

## Contractor for WV public employees system pays itself way more for some drugs than necessary

Ohio has filed its own antitrust lawsuit against the drug middleman company Express Scripts

BY: [MARTY SCHLADEN](#) - FEBRUARY 6, 2024 5:00 AM



Express Scripts headquarters in St. Louis, Missouri. (Photo courtesy of Express Scripts press materials.)

Express Scripts, the company that handles drug transactions for West Virginia public employees has — in some cases — paid itself more than 100 times as much for the most expensive class of drugs than it could have paid if it had gotten them elsewhere, according to pricing data obtained by the Ohio Capital Journal.

Express Scripts — which is the subject of an antitrust suit in Ohio — did not dispute the data, but a spokesperson said that the company uses its heft as a pharmacy middleman to save customers money. And both Express Scripts and the West Virginia Public Employees Insurance Agency said that one can't just look at reimbursements for select drugs and draw conclusions about the plans' overall performance.

Neither responded to some specific questions about Express Scripts' practices.

In a rapidly consolidating marketplace where just a few players control an ever-wider swath of transactions, Express Scripts is not alone in awarding its own pharmacies huge markups. Similar instances have been found in other insurance systems in other states.

Paying itself and its competitors

The West Virginia Public Employees Insurance Agency, or PEIA, uses St. Louis-based Express Scripts as its pharmacy benefit manager. In that capacity, Express Scripts agrees to cover medications in exchange for discounts from drugmakers. It reconciles claims at the pharmacy counter. It bills the state.

And crucially, it determines how much to reimburse pharmacies that fill prescriptions for the agency.

When it comes to “specialty” drugs — think medicines for diseases such as cancer that can cost thousands of dollars a month — Express Scripts requires PEIA members to get their medicines from its own mail-order pharmacy, Accredo, or from a network of 20 specially qualified pharmacies.

Those pharmacies are located only in patches of West Virginia. There are six in Huntington, two in Morgantown, one in Gallipolis, Ohio, but none in Charleston, the capital city where many state employees and retirees live, according to a list provided by the West Virginia Department of Administration. The others are scattered in small communities across the state.

So it’s unclear how many PEIA members have much of a choice about using a pharmacy other than Accredo when they or their family members are unlucky enough to need a specialty drug.

But it is clear that for at least 23 specialty drugs, Express Scripts has at times paid wildly more to its own mail-order pharmacy than it would have if it used prices listed on publicly available databases.

Fruth Pharmacy owns 17 stores in West Virginia, six in Ohio and one in Kentucky. Late last year, President Lynne Fruth received Accredo pricing information obtained through the PEIA patient portal that contained some eye-popping numbers.

For example, at least sometimes Express Scripts' Accredo charged West Virginia taxpayers \$4,300 for a month's supply of the prostate cancer drug abiraterone. That's 110 times as much as the \$39 you would pay if you were charged the price on a database kept by the federal government — [National Average Drug Acquisition Cost, or NADAC](#), — plus a \$10 dispensing fee.

In the case of the brain cancer drug Temozolomide, the Express Scripts-owned pharmacy charged \$12,000 a month more than a Kentucky Medicaid patient would have to pay, according to the Fruth analysis, done by Andy Becker, Fruth's vice president for pharmacy.

Express Scripts was paying its mail order pharmacy \$13,118 a month in taxpayer money for the drug on that day. But a maximum-allowable cost list published by the Kentucky Department of Medicaid priced the drug at \$900, according to Becker's analysis.

In all, it listed 23 drugs for which public pricing was available. Of those, Express Scripts/Accredo upcharges ranged from \$109 a month to \$12,000. Markups on 17 of the drugs exceeded \$2,000 a month.

Who benefits?

The Capital Journal shared the analysis with Express Scripts and West Virginia state officials.

While the size of the markups might appear to be startling, Express Scripts spokeswoman Justine Sessions said they only represent a small selection of the prescriptions her company handles for PEIA.

“Choosing isolated examples of individual medications among the thousands covered by PEIA's plan does not provide meaningful insights about the overall medication cost, affordability and safety that we help ensure for them and their members,” Sessions said in an email.

In an interview, Fruth said that she didn't believe Accredo was taking losses on other drugs that came anywhere near matching the markups it was getting on those in Becker's analysis.

“If it’s OK for you to pay \$11,000 for a \$900 drug, show me somewhere that you’re dispensing an \$11,000 drug and paying only \$900 for it,” she said. “I’m absolutely certain that you can’t show me that.”

Analyses show that having only a few drugs responsible for large profits is not unusual.

The drug-pricing analysis firm 3 Axis Advisors in 2020 examined Florida Medicaid data and found that for generic medications, [just 1.3% of the drugs dispensed accounted for nearly half \(48.3%\) of the markups](#) over the prices listed on the NADAC database. In other words, huge markups on a tiny slice of drugs accounted for a huge portion of the profit being taken out of the program.

Also, the Wall Street Journal in September analyzed the cancer drug imatinib and determined that CVS Caremark and Express Scripts — the two largest pharmacy benefit managers — were paying [well over 100 times as much for the medication than was Mark Cuban’s Cost Plus Drug Company](#), which charges a straight 15% markup plus \$10 in shipping and dispensing fees. The big PBMs were in many instances paying those high prices to their own mail-order pharmacies, according to the analysis.

In the case of the West Virginia Public Employees Insurance Agency, it’s unclear what portion of expensive specialty drugs are being filled by Express Scripts’ Accredo pharmacy, and what portion is being filled by the members of the 20-store specialty network.

When asked for a specific breakdown, Express Scripts’ Sessions didn’t provide one, saying instead, “The large majority of specialty pharmacy claims are dispensed by network pharmacies other than Accredo.”

Becker of Fruth Pharmacy said his company and others are reluctant to join the network. They suspect that while Express Scripts is reimbursing its own mail-order pharmacy lavishly, it reimburses competitors at rates that don’t meet their costs.

“They’re not going to pay you \$1,000 for a \$50 drug,” Becker said. “They’re going to pay you \$20 for a \$50 drug.”

Express Scripts spokeswoman Sessions was asked whether Express Scripts reimbursed its own mail-order pharmacy the same amount for the same drug on the same day as it does and those in its specialty network.

“We offer in-network pharmacies competitive reimbursement rates,” she said.

Congressional concern, investigations and a lawsuit

Sessions said her company’s contract with the tax-funded West Virginia Insurance Agency guarantees savings.

“We ensure that customers receive the best discount on each fill — regardless of where they choose to access their prescriptions,” she said. “Because we offer pricing guarantees that help to control drug spend across drug categories over an annualized period of time, our clients often pay less for drugs overall. Should we fail to meet the pricing guarantees, we make up the financial difference for our clients, which can translate into savings for members.”

But members of the U.S. Senate and other public officials have been questioning such statements.

In the wake of the Wall Street Journal’s reporting last year, U.S. Sens. Elizabeth Warren, D-Mass., and Mike Braun, R-Ind., wrote Cristi Grimm, Inspector General of the Department of Health and Human Services.

They noted that each of the nation’s big-three pharmacy benefit managers is part of a “vertically integrated” health giant that also combines a major insurer and pharmacy — at least of the mail-order variety. They are: Cigna/Express Scripts, CVS/Aetna and UnitedHealth/OptumRx.

The latter two companies have been also [buying up doctors’ offices](#) and if Cigna/Express Scripts is successful [in buying Humana](#), it will be [getting into that business as well](#).

When Braun and Warren say the businesses are vertically integrated, they mean they’re major players in multiple sectors that do business with each other, raising concerns about self dealing. For example, an in-network CVS/Aetna doctor could write a prescription that would be filled at an in-network CVS pharmacy, which would be reimbursed by

CVS Caremark, which controls pharmacy networks. Since CVS would be paying itself at each step, it would remove the incentive to keep costs down.

Referring to the high prices for specialty drugs that the Wall Street Journal found the companies paid themselves, Braun and Warren wrote, “One key factor driving these high prices appears to be the fact that insurers own other key links in the drug supply chain: pharmacy benefit managers (PBMs) and pharmacies.”

They continued, “Cigna/(Express Scripts), UnitedHealth/(OptumRx), and CVS/Aetna each own or are affiliated with the country’s three largest PBMs, which in theory negotiate drug prices with pharmaceutical manufacturers on behalf of insurers and set prices at the pharmacy. However, when those same insurers and their vertically integrated PBMs also own their own specialty pharmacies, they can profit handsomely. That’s because insurers are not just the payers at the end of the transaction; instead, through their PBMs and pharmacies, they are also the recipients of those funds.”

Regulators and law enforcement are taking note.

In 2022, [the Federal Trade Commission announced a major investigation](#) into the practices of the big pharmacy benefit managers.

Then last May, Ohio Attorney General Dave Yost [sued Express Scripts, Humana and others under state antitrust law](#), essentially accusing them of colluding behind a veil of secrecy to fix prices and punish companies that go against them. In the suit, Yost also goes after [Ascent](#), a Switzerland-based “group purchasing organization” formed by Express Scripts’ parent company in 2019. Critics say the purpose of its formation is to avoid scrutiny of its drug-pricing practices.

CVS and UnitedHealth [have formed similar companies](#) in recent years. The FTC last year [added those companies to its antitrust probe](#).