

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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WASHINGTON, DC 20515-6143

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<https://oversight.house.gov>

March 1, 2023

Seileen Mullen

Assistant Secretary of Defense for Health Affairs

Defense Health Agency

7700 Arlington Boulevard, Suite 5101

Falls Church, VA 22042-5101

Dear Assistant Secretary Mullen,

The Committee on Oversight and Accountability is continuing to investigate the role Pharmacy Benefit Managers (PBM) play in pharmaceutical markets. 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 As TRICARE is the Defense Health Agency's (DHA) health care program for uniformed service members, retirees, and their families providing comprehensive coverage to health plans and prescriptions, 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.

¹ Josh Mader, *Pharmacy Benefit Managers: Market Landscape and Strategic Imperatives*, HIRO, (2021), <https://www.hirc.com/PBM-market-landscape-and-imperatives>.

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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The 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 continually 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 extent of the damage 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 DHA for the TRICARE program;
2. All documents and information related to contract terms for the TRICARE program with PBMs or related entities;
3. All documents and communications related to oversight by DHA of PBMs or related entities' implementation and execution of contracts;
4. All documents and communications related to the recoupment of payments made improperly to PBMs or related entities within the TRICARE 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).

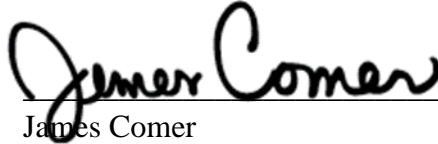
⁸ Bridgette A. Keller & Hassan Shaikh, *PBM Regulatory Roundup (Fall 2022): State Medicaid Enforcement Efforts Continue as Legislative Activity Slows Down*, MINTZ (Nov. 14, 2022).

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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 initial "J".

James Comer

Chairman

Committee on Oversight and Accountability

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