

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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August 28, 2024

David Joyner
President
CVS Caremark
One CVS Drive
Woonsocket, RI 02895

Dear Mr. Joyner:

The House Committee on Oversight and Accountability writes to provide you the opportunity to correct the record for statements made during your appearance before the Committee. On July 23, 2024, the Committee held a hearing titled “The Role of Pharmacy Benefit Managers in Prescription Drug Markets.” As the President of CVS Caremark, you were invited to testify.

During the hearing, you twice testified that CVS Caremark pays CVS-affiliated pharmacies less than other pharmacies in your network:

Exchange #1:

Congressman Palmer: I mean, there is a New York Times article that exposed how PBMS operate in the marketplace, highlighting how they are driving independent pharmacies out of business, and they are not paying enough to cover costs. CVS Caremark overcharged an Oklahoma health plan for State employees \$120,000 for just one cancer patient’s medication. They also overcharged an Illinois cancer patient hundreds of dollars more than needed to Caremark’s formulary requiring her to use the more expensive version of the drug. Express Scripts forced a New Jersey retiree to pay \$211 for his allergy medication when he could have gotten it for \$22 at Costco.

So each of you, I just want you to explain why you overcharge patients, employers, and the Government at some fairly exorbitant rates but often reimburse pharmacies less than it costs them to buy the drug in

the first place. That doesn't make sense. You can respond to that. I know my time has expired. Each one of you can respond to that.

Mr. Joyner: So our experience proves that we actually pay CVS pharmacies less than we do other pharmacies in our network, and, in fact, when we do have people go into our pharmacies, they are paying, on average, 4.7 percent less.¹

Exchange #2:

Congressman Fallon: Thank you, Mr. Chairman. We all know that the cost of healthcare has steadily increased, and it is in an environment of already record-breaking inflation. More and more Americans are forgoing healthcare coverage because they simply can't afford it. PBMs state that they exist to save people money, yet the PBMs are seeing, quite frankly right now, sky-high profits and healthcare costs are becoming prohibitively expensive for the average American. According to the Federal Trade Commission, three PBMs now control 80 percent of the market. They have vertically integrated with suppliers of goods and services, retail, mail-order, especially pharmacies and large health insurers. As a result of vertical integration, there are pharmacies owned by the same company as the PBM that are linked to, 'affiliated pharmacies', as well as local and independent pharmacies, which are known as unaffiliated pharmacies. Each one of you here today represents a group that is integrated, insurer, PBM, pharmacies and provider services together. So for the witnesses here, Mr. Conway, Joyner, and Kautzner, what is your relationship with your respective companies with independent and unaffiliated pharmacies? Would you describe it as positive or negative? Mr. Joyner, is it positive or negative because, I apologize, we have limited time.

¹ *The Role of Pharmacy Benefit Managers in Prescription Drug Markets Part III: Transparency and Accountability*, 118th Cong. (July 23, 2024).

Mr. Joyner: No, I am just saying, Congressman, I think independent pharmacies are a critical part of our network.

Congressman Fallon: So you would say you would describe your relationship with them as positive?

Mr. Joyner. I would, and we also reimburse them more money, so I think that is one of the benefits of a relationship.²

This statement contradicts both the Committee's and Federal Trade Commission's (FTC) findings that CVS Caremark as well as Express Scripts and Optum Rx, reimburse PBM-owned pharmacies at a higher rate than non-affiliated pharmacies. The Committee has received evidence that that CVS Caremark reimburses competing pharmacies below the acquisition cost of the medication and below what it reimburses pharmacies it owns.³

The FTC interim staff report found that PBMs reimburse affiliated pharmacies at significantly higher rates than non-affiliated pharmacies.⁴ In its case study, FTC found that PBM reimbursements for affiliated pharmacies often exceed the National Average Drug Acquisition Cost (NADAC).⁵ Additionally, post-sale adjustments to pharmacy reimbursements by PBMs have been found to significantly reduce reimbursements for unaffiliated pharmacies.⁶ The Committee has also received evidence that CVS Caremark reimburses non-affiliated pharmacies at a lower rate than PBM-owned pharmacies.⁷

Additionally, during the hearing you testified that CVS Caremark does not steer patients to PBM-owned pharmacies:

Exchange:

Congressman Fallon: Okay. And the same thing I would like to start with, Mr. Joyner, do your companies steer patients to affiliated pharmacies? Yes or no.

Mr. Joyner: We actually establish a variety of different network options.

Congressman Fallon: And again, at limited time, yes or no?

² *Id.*

³ Whistleblower email, [on file with the Committee].

⁴ Federal Trade Commission, Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies, 39 (July 2024).

⁵ *Id.*

⁶ *Id.* at 59.

⁷ Whistleblower email, [on file with the Committee].

Mr. Joyner: So the answer is no.⁸

These statements contradict both the Committee’s and the FTC’s findings that CVS Caremark, as well as Express Scripts and Optum Rx, steer patients to PBM-owned pharmacies. The Committee found evidence, detailed in its recent report, that Express Scripts engages in targeted outreach to patients, using data the PBM received from competing pharmacies, encouraging patients to move their prescriptions to Express Scripts mail-order pharmacy.⁹ Additionally, the Committee has received evidence from patients who have been forced to receive their medications from pharmacies affiliated with CVS Caremark instead of the pharmacy of their choosing.¹⁰

The FTC’s interim staff report states that “vertically integrated PBMs may have the ability and incentive to prefer their own affiliated businesses” to “increase utilization of certain drug products at affiliated pharmacies to generate the greatest revenue and profits for their respective conglomerates.”¹¹ PBMs accomplish patient steering in different ways, including pharmacy network and formulary design. For example, the FTC reports that “PBMs routinely create narrow and preferred pharmacy networks that can advantage their own pharmacies while excluding rivals.”¹² Additionally, the FTC reports that PBMs have multiple “optimization levers” to steer patients to PBM-owned pharmacies, including “white bagging,” or requiring that patients obtain drugs from a PBM-affiliated pharmacy, and “brown bagging,” which requires that a patient is administered a prescription in the provider’s office instead of a patient’s pharmacy of choice.¹³

The Committee highlights 18 U.S.C. § 1001, which states, “in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—... (2) makes any materially false, fictitious, or fraudulent statement or representation;... shall be fined under this title, imprisoned not more than 5 years.”¹⁴ The Committee also highlights 18 U.S.C. § 1621, which states, “having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true... is guilty of perjury and shall... be fined under this title or imprisoned not more than five years, or both.”¹⁵

Please provide any necessary corrections to the record prior to September 11, 2024.

⁸ *Supra* n. 1.

⁹ Majority Staff of the House Committee on Oversight and Accountability, *The Role of Pharmacy Benefit Managers in Prescription Drug Markets*, H. Comm. Oversight and Accountability, (Jul. 23, 2024).

¹⁰ CVS Caremark Letter, [*on file with the Committee*]

¹¹ *Supra* n. 4 at 3.

¹² *Id.* at 31-32.

¹³ *Id.*

¹⁴ 18 U.S.C. § 1001.

¹⁵ 18 U.S.C. § 1621.

Mr. David Joyner
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Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive style with a horizontal line underneath it.

James Comer

Chairman

Committee on Oversight and Accountability