

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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August 28, 2024

Patrick Conway, M.D.  
Chief Executive Officer  
Optum Rx  
2300 Main Street  
Irvine, CA 92614

Dear Dr. Conway:

The House Committee on Oversight and Accountability writes to provide you the opportunity to correct the record for statements made during your appearance before the Committee. On July 23, 2024, the Committee held a hearing titled “The Role of Pharmacy Benefit Managers in Prescription Drug Markets.” As the Chief Executive Officer of Optum Rx, you were invited to testify.

During the hearing you testified that Optum Rx does not steer patients to PBM-owned pharmacies:

### **Exchange:**

Congressman Fallon: Okay. And the same thing I would like to start with, Mr. Joyner, do your companies steer patients to affiliated pharmacies? Yes or no.

Mr. Joyner. We actually establish a variety of different network options.

Congressman Fallon: And again, at limited time, yes or no?

Mr. Joyner. So the answer is no.

Congressman Fallon: Okay. Dr. Kautzner?

Dr. Kautzner. No, sir. Our clients make the decision on what pharmacy networks they want to use for their patients.

Congressman Fallon: Dr. Conway?

Dr. Conway.                      No.<sup>1</sup>

This statement contradicts both the Committee’s and Federal Trade Commission’s (FTC) findings that Optum Rx, as well as Express Scripts and CVS Caremark, steer patients to PBM-owned pharmacies.

The FTC interim staff report states that “vertically integrated PBMs may have the ability and incentive to prefer their own affiliated businesses” to “increase utilization of certain drug products at affiliated pharmacies to generate the greatest revenue and profits for their respective conglomerates.”<sup>2</sup> PBMs accomplish patient steerage in different ways, including pharmacy network and formulary design. For example, the FTC reports that “PBMs routinely create narrow and preferred pharmacy networks that can advantage their own pharmacies while excluding rivals.”<sup>3</sup> Additionally, the FTC reports that PBMs have multiple “optimization levers” to steer patients to PBM-owned pharmacies, including “white bagging,” or requiring that patients obtain drugs from a PBM-affiliated pharmacy, and “brown bagging,” which requires that a patient is administered a prescription in the provider’s office instead of a patient’s pharmacy of choice.<sup>4</sup>

Additionally, you testified that Optum Rx reimburses Optum Rx-affiliated pharmacies the same or more than non-affiliated pharmacies in its network, while also acknowledging that affiliated pharmacies are often the lowest cost option:

**Exchange:**

Congressman Fallon: Okay. Dr. Conway, have you all done this, where you are sending out unsolicited communications to pharmacies and saying if you don't respond, you are opted in, unless you opt out?

Dr. Conway: We do not participate in that type of contracting, and our independent pharmacy network has grown over the last several years. And we pay them more than retail pharmacies and actually pay non-affiliated pharmacies, on average, comparable or more than our affiliated pharmacies.

Congressman Fallon: So, would you say whether a pharmacy is owned by

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<sup>1</sup> *The Role of Pharmacy Benefit Managers in Prescription Drug Markets Part III: Transparency and Accountability*, 118<sup>th</sup> Cong. (July 23, 2024).

<sup>2</sup> Federal Trade Commission, *Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies*, 3 (July 2024).

<sup>3</sup> *Id.* at 31-32.

<sup>4</sup> *Id.*

the same company as the PBM, is that a factor in determining reimbursement rates?

Dr. Conway: No. We pay affiliated and non-affiliated pharmacies comparable rates. Often our own affiliated pharmacies are actually the lowest cost options in the market, and at the end of the day, as described, the clients, employers, and others select the network that they want to provide to their employees.<sup>5</sup>

This statement contradicts both the Committee's and Federal Trade Commission's (FTC) findings that Optum Rx, as well as Express Scripts and CVS Caremark, reimburse PBM-owned pharmacies at a higher rate than non-affiliated pharmacies. The FTC interim staff report found that PBMs reimburse affiliated pharmacies at significantly higher rates than non-affiliated pharmacies.<sup>6</sup> In its case study, FTC found that PBM reimbursements for affiliated pharmacies often exceed the National Average Drug Acquisition Cost (NADAC).<sup>7</sup> Additionally, post-sale adjustments to pharmacy reimbursements by PBMs have been found to significantly reduce reimbursements for unaffiliated pharmacies.<sup>8</sup>

Additionally, you testified that Optum Rx does not engage in opt out contracting:

**Exchange:**

Congressman Fallon: Okay. Dr. Conway, have you all done this, where you are sending out unsolicited communications to pharmacies and saying if you don't respond, you are opted in, unless you opt out?

Dr. Conway: We do not participate in that type of contracting, and our independent pharmacy network has grown over the last several years. And we pay them more than retail pharmacies and actually pay non-affiliated pharmacies, on average, comparable or more than our affiliated pharmacies.

The Committee has also reviewed documents titled "Notice Amendment" in which a pharmacy to accept an amendment to their contracts with Optum Rx altering Direct and Indirect Remuneration by simply submitting a claim.<sup>9</sup> Furthermore, the FTC's interim staff report states, "Independent pharmacies generally lack the leverage to negotiate terms and rates when enrolling

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<sup>5</sup> *Supra* n. 1.

<sup>6</sup> *Supra* n. 2 at 39.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 59.

<sup>9</sup> *Notice Amendment*, [on file with the Committee].

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in PBMs' pharmacy networks, and subsequently may face effectively unilateral changes in contract terms without meaningful choice and alternatives."<sup>10</sup>

The Committee highlights 18 U.S.C. § 1001, which states, "in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—... (2) makes any materially false, fictitious, or fraudulent statement or representation;... shall be fined under this title, imprisoned not more than 5 years."<sup>11</sup> The Committee also highlights 18 U.S.C. § 1621, which states, "having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true... is guilty of perjury and shall... be fined under this title or imprisoned not more than five years, or both."<sup>12</sup>

Please provide any necessary corrections to the record prior to September 11, 2024.

Sincerely,



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James Comer

Chairman

Committee on Oversight and Accountability

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<sup>10</sup> *Supra* n. 2.

<sup>11</sup> 18 U.S.C. § 1001.

<sup>12</sup> 18 U.S.C. § 1621.