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ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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JAMIE RASKIN, MARYLAND
RANKING MINORITY MEMBER

March 1, 2023

Heather Cianfrocco
Chief Executive Officer
OptumRx
2300 Main Street
Irvine, CA 92614

Dear Ms. Cianfrocco,

The Committee on Oversight and Accountability is continuing to investigate the role Pharmacy Benefit Managers (PBM) play in pharmaceutical markets. UnitedHealth Group's OptumRx (OptumRx), along with CVS Caremark and Cigna Express Scripts, are the three largest PBMs and control 80 percent of the PBM market.[1] In Committee Republicans' December 2021 report, we highlighted initial findings that large PBM consolidation has negatively impacted patient health, increased costs for consumers, forced manufacturers to raise their prices, and created conflicts of interest which distort the market and limit high quality care for patients.[2] This issue remains a top priority while Americans continue to suffer under historically high inflation and rising health care costs. In light of the central role PBMs play in our pharmaceutical markets, we request that you provide the documents and communications.

PBMs engage in self-benefiting practices at multiple levels of the payment and supply chain as they retain control over drug prices, rebates, pharmacy reimbursements, insurers, pharmacy networks, and formularies.[3] PBMs use "fail first" policies which require patients to fail on the PBM's preferred drug before they can take the drug originally prescribed. These policies can worsen patient's health by forcing them to take medications which do not work for them.[4] Additionally, lengthy delays for prior authorizations can cause suffering or even death as patients wait for PBMs to approve life-saving medications their doctors prescribe.[5] PBMs enact these policies to get higher rebates from pharmaceutical manufacturers at the expense of patients. PBMs also engage in spread pricing, where PBMs pay pharmacies a lower amount than they

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[1] Josh Mader, *Pharmacy Benefit Managers: Market Landscape and Strategic Imperatives,* HIRO, (2021).
[2] H. Comm. on Oversight & Reform, *Staff Report: A View from Congress: Role of Pharmacy Benefit Managers in Pharmaceutical Markets*, 117th Cong. (Dec. 10, 2021).
[3] *Pharmacy Benefit Managers and Their Role in Drug Spending,* THE COMMONWEALTH FUND (Apr. 22, 2019); *Pharmacy Benefit Managers,* NAT'L ASS'N OF INS. COMM'RS (Apr. 11, 2022).
[4] *What is Fail First? And Why it Matters,* FAIL FIRST HURTS.
[5] Aaron Tallent, *Oncologists Say Prior Authorization is Causing Delays in Care,* OBR ONCOLOGY (Mar. 25, 2022); *What is Prior Authorization*, CIGNA (2021).

charge to a health plan sponsor, such as the government in cases of Medicare and Medicaid, while pocketing the difference.[6] PBMs also force pharmacies to pay retroactive rebates and fees including Direct and Indirect Remuneration (DIR) fees months or even years later shifting costs from PBMs to beneficiaries and the government.

OptumRx appears to be continuing to leverage their size for financial gain. In October 2022, OptumRx agreed to pay $15 million to settle claims that the company overcharged Ohio's workers' compensation agency for prescription drugs.[7] The State of Ohio claimed in a lawsuit that OptumRx failed for almost three years to provide agreed-upon discounts for generic drugs purchased by injured workers submitting workers compensation claims.[8] In April 2022, Louisiana sued OptumRx for Medicaid drug overcharging by billions of dollars.[9] Again in February 2022, Optum Rx settled to pay $5.8 million to Massachusetts after overcharging drugs covered by workers' compensation insurance.[10] In May 2017, an individual Medicare patient filed suit in California claiming that drugmaker, Novo, artificially inflated the price of injected Type 2 diabetes medication, Victoza, in order to subsidize kickbacks from OptumRx.[11] Many patients have had to shoulder the growing costs of prescription drugs due to the controversial practices of OptumRx and other PBMs.

The focus of the pharmaceutical marketplace should be on the patient. Greater transparency is needed to determine the impact PBM tactics are having on patients and the pharmaceutical market. To assist the Committee further understanding the role of PBMs in pharmaceutical markets, please provide the following documents and information no later than March 15, 2023:

1. All documents and communications related to formulary design and management relating to:

    a. Commercial plans;
    b. Medicare;
    c. Medicaid;
    d. Federal Employee Health Benefit Program;
    e. TRICARE; or
    f. The Department of Veteran's Affairs;

2. A list of individuals involved in the design and management of formularies;

3. A list, by year, of all rebates or fees paid to OptumRx or related entities by:

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[6] *Spread Pricing 101*, NAT'L CMTY PHARMACISTS ASS'N.
[7] Brendan Pierson, *OptumRX to Pay $15 Mln to Settle Ohio's Overcharging Claims,* REUTERS (Oct. 25, 2022).
[8] *Id.*
[9] Nona Tepper, *Louisiana sues UnitedHealthcare, OptumRx for Alleged Medicaid Drug Overcharging,* MODERN HEALTHCARE (Apr. 20, 2022).
[10] Nate Raymond, *UnitedHealth Unit Settles Mass. Drug Overcharge Case for $5.8 Mln,* REUTERS (Feb. 24, 2022).
[11] Eric Palmer, *Lawsuit Says Novo, OptumRx 'Mutually Benefited' From Rebate Scheme, While Consumers Paid the Price,* FIERCE PHARMA (May 26, 2017).

a. Manufacturers of one or more prescription drugs; or
b. Wholesale drug distributers licensed by any state or entity of the state;

4. All documents and communications related to:

   a. Differences in pricing between government programs and commercial plans;
   b. "Rebate guarantees," defined as guaranteeing a specific amount of rebates to a plan sponsor;
   c. Drug discount cards;
   d. Incentives or encouragement of a patient to use a pharmacy owned by OptumRx or related entities;
   e. Patient adherence metrics, including but not limited to how the metrics are created and applied to pharmacies;

5. All documents and communications related to the Group Purchasing Organization called Emisar Pharma Services (Emisar), including but not limited to:

   a. Emisar's relationship with UnitedHealth Group and Optum Rx;
   b. Conflicts of interest between UnitedHealth Group, Optum Rx, and Emisar;
   c. Priorities given to UnitedHealth Group-owned or preferred entities;
   d. Services Emisar offers to manufacturers and rebate negotiations with manufacturers;

6. All contracts between OptumRx with entities or programs within or subsidized by the Federal Government including but not limited to:

   a. Medicaid;
   b. Medicare;
   c. The Centers for Medicare and Medicaid Services;
   d. The Office of Personnel Management;
   e. The Defense Health Agency; or
   f. The Department of Veteran's Affairs;

7. All documents or communications, including but not limited to letters or notices from or on behalf of OptumRx or related entities, related to any removal or threat of removal from any Medicare Part D network based upon:

   a. The raising of a dispute or making any comment regarding the legality, propriety, or other legal deficiency in connection with the PBM or Plan Sponsor's Medicare Part D networks;
   b. The filing or communication of the intent to file any legal action against Optum Rx or its related entities;

   c. The filing or communication of the intent to file an application in any state or federal court to confirm any arbitration award rendered against Optum Rx or its related entities;

8. Any interim or final arbitration award, court opinion, order, or judgment finding Optum Rx or related entities violated Medicare Part D "Any Willing Provider Law" (42 U.S.C. § 1394w-104(b)(1)(A), 42 C.F.R. § 423.505(b)(18));

9. All documents and communications related to fees charged by OptumRx to pharmacies owned by CVS Health, UnitedHealth Group, or Cigna Express Scripts Inc., including but not limited to;

   a. Direct and Indirect Remuneration (DIR) fees;
   b. Network Access fees; or
   c. Data sharing fees;

10. All policies and procedures relating to the payment for and distribution of specialty medications within OptumRx, including but not limited to policies and procedures taken to encourage or incentivize patients to receive specialty medications from a UnitedHealth Group-owned or preferred entity; and

11. All policies and procedures related to the purchase or the determination to offer to purchase a competing pharmacy.

Thank you for your consideration of this important issue. To make arrangements to deliver documents or ask any related follow-up questions, please contact Committee on Oversight and Accountability Majority Staff at (202) 225-5074. The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,

James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Jamie B. Raskin, Ranking Member
Committee on Oversight and Accountability