

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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WASHINGTON, DC 20515-6143

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

March 1, 2023

The Honorable Kiran Ahuja
Director
U.S. Office of Personnel Management
1900 E Street NW
Washington, DC 20415-1000

Dear Director Ahuja,

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 Office of Personnel Management (OPM) provides support to federal agencies and the federal workforce through the management of healthcare and insurance programs involving PBMs. In light of the central role of PBMs in pharmaceutical markets, we request that you provide the 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.

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).

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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, while pocketing the difference.⁶

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

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 in investigating the role of PBMs in pharmaceutical markets, please provide the following documents and information from 2015 to present, no later than March 15, 2023:

1. All documents and information regarding the accounting of rebates, fees, or other similar charges received by PBMs, or related entities, contracted by OPM for the Federal Employee Health Benefits program;
2. All contracts between OPM, for the Federal Employee Health Benefits program, and PBMs or related entities;
3. All documents and communications related to oversight by OPM of contracted PBMs or related entities including but not limited to the implementation and execution of Federal Employee Health Benefit program contracts;
4. All documents and communications related to the recoupment of payments made improperly to PBMs or related entities by OPM for the Federal Employee Health Benefits program.

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.

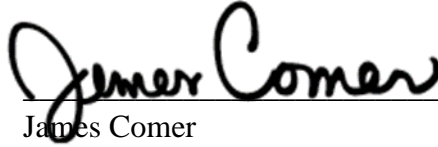
⁶ *Spread Pricing 101*, NAT’L CMTY PHARMACISTS ASS’N.

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).

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Sincerely,

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

James Comer
Chairman
Committee on Oversight and Accountability

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