

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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August 28, 2024

Adam Kautzner, PharmD  
President  
Express Scripts  
One Express Way  
St. Louis, MO 63121

Dear Dr. Kautzner:

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 Part III: Transparency and Accountability.” As the President of Evernorth Care Management & Express Scripts, you were invited to testify.

During two different exchanges in the hearing, you testified that Express Scripts does not steer patients to PBM-owned pharmacies.

### **Exchange #1:**

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.<sup>1</sup>

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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).

**Exchange #2:**

Congresswoman Brown: Similar but not the same. Reclaiming my time. Thank you. Many people, especially in vulnerable populations, rely on local and independent pharmacies, similar but not the same, for their medications and important health services. However, PBMs are forcing more and more people to specialty pharmacies or mail-order pharmacies, which are owned by the same parent company as PBMs. As one example, PBMs can tell patients they can only receive an extended supply of their medication if they go to a specific pharmacy owned by the same parent company as the PBM, generating even greater profit for these giant pharma corporations. So I am just going to dovetail into what my colleague talked about on the other side of the aisle. How do you respond to the accusations that you are steering patients to pharmacies owned by your parent companies? Hello?

Dr. Conway: So we have over 26,000 independent local pharmacies in our network. The reimbursement rate, the volume of prescriptions has gone up over time, the number of pharmacies have gone up over time, and agree with you on the importance of these pharmacies.

Congresswoman Brown: Anyone else with an actual answer?

Dr. Kautzner: So one, we do not steer. Our clients make the decision on which pharmacies they decide to put into their network, and our data would show that in the last year, mass retailers saw a 6 percent increase in pharmacy prescriptions. In the last 5 years, grocers saw an increase of 23 percent, while in the last year, our home delivery pharmacy had a relatively flat volume.<sup>2</sup>

These statements contradict both the Committee's and the Federal Trade Commission's (FTC) findings that Express Scripts, as well as Optum Rx and CVS Caremark, steer patients to PBM-owned pharmacies. The Committee found evidence, detailed in its recent report, that

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<sup>2</sup> *Id.*

Express Scripts engages in targeted outreach to patients, using data the PBM received from competing pharmacies, encouraging patients to move their prescriptions to Express Scripts mail-order pharmacy.<sup>3</sup>

The FTC's 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>4</sup> PBMs accomplish patient steering 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>5</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>6</sup>

Additionally, you testified that Express Scripts allows non-affiliated pharmacies to redline and negotiate their contracts:

**Exchange:**

Congressman Fry: How much opportunity exists for a small mom-and-pop pharmacy in a rural area to negotiate their own contract? Is it a boilerplate contract? Do they have any negotiating room at all? Say I own my own pharmacy.

Dr. Kautzner: We are always open, Congressman, to negotiating with pharmacies.

Congressman Fry: How does that look?

Dr. Kautzner: Pharmacies can always redline a contract back to us and negotiate.

This statement contradicts both the Committee's and Federal Trade Commission's (FTC) findings that Express Scripts, as well as Optum Rx and CVS Caremark, do not allow non-affiliated pharmacies to redline and negotiate their contracts. The Committee has received evidence from multiple pharmacies who has attempted to redline contracts, both before and since

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<sup>3</sup> Majority Staff of the House Committee on Oversight and Accountability, *The Role of Pharmacy Benefit Managers in Prescription Drug Markets*, H. Comm. Oversight and Accountability, (Jul. 23, 2024).

<sup>4</sup> Federal Trade Commission, *Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies*, 3 (Jul. 2024).

<sup>5</sup> *Id.* at 31-32.

<sup>6</sup> *Id.*

the hearing, and negotiate with Express Scripts.<sup>7</sup> The Committee found that Express Scripts informed the pharmacies that “rates are non-negotiable,” and “[t]he rate exhibit provided offers our best and final rates.”<sup>8</sup> Furthermore, the FTC’s interim staff report states “Independent pharmacies generally lack the leverage to negotiate terms and rates when enrolling in PBMs’ pharmacy networks, and subsequently may face effectively unilateral changes in contract terms without meaningful choice and alternatives.”<sup>9</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>10</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>11</sup>

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

Sincerely,



James Comer  
Chairman  
Committee on Oversight and Accountability

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<sup>7</sup> Whistleblower Email, [on file with the Committee].

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

<sup>9</sup> *Supra* n. 4.

<sup>10</sup> 18 U.S.C. § 1001.

<sup>11</sup> 18 U.S.C. § 1621.