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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.[1]

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."[2] 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."[3] 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.[4]

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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[1] *The Role of Pharmacy Benefit Managers in Prescription Drug Markets Part III: Transparency and Accountability*, 118th Cong. (July 23, 2024).
[2] Federal Trade Commission, Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies, 3 (July 2024).
[3] *Id.* at 31-32.
[4] *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.[5]

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.[6] In its case study, FTC found that PBM reimbursements for affiliated pharmacies often exceed the National Average Drug Acquisition Cost (NADAC).[7] Additionally, post-sale adjustments to pharmacy reimbursements by PBMs have been found to significantly reduce reimbursements for unaffiliated pharmacies.[8]

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.[9] 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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[5] *Supra* n. 1.
[6] *Supra* n. 2 at 39.
[7] *Id.*
[8] *Id.* at 59.
[9] *Notice Amendment*, [*on file with the Committee*].

in PBMs' pharmacy networks, and subsequently may face effectively unilateral changes in contract terms without meaningful choice and alternatives."[10]

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."[11] 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."[12]

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

Sincerely,

James Comer
Chairman
Committee on Oversight and Accountability

[10] *Supra* n. 2.
[11] 18 U.S.C. § 1001.
[12] 18 U.S.C. § 1621.

News

Lawmakers revive PBM reporting bill after near-passage last session

The bill, which would also apply to TPAs, came close to becoming law in December but ran into resistance from Elon Musk.

By **Allison Bell** | March 12, 2025 at 10:20 AM

The U.S. Capitol rotunda. Photo: Diego M. Radzinschi/ALM

A Republican and a Democrat are bringing back a pharmacy benefit manager reporting bill that nearly became law during the 118th Congress.

Rep. Erin Houchin, R-Ind., and Rep. Joe Courtney, D-Conn., introduced a version of the Hidden Fees Disclosure Act bill for the 119th Congress Tuesday.

The text of the new version was not available at press time, but it's similar to the text of the earlier version, which would require a PBM serving a self-insured employer health plan to send the employer a report showing all compensation the PBM has received; detailed information about any rebate or discounts negotiated, including information about the amounts of rebates or discounts to be passed through to the employer or the plan participants; and information about the PBM-related compensation flowing to other firms providing services for the employer's plan.

Third-party administrators serving self-insured employer plans would also have to provide detailed reports on their activities.

TPAs would have to tell employers about rebates, discounts, fees coming in from and going to other service providers, and recoveries from service providers associated with overpayments, erroneous payments, incomplete payments, billing errors, fraud and other matters.

The House included the bill in the Lower Costs, More Transparency Act bill, a package that passed in the House by a 320-71 vote in December. The hidden fees bill and the rest of the package nearly became law as a large spending package in December, but it was eventually removed from the package after Elon Musk asked for congressional leaders to replace the original spending package with a much shorter package. Musk did not comment on the bills excluded from the spending package, and it's not known what he or President Donald Trump think about the PBM-related provisions that were left out.

Related: New 'must pass' House package includes employer plan PBM section

PBMs help insurers, self-insured employer health plans and other payers manage prescription drug

benefits.

PBMs contend that they are attracting criticism because of their success at holding down prescription drug prices and pharmacies' and wholesale distributors' profit margins.

PBMs' critics contend that a handful of big PBMs control too much of the market, operate in ways that weaken competition and keep too much of the discounts that they negotiate.

Houchin said the new hidden fees bill will help by making patients and policymakers aware of the true cost of prescriptions.

"Americans should never be blindsided by hidden costs in their health care," Houchin said.

The bill could have a good chance to move forward in the House.

Both Sen. Bill Cassidy, R-La., chairman of the Senate Health, Education, Labor and Pensions Committee and Rep. Brett Guthrie, R-Ky., chairman of the House

Energy and Commerce Committee, have expressed support for passing PBM legislation.

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https://www.hometownstations.com/news/ohio_headlines/ag-yost-secures-49-1-million-settlement-in-price-fixing-cases-involving-generic-drugs/article_eb1b34d1-59d7-46d0-9c82-50d49a19e1b9.html

AG Yost secures $49.1 Million settlement in price-fixing cases involving generic drugs

Press release written and provided by the Office of Ohio Attorney General Dave Yost
Mar 26, 2025

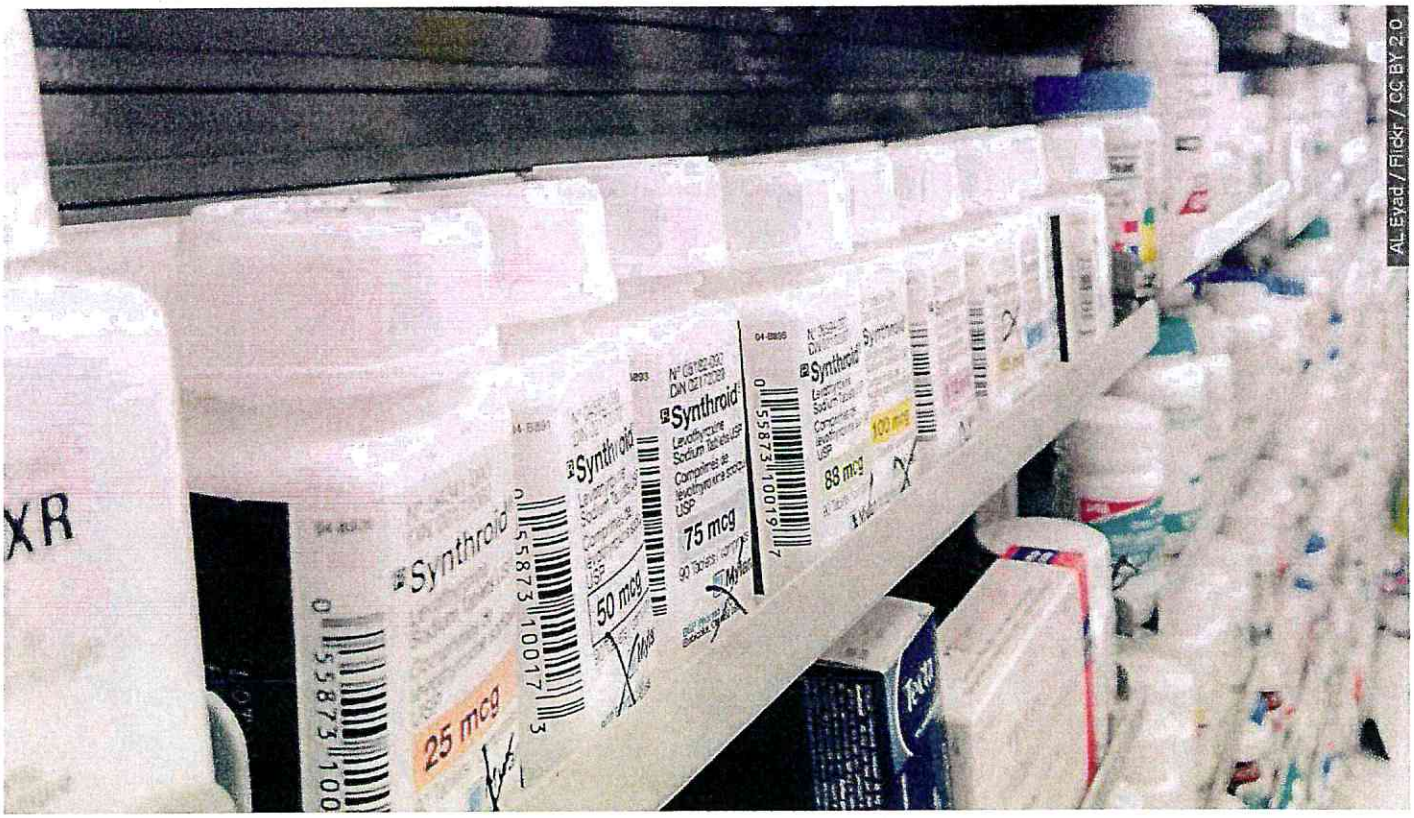

PHOTO: Prescription drugs, Photo Date: 02/29/2020
Credit: AL.Eyad / Flickr / CC BY 2.0

March 26, 2025, Press Release from the Office of Ohio Attorney General Dave Yost:

COLUMBUS, Ohio — Consumers who were charged too much for certain generic drugs may be eligible for compensation from a $49.1 million settlement with two manufacturers, Ohio Attorney General Dave Yost announced today.

Apotex of Toronto and Heritage Pharmaceuticals of Eatontown, New Jersey, were accused of participating in a long-running scheme to artificially inflate prices, manipulate markets, and limit competition for numerous generic prescription drugs.

Heritage Pharmaceuticals will pay $10 million as part of the settlement, which was filed Dec. 15, 2016, in the U.S. District Court for the District of Connecticut, in Hartford. Apotex's share of the settlement is $39.1 million, bringing the total to $49.1 million.

"This was a conspiracy to cheat the system – we won't tolerate collusion that inflates drug prices and harms Ohioans who rely on affordable medication," Yost said. "We are working to restore fair competition and hold wrongdoers accountable."

Consumers who purchased certain generic prescription drugs between May 2009 and December 2019 may be eligible for compensation. To check eligibility, visit www.AGGenericDrugs.com, call 1-866-290-0182 (toll-free), or email info@AGGenericDrugs.com.

AG Yost joined a coalition of nearly all states and territories that filed three major antitrust complaints against 30 corporate defendants and 25 individual executives.

- The first complaint, filed in 2016, included Heritage Pharmaceuticals, Apotex and 16 corporate defendants, two individual executives, and 15 generic drugs. Two former Heritage executives, Jeffery Glazer and Jason Malek, have since settled and are cooperating.
- The second complaint, filed in 2019, targeted Teva Pharmaceuticals, Apotex and 18 of the nation's largest generic drug manufacturers, naming 16 senior executives.
- The third complaint, filed in 2020, focuses on 80 topical generic drugs that account for billions of dollars in U.S. sales and names 26 corporate defendants and 10 individual defendants. Six pharmaceutical executives have settled in this case and are assisting in the litigation.

The cases are all built on evidence from several cooperating witnesses, along with a database of more than 20 million documents and millions of phone records showing communications among 600-plus sales and pricing executives in the generics industry.

The complaints describe an interconnected network of industry executives who secretly met at dinners and social gatherings and on private calls, using coded language such as "fair share," "playing nice in the sandbox," and "responsible competitor" to disguise illegal agreements. One key piece of evidence is a two-volume notebook kept by a cooperating witness, documenting secret discussions with competitors and internal meetings over several years.

A major win in the fight against corporate greed, this settlement highlights Ohio's commitment to protecting consumers from unlawful practices.

Katie Honigford
Anchor/Multimedia Journalist

jmkasper@amg-nd.com

From: HEALTH CARE un-covered <healthcareuncovered@substack.com>
Sent: Wednesday, March 26, 2025 10:58 AM
To: jmkasper@amg-nd.com
Subject: There is a Bi-Partisan Bill to Rein in PBMs and Lower Drug Costs. It's a Step in the Right Direction.

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There is a Bi-Partisan Bill to Rein in PBMs and Lower Drug Costs. It's a Step in the Right Direction.

Pharmacy benefit managers' business practices have led to soaring prescription drug prices that make life-saving medications unaffordable for millions of Americans.

WENDELL POTTER
MAR 26

READ IN APP

Members of Congress from both political parties have joined forces to reintroduce a bill aimed at reforming how pharmacy benefit managers (PBMs)

make their money at the expense of patients. As reported by *ALM Benefits Pro*, the Delinking Revenue from Unfair Gouging Act, or DRUG Act, would halt PBMs from tying their payments to the retail or wholesale prices of prescription drugs. Instead, PBMs would have to charge flat fees for their services — an approach that could reduce the financial incentives for PBMs to drive up drug prices.

As a reminder, PBMs are the middlemen between drug manufacturers and patients. While they have been around for years, the biggest are now owned by big insurance companies. Cigna, CVS/Aetna and UnitedHealth Group. Collectively, those companies control 80% of the market, and they have figured out how to maximize profits in numerous ways.

For many drugs, the PBMs are taking more money out of the pharmacy supply chain than either the drugs' manufacturers or our local pharmacies., The big insurer-owned PBMs often pocket a cut of the very price hikes they claim to negotiate down. Critics — like myself — have pointed out that PBMs benefit when drug prices go up **because their fees are often based on a percentage of those inflated costs.**

In more layman's terms: It's not in the PBMs financial interest to keep prices down.

The DRUG Act was reintroduced by Rep. Mariannette Miller-Meeks, M.D. (R-IA) along with her colleagues Rep. Nannette Barragan (D-CA), Rep. Nicole Malliotakis (R-NY), Rep. Brad Schneider (D-IL), Rep. Rick Allen (R-GA), and Rep. Donald Norcross (D-NJ).

"Pharmacy benefit managers have excessive influence over the prices patients pay at the pharmacy counter," said Rep. Miller-Meeks. "Local Iowa pharmacies are closing due to greedy PBM practices, impacting proximity and access to medications for Iowans. The DRUG Act will put downward pressure on

prescription drug prices and insurance premiums by removing the incentive for PBMs to drive up the list price of medications."

Upgrade to paid

The PBM's PR and lobbying organization, the Pharmaceutical Care Management Association, insists, of course, that the industry's critics are wrong, even as an untold number of Americans walk away from the pharmacy country without their medications even with an insurance card in their wallets.

A Step in the Right Direction

The bipartisan nature of the DRUG Act signals growing recognition — on both sides of the political aisle — that PBMs are part of the problem. Several other bipartisan bills have or soon will be introducted to rein in the unchecked power of PBMs and the insurance giants that own them. We will keep you posted on whether some or all of them can finally get across the finish line this year. You can be certain PCMA and the big insurance companies will be spending enormous amounts of the money we pay in premiums to kill them, but there appears to be real momentum.

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

For Release

FTC Releases Second Interim Staff Report on Prescription Drug Middlemen

Report finds PBMs charge significant markups for cancer, HIV, and other critical specialty generic drugs

January 14, 2025 |

Tags: Competition | Office of Policy Planning | generic drugs | Pharmacy Benefits Managers (PBM) | Health Care | Drug Stores and Pharmacies | Prescription Drugs

The Federal Trade Commission today published a second interim staff report on the prescription drug middleman industry, which focuses on pharmacy benefit managers' (PBMs) influence over specialty generic drugs, including significant price markups by PBMs for cancer, HIV, and a variety of other critical drugs.

Staff's latest report found that the 'Big 3 PBMs'—Caremark Rx, LLC (CVS), Express Scripts, Inc. (ESI), and OptumRx, Inc. (OptumRx)—marked up numerous specialty generic drugs dispensed at their affiliated pharmacies by thousands of percent, and many others by hundreds of percent. Such significant markups allowed the Big 3 PBMs and their affiliated specialty pharmacies to generate more than $7.3 billion in revenue from dispensing drugs in excess of the drugs' estimated acquisition costs from 2017-2022. The Big 3 PBMs netted such significant revenues all while patient, employer, and other health care plan sponsor payments for drugs steadily increased annually, according to the staff report.

"The FTC staff's second interim report finds that the three major pharmacy benefit managers hiked costs for a wide range of lifesaving drugs, including medications to treat heart disease and cancer," said FTC Chair Lina M. Khan. "The FTC should keep using its tools to investigate practices that may

inflate drug costs, squeeze independent pharmacies, and deprive Americans of affordable, accessible healthcare—and should act swiftly to stop any illegal conduct."

"FTC staff have found that the Big 3 PBMs are charging enormous markups on dozens of lifesaving drugs," said Hannah Garden-Monheit, Director of the FTC's Office of Policy Planning. "We also found that this problem is growing at an alarming rate, which means there is an urgent need for policymakers to address it."

Staff's latest report builds on a report issued by FTC staff in July 2024, which found that pharmacies affiliated with the Big 3 PBMs received 68% of the dispensing revenue generated by specialty drugs in 2023, up from 54% in 2016. The latest report analyzes a broader set of specialty generic drugs compared to two specialty generic drugs analyzed in the July 2024 report and finds that the Big 3 PBMs impose significant markups on a wide array of specialty generic drugs.

The FTC's second interim staff report analyzed all specialty generic drugs dispensed from 2017 to 2022 for members of commercial health plans and Medicare Part D prescription drug plans managed by the Big 3 PBMs for which the FTC has relevant data. This includes an analysis of 51 specialty generic drugs comprising 882 National Drug Codes, which include the generic versions of: Ampyra (used to treat multiple sclerosis), Gleevec (used to treat leukemia), Sensipar (used to treat renal disease), and Myfortic (used by transplant recipients).

Key Findings

The FTC's latest interim staff report is part of the Commission's ongoing study of the PBM industry. This report highlights several key insights gained from data and documents obtained from special orders the FTC issued in 2022 under Section 6(b) of the FTC Act, as well as from publicly available information:

- **Significant price markups:** The Big 3 PBMs imposed *markups of hundreds and thousands of percent on numerous specialty generic drugs* dispensed at their affiliated pharmacies—including drugs used to treat cancer, HIV, and other serious diseases and conditions. The Big 3 PBMs also reimbursed their affiliated pharmacies at a higher rate than they paid unaffiliated pharmacies on nearly every specialty generic drug examined.
- **Dispensing the most profitable drugs:** A larger, disproportionate share of commercial prescriptions for specialty generic drugs marked up more than $1,000

per prescription were dispensed by the Big 3 PBMs' affiliated pharmacies compared with unaffiliated pharmacies. Dispensing patterns suggest that the Big 3 PBMs may be steering highly profitable prescriptions to their own affiliated pharmacies (and away from unaffiliated pharmacies).

- **Over $7.3 billion of dispensing revenue in excess of NADAC:** The Big 3 PBMs' affiliated pharmacies generated over $7.3 billion of dispensing revenue in excess of their estimated acquisition cost, as measured by the National Average Drug Acquisition Cost (NADAC), on specialty generic drugs over the study period. PBM-affiliated pharmacy dispensing revenue in excess of NADAC increased dramatically at a *compound annual growth rate of 42 percent* from 2017-2021. In the aggregate, the *top 10 specialty generic drugs generated $6.2 billion of dispensing revenue in excess of NADAC* (85 percent of total).

- **Generating additional income via spread pricing:** In the aggregate, the Big 3 PBMs also separately generated an estimated $1.4 billion of income from spread pricing—i.e., billing their plan sponsor clients more than they reimburse pharmacies for drugs—on the analyzed specialty generic drugs over the study period.

- **Specialty generic drugs help drive parent healthcare conglomerates' operating income:** The top specialty generic drugs accounted for a significant share of the relevant business segments reported by the Big 3 PBMs' parent healthcare conglomerates. Operating income from the Big 3 PBMs' affiliated pharmacies dispensing of the analyzed *specialty generic drugs accounted for 12 percent of the aggregated operating income reported by the parent healthcare conglomerates' business segments* that include their PBM and pharmacy businesses in 2021.

- **Plan sponsor and patient drug spending increased significantly:** In 2021, the last year for which the FTC received full-year data for this study, plan sponsors paid $4.8 billion for specialty generic drugs, while patient cost sharing totaled $297 million. Between 2017 and 2021 plan sponsors and patient payments both increased at compound annual growth rates of 21% for commercial claims, and 14%-15% for Medicare Part D claims.

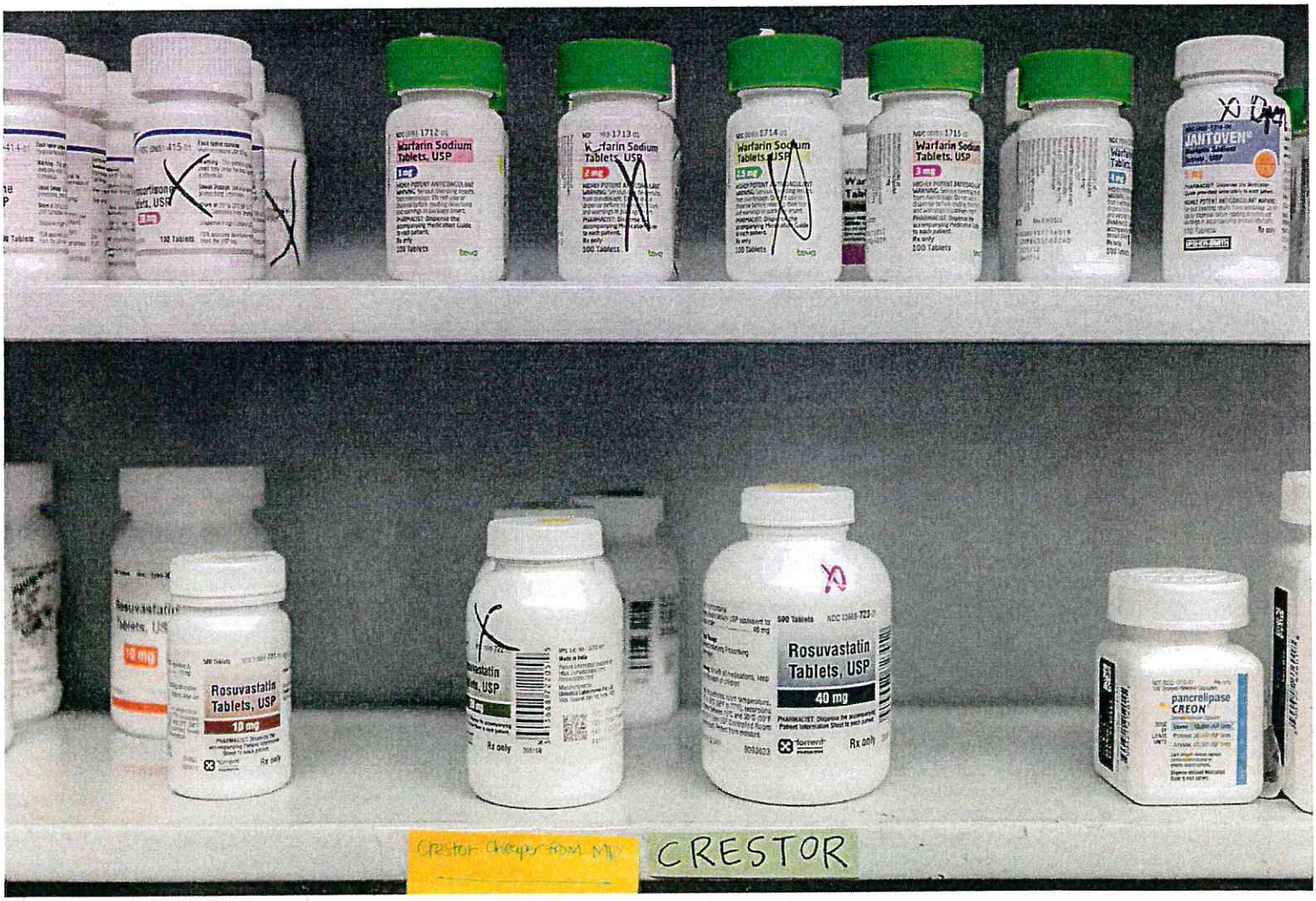
FTC staff remain committed to providing timely updates as the Commission continues to receive and review additional information as part of the ongoing study.

The Commission voted 5-0 to allow staff to issue the second interim staff report. Commissioner Andrew N. Ferguson issued a concurring statement joined by Commissioner Melissa Holyoak.

HEALTH

Optum audit shows possible law violation, lower payments to independent pharmacies

by Gwen Dilworth
November 7, 2024



Medications are lined up on a shelf at Brandon Discount Drugs in Brandon, Miss., on Thursday, Oct. 3, 2024. Independent pharmacies are facing financial challenges due to reduced reimbursements from the companies that serve as middlemen between pharmacies, drug manufacturers and insurers. Credit: Eric Shelton/Mississippi Today

The findings of a recent audit of a major company that manages prescription benefits revealed it may have violated Mississippi law.

The review of Minnesota-based Optum's business practices by the Mississippi Board of Pharmacy indicated that the company paid independent pharmacies in Mississippi rates lower than chains and Optum-affiliated pharmacies for the same prescription drugs.

The audit uncovered over 75,000 instances in which Optum-affiliated pharmacies' lowest payments for a prescription drug were higher than at unaffiliated pharmacies in one year, including chain and independent drug stores.

Mississippi state law prohibits pharmacy benefit managers from reimbursing their affiliate pharmacies, or ones they own, at higher rates than non-affiliate pharmacies for the same services.

In some cases, patients footed the bill: consumers were almost twice as likely to pay the full cost of a prescription drug claim without contributions from their insurance plan at independent pharmacies than at affiliated pharmacies.

The Board of Pharmacy will hold an administrative hearing based on the alleged violations of Mississippi law on Dec. 19. Board staff declined to answer questions about the audit or its findings.

"I think this proves that we need to have more transparency, we need to have more PBM reform in Mississippi and across the country and even on a federal level," said Robert Dozier, the executive director of the Mississippi Independent Pharmacy Association, an organization that advocates for 180 pharmacy members.

Optum declined to answer specific questions about the audit. The company has identified errors in the audit's findings and methodology and submitted them to the Board of Pharmacy, said Isaac Sorenson, a spokesperson for Optum.

"The pharmacy – and local pharmacists – play a vital role in supporting people's health and we are committed to paying them fairly," he said. "…For pharmacies in rural and underserved communities, Optum Rx is deepening its commitment to support their role by launching new programs, expanding existing initiatives and launching a new pharmacy network option for customers."

He said the new pharmacy network option will provide pharmacies with increased reimbursements. Generic drugs will be reimbursed at 5% higher rates and brand name drugs at .2% higher rates.

Optum is owned by health care behemoth UnitedHealth Group Inc., the U.S.' most profitable health care company and the owner of the nation's largest health insurance company, UnitedHealthcare. In 2023, the company **reaped $32.4 billion** in earnings.

Pharmacy benefit managers are private companies that act as middlemen between pharmacies, drug manufacturers and insurers. They process prescription drug claims, negotiate pricing and conditions for access to drugs and manage retail pharmacy networks.

Optum is one of the largest three pharmacy benefit managers in the U.S., which together account for 79% of prescription drug claims nationwide.

The results of the audit echoed some of the conclusions of a Federal Trade Commission **report** published in July: large pharmacy benefit managers pay their own, affiliated pharmacies significantly more than other pharmacies and set reimbursement rates at untenably low levels for independent drug stores, or retail pharmacies not owned by a publicly traded company or owned by a large chain, said the report.

Mississippi Today **reported last month** that many Mississippi independent pharmacists fear they may be forced to close their businesses due to low reimbursement rates from pharmacy benefit managers.

Pharmacy benefit managers have an incentive to steer customers towards their affiliate pharmacies and compensate them at higher rates, which can disadvantage unaffiliated pharmacies and lead to higher drug costs, said the Federal Trade Commission.

Optum's affiliate pharmacies include Optum Home Delivery Pharmacy and Optum Specialty Pharmacy.

The audit revealed that Optum uses 49 different maximum cost lists, or schedules created by pharmacy benefit managers that determine the highest price they will pay pharmacies for generic drugs. Maximum cost lists are proprietary and confidential, even to the pharmacies that are reimbursed based on the lists, and change continuously.

"I think that's 48 too many," said Dozier. "There should only be one MAC list."

Fifteen are used exclusively at independent pharmacies and 22 are used solely at chain pharmacies.

An analysis of the maximum allowable cost lists showed that independent pharmacies were reimbursed at rates 74% lower than chain pharmacies on average.

An analysis of a generic drug used to treat bacterial infections yielded a payment to an Optum-affiliated pharmacy that was eight times higher than the lowest-paid independent pharmacy on the same day. Chain and affiliate pharmacies were paid over 20 times as much as independent pharmacies for a generic drug used to treat stomach and esophagus problems.

Pharmacies' attempts to contest low reimbursement rates were often unsuccessful, showed the audit.

Ninety-eight percent of pharmacy appeals were denied, most commonly because they did not include information about how much the pharmacy paid to acquire the medication from a wholesaler.

Mississippi law prohibits pharmacy benefit managers from reimbursing pharmacies at rates below their cost to acquire the drug, even when using a maximum allowable cost list. But the audit revealed over 400 times that Optum denied pharmacies' appeals on those grounds, saying that the maximum cost list was accurate.

The audit, which studied Optum in 2022, was the first commissioned by the Mississippi Board of Pharmacy after **revisions to state law in 2020** gave it more regulatory authority over pharmacy benefit managers.

It took the board several years to hire staff to enact the law and receive approval to increase its budget due to the high costs of audits, the board's executive director Susan McCoy told lawmakers at the House Select Committee on Prescription Drugs Aug. 21 at the Capitol.

The board also has pending administrative proceedings with the other largest pharmacy benefit managers in the country, Express Scripts and CVS Caremark. Neither is the result of an audit. Both hearings are scheduled for Nov. 21.

Optum has already faced scrutiny for its business practices in Mississippi. In August, Attorney General Lynn Fitch **filed a lawsuit** alleging that Optum and several other pharmacy benefit managers stoked the opioid epidemic by plotting with manufacturers to increase sales of the addictive drugs and boost their profits. The suit also named Evernorth Health and Express Scripts, along with the companies' subsidiaries.

October 03, 2024 | Press Release

Attorney General Ken Paxton Sues Big Pharma Drug Manufacturers and Pharmacy Benefit Managers for Conspiracy That Increased Insulin Prices by 1,000%

Texas Attorney General Ken Paxton sued major insulin manufacturers and pharmacy benefit managers ("PBMs")—including Eli Lilly, Express Scripts, CVS Pharmacy, and others—over a conspiracy to increase prices of insulin.

Through this conspiracy, the manufacturers artificially and willingly raised the prices of insulin then paid a significant, undisclosed portion back to the PBMs as a *quid pro quo* for inclusion in the PBMs' standard offerings. The PBMs then granted preferred status to the manufacturer whose drug has the highest list price while excluding lower priced drugs. These synthetic insulin drugs, which today cost the manufacturers less than $2 to produce and were originally priced at $20 when released in the late 1990s, now range between $300 and $700. In the last decade alone, the manufacturers who are defendants in the lawsuit have increased the prices of their insulins up to 1,000%. Attorney General Paxton is suing because the insulin pricing scheme violates the Texas Deceptive Trade Practices Act, constitutes unjust enrichment, and represents an unlawful civil conspiracy.

"This is a disturbing conspiracy by which pharmaceutical companies were intentionally and artificially inflating the price of insulin. Big Pharma insulin manufacturers and PBMs worked together to take advantage of

diabetes patients and drive prices as high as they could," said Attorney General Paxton. "These companies acted illegally and unethically to enrich themselves, and we will hold them accountable."

According to the complaint, "While the PBM Defendants represent that they perform their services on behalf of their clients (including Texas payors) and diabetics to lower drug prices, increase access to affordable drugs, and promote diabetic health, these representations are false. Rather, the PBM Defendants have worked in coordination with the Manufacturer Defendants to distort the market for diabetic treatments to their benefit at the expense of Texas diabetics and payors."

Liston & Deas, David Nutt & Associates, the Cicala Law Firm, and Foreman Watkins Krutz are serving as outside counsel.

To read the filing, click here. (/sites/default/files/images/press/Eli%20Lilly%20et%20al%20Complaint%20Filestamped.

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