CVS/Caremark for patient protection law violations*, NAT'L CMTY PHARMACISTS ASS'N (Apr. 29, 2022).

⁹ *Id.*

¹⁰ Oklahoma Ins. Dep't, Press Release, *OID Reaches \$4.8 Million Settlement Agreement with CVS Caremark for Alleged Violations of the Patient's Right to Pharmacy Choice Act, Dependent on Federal Court Decision* (Jan. 20, 2022).

¹¹ Rebecca Pifer, *CVS Long-Term Care Pharmacy Sued by DOJ Over Fraudulent Prescribing Practices*, HEALTHCARE DIVE (Dec. 17, 2019).

¹² Jonathan Stempel, *CVS' Caremark Unit Settles U.S. False Claims Allegations*, REUTERS (Sep. 26, 2014).

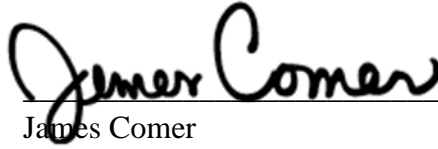
- e. TRICARE; or
 - f. The Department of Veteran's Affairs;
2. A list of individuals involved in the design and management of formularies;
3. A list, by year, of all rebates or fees paid to CVS Caremark by:
 - a. Manufacturers of one or more prescription drugs;
 - b. Wholesale drug distributors licensed by any state or entity of the state; or
 - c. Pharmacies licensed by any state or entity of the state;
4. All documents and communications related to:
 - a. Differences in pricing between government programs and commercial plans;
 - b. "Rebate guarantees," defined as guaranteeing a specific amount of rebates to a plan sponsor;
 - c. Drug discount cards;
 - d. Incentives or encouragement of a patient to use a pharmacy owned by CVS Caremark or related entities;
 - e. Patient adherence metrics, including but not limited to how the metrics are created and applied to pharmacies;
5. All documents and communications related to the Group Purchasing Organization called Zinc Health Services (Zinc), including but not limited to:
 - a. Zinc's relationship with CVS Caremark and CVS Health;
 - b. Conflicts of interest between CVS Health, CVS Caremark, and Zinc;
 - c. Priorities given to CVS Caremark-owned or preferred entities;
 - d. Services Zinc offers to manufacturers and rebate negotiations with manufacturers;
6. All contracts between CVS Caremark with entities or programs within or subsidized by the Federal Government including but not limited to:
 - a. Medicaid;
 - b. Medicare;
 - c. The Centers for Medicare and Medicaid Services;
 - d. The Office of Personnel Management;
 - e. The Defense Health Agency; or
 - f. The Department of Veteran's Affairs;
7. All documents or communications, including but not limited to letters or notices from or on behalf of CVS Caremark, related to any removal or threat of removal from any Medicare Part D network based upon:

- a. The raising of a dispute or making any comment regarding the legality, propriety, or other legal deficiency in connection with the PBM or Plan Sponsor's Medicare Part D networks;
 - b. The filing or communication of the intent to file any legal action against CVS Health or its related entities;
 - c. The filing or communication of the intent to file an application in any state or federal court to confirm any arbitration award rendered against CVS Health or its related entities;
8. Any interim or final arbitration award, court opinion, order, or judgment finding CVS Caremark or related entities violated Medicare Part D "Any Willing Provider Law" (42 U.S.C. § 1394w-104(b)(1)(A), 42 C.F.R. § 423.505(b)(18));
 9. All documents and communications related to fees charged by CVS Caremark to pharmacies owned by CVS Health, UnitedHealth Group, or Cigna Express Scripts Inc., including but not limited to:
 - a. Direct and Indirect Remuneration (DIR) fees;
 - b. Network Access fees; or
 - c. Data sharing fees;
 10. All policies and procedures relating to the payment for and distribution of specialty medications within CVS Caremark, including but not limited to policies and procedures which encourage or incentivize patients to receive specialty medications from a CVS Health-owned or preferred entity; and
 11. All policies and procedures related to the purchase or the determination to offer to purchase a competing pharmacy.

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.

David Joyner
March 1, 2023
Page 5 of 5

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