

# United States Senate

COMMITTEE ON FINANCE  
WASHINGTON, DC 20510-6200

April 8, 2019

Inspector General  
Office of Inspector General  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Mr. Levinson:

We are writing to you regarding an increasing number of reports that highlight concerning practices by Pharmacy Benefit Managers (PBMs) in state Medicaid programs. In August of this year, the state of Ohio publicly released the results of an audit examining PBM administration of Medicaid pharmacy benefit plans under the state's Medicaid program. The audit found that the PBMs' "spread pricing" practices resulted in the program being billed \$224 million more than the total price paid to pharmacies for actual claims over the course of the year.<sup>1</sup> On average, this spread—the difference between what the PBMs paid the Ohio pharmacy providers and what they billed the Medicaid managed care plans for—reflected more than an 8% markup for prescription drugs paid for by Medicaid.<sup>2</sup> A subsequent article in January also reported that the PBMs were paying their own pharmacies even more than competitors.<sup>3</sup>

Reports detailing pricing practices by PBMs in state Medicaid programs have not been isolated to Ohio. In December, the Pennsylvania Auditor General released a report finding that three PBMs employed similar practices in Pennsylvania and made millions off the Medicaid

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<sup>1</sup> AUDITOR OF STATE OF OHIO, OHIO'S MEDICAID MANAGED CARE PHARMACY SERVICES (Aug. 16, 2018), [https://audits.ohioauditor.gov/Reports/AuditReports/2018/Medicaid\\_Pharmacy\\_Services\\_2018\\_Franklin.pdf](https://audits.ohioauditor.gov/Reports/AuditReports/2018/Medicaid_Pharmacy_Services_2018_Franklin.pdf).

<sup>2</sup> Following concerns and recommendations raise

d in the report, the Ohio Department of Medicaid has since instructed its MCPs to terminate existing contracts with PBMs that use Spread Pricing, and required that new contracts adopt a "pass-through pricing" model in effort to improve transparency in drug pricing, reimbursement, and payment as relevant to the state's Medicaid program. Catherine Candisky & Lucas Sullivan, *Ohio ending deals with pharmacy middlemen that cost taxpayers millions*, THE COLUMBUS DISPATCH, Aug. 14, 2018, <https://www.dispatch.com/news/20180814/ohio-ending-deals-with-pharmacy-middlemen-that-cost-taxpayers-millions>.

<sup>3</sup> Marty Schladen & Cathy Candisky, *CVS paid itself far more than some major competitors, report says*, THE COLUMBUS DISPATCH, Jan. 20, 2019, <http://gatehousenews.com/sideeffects/cvs-paid-far-major-competitors-report-says/site/dispatch.com/>.

program, with profits averaging between 28 cents and nearly \$13 per prescription.<sup>4</sup> Most recently, the Kentucky Department of Medicaid Services released a report in February finding that, in 2018, PBMs in the state made \$123 million off the state's Medicaid program through spread pricing practices—a nearly 13% markup.<sup>5</sup>

The Medicaid program is essential to providing care to millions of Americans. As a state-federal partnership, it is imperative that taxpayer dollars are used efficiently and effectively to provide quality care and treatment to beneficiaries. Under 42 C.F.R. § 438.230, subcontractors like PBMs are required to comply with all applicable Medicaid laws and regulations. Furthermore, in accordance with these federal rules, the Department of Health and Human Services' Inspector General has the right to conduct audits and evaluations of Medicaid managed care subcontracted entities such as PBMs that pertain to any aspect of services and activities performed as well as the amounts payable under Medicaid managed care contracts with state Medicaid programs.<sup>6</sup> Moreover, the central tenet of pricing practices of state-federal partnerships should keep the beneficiary, and sustainability of state Medicaid programs, at its core.

Given the potential vulnerabilities created as a result of opaque drug pricing practices employed by entities like PBMs, we believe additional transparency and oversight in this space is warranted. Accordingly, we request your office conduct a federal-level analysis of PBM practices across state Medicaid programs, including practices that may allow for inappropriate profiteering and potential anti-competitive practices in state Medicaid programs. Thank you for your prompt attention to this request. We look forward to your response.

Sincerely,



Charles E. Grassley  
Chairman  
Senate Committee on Finance



Ron Wyden  
Ranking Member  
Senate Committee on Finance

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<sup>4</sup> EUGENE A. DEPASQUALE, AUDITOR GENERAL, BRINGING TRANSPARENCY & ACCOUNTABILITY TO DRUG PRICING (2019), [https://www.paauditor.gov/Media/Default/Reports/RPT\\_PBMs\\_FINAL.pdf](https://www.paauditor.gov/Media/Default/Reports/RPT_PBMs_FINAL.pdf).

<sup>5</sup> KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICE, MEDICAID PHARMACY PRICING: OPENING THE BLACK BOX (Feb. 19, 2019), [https://chfs.ky.gov/agencies/ohda/Documents1/CHFS\\_Medicaid\\_Pharmacy\\_Pricing.pdf](https://chfs.ky.gov/agencies/ohda/Documents1/CHFS_Medicaid_Pharmacy_Pricing.pdf).

<sup>6</sup> 42 C.F.R. § 438.230, Subcontractual relationships and delegation.