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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

June 24, 2024

Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Brooks-LaSure:

I write to urge the Centers for Medicare & Medicaid Services (CMS) to conduct immediate oversight and rigorous regulatory enforcement of specific Medicare Part D program requirements for plan sponsors and their pharmacy benefit managers (PBMs). According to reports, PBMs are flouting Medicare Part D requirements with dire consequences for many kinds of pharmacies and the patients they serve in their communities.

Pharmacies around the country are closing at an alarming rate. In 2023 there were over 300 independent pharmacy net closures—almost one less pharmacy open for patients a day—and overall there were approximately 2,200 fewer retail pharmacies than there were four years ago leaving many communities with few or no pharmacists to treat local residents.<sup>1</sup> In my home state of Oregon, 35 pharmacies closed their doors last year alone. The implications of these closures are dire for local communities.

I am alarmed to hear reports that PBM contracting practices are straining the finances of pharmacies and directly contributing to their closures. Specifically, I am concerned PBMs are not adhering to the new rule reining in direct and indirect remuneration (DIR) fees that took effect on January 1 and undermining Medicare's pharmacy access standards as intended by Congress.

According to a recent survey of U.S. pharmacists, PBMs imposed draconian contract terms for 2024. These contract terms include paying pharmacies less than their actual cost to acquire and stock medications. Pharmacists also convey that the reimbursement levels as provided in contracts offered by PBMs for 2025 are again significantly below cost and far worse than contract terms offered in prior years. As such, PBM contracting terms are forcing pharmacies into such dire financial straits that many pharmacies may be unable to serve Medicare

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<sup>1</sup> <https://ncpa.org/newsroom/news-releases/2024/02/27/local-pharmacies-brink-new-survey-reveals#:~:text=NCPA%20sent%20a%20letter%20to,there%20were%20four%20years%20ago>.

beneficiaries next year. If these pharmacies stop participating in Part D networks, seniors will be unable to use their Part D benefit. Patient access to medication would be decimated across the country, with America's rural seniors bearing the greatest burden.

When asked which PBM causes the most Part D financial stress, 47% of respondents cited Express Scripts as the most problematic, having 50% more complaints than the runner-up PBM. This is especially troubling given that Express Script's Part D market share increased substantially as of January 1, particularly concerning dual-eligible Part D enrollees. Capitalizing on its growth in market share, Express Scripts seems to have expanded its use of predatory pricing behavior which has slashed pharmacy revenues to unsustainable levels. The Federal Trade Commission (FTC) has opened an investigation into anticompetitive business practices of PBMs such as these.

The Medicare statute gives CMS the clear authority to ensure each PBM engage in fair contracting practices with pharmacies and adhere to Medicare rules. I urge CMS to immediately take the following actions:

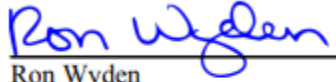
- Enforce "Any Willing Pharmacy" requirements by ensuring that PBMs reimburse pharmacies at a minimum of the cost to acquire and dispense covered prescription drugs.
- Enforce, such as through auditing, the pharmacy price concessions provision included in the *Medicare Program; Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency* final rule that requires all pharmacy price concessions be applied to negotiated prices at the point of sale under Part D.
- Implement standardized pharmacy measures which are long overdue, including the evaluation and reporting of plan performance measures which CMS has finalized in rulemaking yet has not fully come to fruition.
- Review formal or informal complaints about PBM contracting practices under Part D received over the past 18 months to determine if the number of complaints is higher than in prior years.
- Respond to this letter with information, within 60 days, on the number of formal or informal complaints received about PBM contracting practices over the past 18 months, a description of the type of complaints received, and the disposition of the complaints.

Local pharmacies not only provide access to prescribed medication, they also play an essential role in delivering critical patient services such as patient education, management of chronic illness, and preventive care. America's rural communities are especially dependent on access to their pharmacists for health care as rural health systems are sparse and providers can be hard to get to or non-existent. When these points of care close, residents face more limited access to medication consultations and vaccines, longer travel times to pharmacies, and have higher risk of not adhering to their prescribed medication.

I hear consistently from local pharmacists that preventing "further cannibalization and destruction of the pharmacy landscape" truly hinges on the timing of actions taken by CMS to

rein in PBMs. Acting now to conduct rigorous oversight and enforcement could mean the difference between hundreds of pharmacies closing or staying open to serve Medicare beneficiaries across the nation. I will be following up with you for an update on this matter.

Sincerely,



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Ron Wyden  
United States Senator  
Chairman, Committee on  
Finance