COMMENTARY

PBMs are modern-day drug price gangsters and must be held accountable

SARA SIROTA

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(Stock photo Mint Images/Getty Images)

In March, Ohio Attorney General Dave Yost filed a groundbreaking lawsuit challenging the coercive tactics of the shadowy, modern-day health care mafia known as pharmacy benefit managers (PBMs). You may not have heard of PBMs before, but they play a critical role in controlling which medications your insurer covers. While that may sound like a relatively minor job, PBMs have become the gatekeepers of the prescription drug industry, exploiting their monopoly power to jack up prices, limit access to affordable medicines, and line their pockets with billions of dollars in profit. Using behind-the-scenes negotiations and secret deals, this cartel has enriched themselves by extorting patients, pharmacies, and health care providers across the country.

The lawsuit targets Express Scripts and Prime Therapeutics – two of the largest PBMs in the U.S. Together, they control a mysterious and secretive company in Switzerland called Ascent, which Yost alleges is merely a front for a price-fixing conspiracy that would make even the Genovese crime family proud. Under Ascent's veil, Express Scripts and Prime Therapeutics agree to restrain competition and leverage their and client Humana's combined intelligence and market power to strong-arm manufacturers into raising prescription drug prices. The accusations are hardly a surprise for the PBM industry's longtime critics, who've yet to see much progress in the way of reform. But the lawsuit does arrive amid heightened momentum throughout the country, among Republicans and Democrats alike, in state legislatures and the U.S. Capitol, in attorneys general offices and the Federal Trade Commission, to crack down.

To understand what PBMs do, let's take a patient with attention deficit hyperactivity disorder (ADHD). The patient may find their health plan requires them to take Concerta, a drug that a 54 mg, 30-day supply costs a pharmacy about $419 to buy, rather than a generic equivalent, which costs just $26. Why would an insurer do this? Well, that decision was not up to the insurer. It was up to a PBM.

PBMs come up with the lists of medications that health plans cover each year for their beneficiaries. The idea is that PBMs can use the collective power of multiple plans to get price concessions from manufacturers in exchange for better rankings on the lists. The better the ranking, the more coverage the plan gives to that drug. Janssen Pharmaceuticals, Concerta's maker, can ensure the generic gets a worse ranking or is excluded entirely by offering the PBMs a larger rebate than the generic would ever be able to afford.

As Senate Finance Committee Chair Ron Wyden (D-OR) said during a hearing in late March, these are the "perverse incentives" of the PBM business model: PBMs are paid a percentage of the rebate, so they're incentivized to give better coverage to more expensive drugs when coming up with their lists. This heightens drug spending not only by benefiting brand drugs over generics but by encouraging brand makers to compete with one another by continuously raising their prices.

Health plans are often not aware they're being fleeced because they have no idea what the real list and net prices are and how much of the rebates the PBMs are retaining. The PBMs claim all this data is proprietary, even though these are the very figures Express Scripts and Prime Therapeutics are allegedly sharing to fix the market. Since they've gotten away with claiming the information must be concealed, PBMs are also able to justify being the financial middlemen when a patient goes to the pharmacy counter to pick up their prescription. This gives them another avenue to skim profits, this time from independent pharmacies.

When the ADHD patient buys Concerta, for example, the PBM transmits the reimbursement from the health plan to the pharmacy, while taking a cut. This leaves the pharmacy with just $415 for the $419 drug, in addition to a $10 copay from the patient. That's already a slim margin for any business to operate on, let alone that PBMs often charge pharmacies additional fees they keep for themselves. They "are actually driving our independent pharmacies and our rural pharmacies into submission or gone," Senator James Lankford (R-OK) said during last month's hearing.

There's another perverse incentive in the PBM business model that's leading them to squeeze these drugstores into insolvency: they have their own mail-order pharmacies they'd rather steer patients to. This is just one type of "vertical integration" that Chair Lina Khan's FTC is probing as part of a sweeping investigation into the PBM industry. Representative Buddy Carter (R-GA) revealed at a House Energy and Commerce Committee hearing in March, though, that the PBMs are outrageously not cooperating. Beyond the conflicts of interest, just three PBMs – Caremark, Optum Rx, and Express Scripts – also control 80 percent of the industry, giving them what Senator Bob Menendez (D-N.J.) called "inappropriate negotiating leverage."

The floodgates are finally opening, but legislators and regulators must not squander this opportunity to enact half-baked measures. With payers facing mounting, unjustified bills each year, there's no time to waste. To fix this, do not only impose transparency on the system. Address the underlying market failures by reversing the poorly conceived exemption from the Anti-Kickback Statute that PBMs were given more than 30 years ago so they could take rebates from manufacturers. Outlaw PBMs from having their own pharmacies and other conflicts of interest to clamp down on the absurd leverage the few giants have against their competitors and against health plans, patients, providers, and drug makers. As Ohio AG Yost said last week, "PBMs are modern gangsters... scheming in the shadows to control drug prices on all sides of the market."

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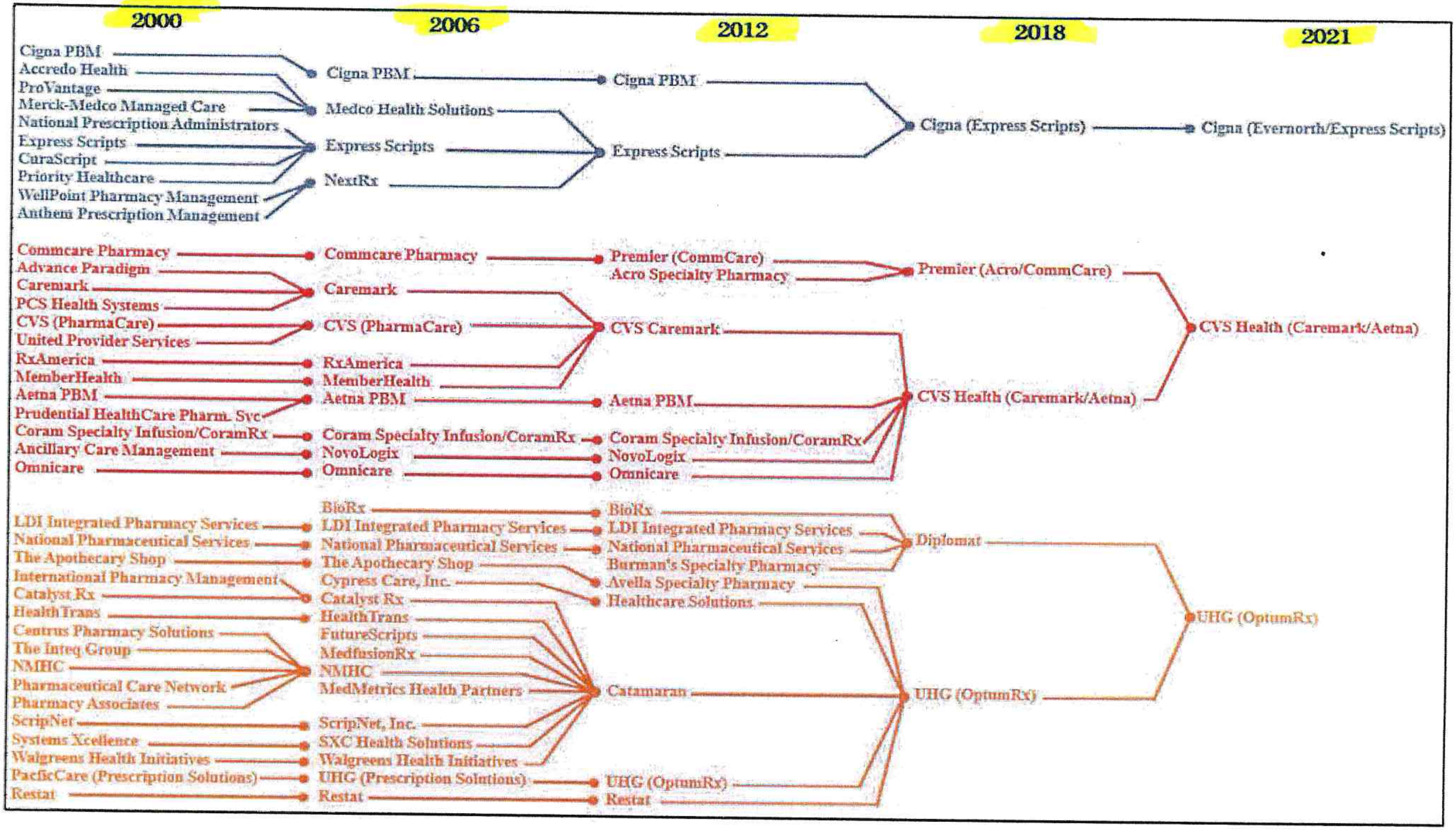
Figure 3. PBM Parent Entity Consolidation[21]



Prime Therapeutics ordered to pay $10 million for price fixing

By Kelcey Carlson | Published January 30, 2025 9:39pm CST | Health Care | FOX 9 |

The Brief

- Prime Therapeutics based in Eagan, MN ordered to pay $10 million in damages for pric fixing.
- This case stems from healthcare contracts with AIDS Healthcare Foundation (AHF) whic provides pharmacy care for people with HIV/AIDS.
- This was a federal arbitration case that said AHF was harmed by lower reimbursement rates from Prime for its drug costs.

(FOX 9) - Eagan-based Prime Therapeutics has been ordered to pay $10 millio in damages after federal arbitration found it engaged in illegal price fixing with competitor Express Scripts to suppress drug reimbursement rates for HIV/AID! treatments.

The impact

Why it Matters: : Prime Therapeutics negotiates drug prices for insurance plans The arbitration found that Prime collaborated with a competit Express Scripts, in this price fixing agreement. And the ruling stated that Prime violated federal and Minnesota anti-trust laws in the process

Increased Scrutiny on Pharmacy Benefit Managers

The backstory: Prime Therapeutics and Express Scripts are both Pharmacy Benefit Managers or PBMs. The Federal Trade Commission is investigating the industry which is often in the same ownership chain with insurance companies. The federal investigation alleges that PBMs ar inflating generic drug prices by 1,000 percent or more and squeezing out smal independent pharmacies.

Dig deeper: FOX 9 has been following the Federal Trade Commission investigat and filed this story in December with a look at how independent pharmacies were being impacted. You can also click here to read **t full Prime Therapeutics ruling.**

Reaction

Statement from the AIDS Healthcare Foundation

What they're saying: "Through this case and with this ruling, the Prime-ESI 'collaboration' has been clearly exposed as per-se-illegal horizontal price-fixing—the cardinal sin of antitrust law an felonious behavior that government antitrust enforcement agencies, including FTC, the Department of Justice's Antitrust Division, and U.S. State Attorneys General, should help put a nationwide end to immediately, for all victims," said **Jonathan M. Eisenberg,** AHF's Deputy General Counsel-Litigation and lead counsel for AHF in the arbitration. "We are fearful that Prime and/or ESI now w retaliate against AHF by kicking AHF out of their pharmacy networks. However, AHF took this risk in the pursuit of justice to expose the illegal price-fixing 'collaboration,' not just for ourselves but to speak out on behalf of everyone affected by this ongoing criminal activity, including thousands of independent pharmacies and tens of millions of patients across the United States."

Statement from Prime Therapeutics

What they're saying: In the arbitration brought by the AIDS Healthcare Foundat (AHF), Prime demonstrated how actual patients saved on prescription drugs as a result of the agreement. With this ruling, AHF is seeking to rewind the clock to cause patients living with HIV/AIDS pay more – not less – at their pharmacy and thereby enrich AHF's bottom line.

Generic prescription drug prices marked up as higl as 5,000%, investigation finds

By Kelcey Carlson | Published February 2, 2025 10:49pm CST | Health Care | FOX 9 |

Report: Generic prescriptions marked up 5,000%

A new FTC report found that pharmacy benefit managers have inflated the pric of life-saving generic prescription drugs, finding the companies sometimes increased prices of these drugs by 1,000 percent or more.

The Brief

- The Federal Trade Commission (FTC) has found that some lifesaving generic prescriptic drug prices are being inflated, sometimes by 1000 percent or more.
- The FTC says this is the work of Pharmacy Benefit Managers (PBMs), three of which set pricing for 80 percent of prescriptions filled in the U.S. They are Express Scripts, CVS Caremark and Optum RX, based in Eden Prairie, MN.
- The price inflation happens when the Pharmacy Benefit Managers steer customers intc

pharmacy systems they own, like mail order.

(FOX 9) - A new FTC report found that pharmacy benefit managers have inflate the price of life-saving generic prescription drugs, finding the companies sometimes increased prices of these drugs by 1,000 percent or more.

FTC Findings on drug prices

What we know: On January 14, 2025, the Federal Trade Commission released a second staff report into their findings of Pharmacy Benefit Manager price setting. The FTC specifically looked at generic dr for conditions like cancer, multiple sclerosis, HIV, transplants and pulmonary hypertension.

The report stated that: "Caremark, Express Scripts and OptumRX marked up numerous specialty generic drugs dispensed at their own affiliated pharmacies thousands of a percent, and many others by hundreds of a percent."

The report goes on to say, "such significant markups allowed the Big 3 PBMs ar their affiliated specialty pharmacies to generate more than $7.3 billion in reven from dispensing drugs in excess of the drugs' estimated acquisition costs from 2017 to 22."

FOX 9 looked further into the pricing in the report and found that a multiple sclerosis drug called Dalfampridine can be purchased for cash for about $10 a pharmacy counters or online through Cost Plus Drugs for a 30-day supply. But the FTC found that employers and customers through insurance plans get bille about $1,000 dollars for that same 30-day supply.

The cancer drug Imatinib can be purchased for cash at a pharmacy counter or online at Cost Plus Drugs for around $34.50 for a 30-day supply, but health pla

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News

Supreme Court takes up PBM case: Does ERISA preempt states' efforts to regulate drug prices?

The Oklahoma case hinges on what happens when state authority collides with ERISA.

By **Allison Bell** | October 11, 2024 at 10:30 AM

U.S. Supreme Court courtroom in Washington, D.C. Credit: Carol M. Highsmith/Library of Congress via Wikimedia Commons

The U.S. Supreme Court plans to look at states' ability to regulate pharmacy benefit managers this term.

Glen Mulready, Oklahoma's insurance commissioner, is trying to overturn an appeals court ruling that found that the Employee

Retirement Income Security Act of 1974 benefits rule uniformity provisions preempts state efforts to regulate PBMs when the PBMs are serving self-funded employer health plans.

The Supreme Court "has long cautioned against stretching ERISA to preempt laws in 'traditionally state-regulated' areas about which 'ERISA has nothing to say,'" Mulready says in a brief filed in connection with the case, Mulready v. Pharmaceutical Care Management Association. "Pharmacy regulation is an area of traditional state concern and neither PBMs nor prescription-drug benefits are mentioned anywhere in ERISA."

But the PCMA, the PBMs' group, says ERISA should preempt the Oklahoma PBM law.

"This Court has said time and time again that any state law that 'prohibits employers from structuring their employee benefit plans in a [particular] manner" is 'clearly' preempted," the PCMA says.

Related: MetLife wins appeal in $65M health plan drug rebate case

Congress included the state-rule preemption provision ERISA in an effort to make U.S. benefits rules uniform.

Congress wanted to encourage large, multistate employers to offer benefit plans, by eliminating the need for multistate plans to comply with 50 different sets of benefit rules.

The PBMs contend that the play an important role in holding pharmacy benefit costs down.

State regulators and some other players, including traditional pharmacy groups, argue that the big PBMs are not transparent, may not really hold employers' costs down and are too hard on traditional pharmacies.

PCMA sued Oklahoma over its Patient's Right to Pharmacy Choice Act in the U.S. District Court for the Western District of Oklahoma in 2019.

A district court judge ruled in favor of Mulready and Oklahoma's PBM law in 2022.

The 10th U.S. Circuit Court of Appeals overturned the lower-court ruling in August 2023, finding that ERISA did preempt state efforts to regulate PBMs.

10th Circuit "NO"

A group of 32 state attorneys general, which includes both Republican attorneys general and Democratic attorneys general, is supporting Mulready.

The list of organizations submitting "friend of the court briefs" or comments, in support of Mulready also includes health care provider groups and pharmacy groups.

The Supreme Court previously ruled in favor of state efforts to regulate self-insured employers' PBMs in Rutledge v. Pharmaceutical Care Management Association.

SUPREME COURT "YES"

PCMA contends that the Rutledge ruling did not give states' new authority to regulate the benefits offered by ERISA plans.
