

Ohio AG Yost's lawsuit against drug middlemen 'gangsters' could have international impact



Ohio Attorney General Dave Yost. (Image: Office of the Ohio Attorney General)

Calling them “modern gangsters,” Ohio Attorney General [Dave Yost](#) filed a price-fixing [suit](#) on Monday against pharmacy benefit managers, controversial middlemen in the drug supply chain.

The litigation is significant because it constitutes a major legal challenge against many PBM practices called into question by critics in recent years – most of which stem from the fact that just three PBMs control around 80% of the market.

One of them, [Express Scripts](#), is named in the Ohio suit along with its parent company, [Cigna](#) group.

The former is accused in the lawsuit of setting up a mysterious entity in Switzerland to handle price collusion with a purported competitor.

"The PBMs were designed to protect and negotiate on behalf of employers and consumers after Big Pharma was criticized for overpricing medications, but instead they have absolutely destroyed transparency, scheming in the shadows to control drug prices on all sides of the market," Yost said in a news release.

ABC 6 On Your Side reached out to four different media representatives of Cigna/Express Scripts for comment on the lawsuit, but had not heard back from any by late afternoon.

But perhaps more important, many of the actions described by Yost as illegal occur regularly in today's murky drug-pricing world – and not just by the named defendants.

For instance, the state's allegation that an unlawful conspiracy among defendants to raise list prices in exchange for preferred treatment on a PBM's formulary (list of drugs eligible for insurance coverage) violated anti-trust laws is remarkably similar to what [U.S. Senate investigators](#) and others have found happens regularly among PBMs and drugmakers.

In another statement that applies to all PBMs, the lawsuit accused them of using "their market power to hurt competing pharmacies, and particularly independent pharmacies" – often forcing them to accept reimbursements significantly below what the pharmacies pay for those drugs themselves.

"Pharmacies in under-served areas or rural communities in Ohio, which often operate as a patient's first line of treatment, are struggling to stay in business due to these punishing price demands by the PBMs."

The lawsuit describes a "complex 'pay to play' rebate system that, perversely, pushes manufacturers to increase drug prices in order to be placed on or receive preferred placement on PBM formularies."

The big PBMs, combined with health insurers and pharmacies under the same corporate roof, so dominate the system that they can "extract exorbitant fees" and "monopoly profits" in the highly consolidated setup, the lawsuit said.

"In the United States, over-inflated drug prices are born out of a highly dysfunctional system where little-known but massively sized PBMs often dictate our reality," said Antonio Ciaccia,

founder of drug-price watchdog 3 Axis Advisers who exposed many questionable PBM practices in Ohio.

“When Dave Yost first started pursuing litigation regarding the hidden waste buried in the middle of the prescription drug supply chain, he promised that many shoes would eventually drop. To build on the metaphor, Yost just dropped the steel-toed boot.”



Pharmacy benefit manager Express Scripts profited from unfair trade practices, a new Ohio lawsuit alleges.

PBMs are like...kudzu?

The lawsuit starts with agricultural metaphor:

“Like the import of [kudzu](#) to stop soil erosion, the creation of the pharmacy benefit manager was a solution that has become the problem. Through industry consolidation, the PBM landscape is dominated by three big players. With this dominance, they have created a black box that holds a complex administration system that allows the PBMs, including Express Scripts, to enrich themselves in multiple ways.

“This is all at the expense of consumers and other industry participants.”

The other two PBMs: CVS’ [Caremark](#) and UnitedHealth Group’s [Optum](#).

Express Scripts “knowingly and willfully made false statements of fact” on price reductions it was providing, as well as “repeated misrepresentations” on the characteristics, benefits and quality of its services, the lawsuit says.

Yost [alleged](#) the collusion jacked up the price of many of Ohioans’ drugs.

“For example,” Yost said, “an estimated 1.1 million Ohioans are diabetics. For hundreds of thousands of them, daily insulin injections are essential to survival, but Express Scripts’ well-concealed scheme has fueled an astronomical increase in the price of insulin – from roughly \$20 per unit in the late 1990s to between \$300 and \$700 per unit today.”

Yost says the scheme impacts several other types of drugs, as well as biosimilars.

“Medications shouldn’t cost an arm and a leg, metaphorically or literally,” he said. “Insulin is just a symptom of the problem; PBMs are the disease.”

Also named as defendants were Prime Therapeutics, Ascent, Humana Pharmacy Solutions and its parent company, Humana.

After congressional pressure on drug pricing, Express Scripts formed Ascent, a group purchasing organization, in 2019. The same year, per the lawsuit, the PBM invited a supposed competitor, Prime Therapeutics, to become a minority owner of Ascent. And one of Ascent’s customers is Humana Pharmacy Solutions.

Through Ascent, relocated from St. Louis to Switzerland, the group is “able to share drug pricing and rebate information with one another, as well as to fix rebate prices among them,” the lawsuit said. It adds that the three also “negotiate with (drug) manufacturers with the intent of increasing the price of pharmaceuticals, including insulins, biologics and cancer-fighting drugs.”

In sum, per the lawsuit, “The defendants have harmed not just markets and pocketbooks, but Ohioans’ health and lives.”

drowland@sbgvtv.com @darreldrowland
