

Submitted electronically and faxed to David.Cordani@cigna.com (Fax: 1-860-226-6741 and 1-215-761-5511); Adam.Kautzner@evernorth.com (Fax: 877-387-5800)

April 11, 2024

Adam Kautzner, PharmD
President
Express Scripts, Inc.
One Express Way
St. Louis, MO 63121

David Cordani
Chairman and Chief Executive Officer
The Cigna Group
900 Cottage Grove Road
Bloomfield, CT 06002

Re: Express Scripts, Inc.'s Medicare Part D Egregious Pharmacy Contracting Practices Threatening Independent Pharmacies and Harming Patient Access and Care

Dear Mr. Kautzner and Mr. Cordani:

The National Community Pharmacists Association (NCPA) is writing, on behalf of our independent pharmacy members, to express our serious concerns with ESI Part D contract terms that are leading to pharmacy closures and dire impacts on the patients they serve.

NCPA represents America's community pharmacists, including 19,400 independent community pharmacies. Almost half of all community pharmacies provide long-term care services and play a critical role in ensuring patients have immediate access to medications in both community and long-term care (LTC) settings. Together, our members represent a \$94 billion healthcare marketplace, employ 230,000 individuals, and provide an expanding set of healthcare services to millions of patients every day. Our members are small business owners who are among America's most accessible healthcare providers. NCPA submits these comments on behalf of concerns we have received from independent and LTC pharmacies.

According to NCPA's [new survey](#) conducted in February 2024, when asked which PBM is causing the most financial stress in the Medicare Part D program, almost half identified Express Scripts. Of the "big 3" PBMs, Cigna-ESI was mentioned as being the most problematic of all PBMs in Medicare, 50% more often than the runner-up. Another of the big 3 PBMs was only mentioned less than 10% of the time.

Pharmacy owner members frequently cite Cigna-ESI's draconian contract terms—particularly on brand name prescriptions—when talking about whether they will be able to keep their business open. In fact, one alarming result from the recent survey was *32 percent of all respondents say they are considering closing their doors in 2024 because of the cash crunch in Medicare*. And, perhaps, most disturbing of all, *ninety-three percent* of respondents said they may drop out of Medicare Part D in 2025 if this year's experience continues, which would decimate patient access across the country, especially for seniors.

Medicare Part D makes up 36 percent of the average independent pharmacy's business. Thus, contractual terms that pay pharmacies less than they pay for the medication are having a disproportionately negative effect on the solvency of pharmacies. As a result of 2024 terms, pharmacy "deserts" are proliferating in the country, especially in some of the areas where our country's most socially vulnerable populations reside. In 2023, there were over 300 independent pharmacy *net* closures — in other words, *every day* patients have one less independent pharmacy from which to choose. What's more, there are approximately 2,200 fewer retail pharmacies than there were four years ago—an overall 4 percent decrease of pharmacy choices for patients—and that pattern of pharmacy closures is increasing. Based on the most recent data through February 29, 2024, independent pharmacy net closures continue at approximately one store per day. These closures are expected to escalate given 2024 contract terms. Increased vertical and horizontal consolidation of PBMs and health plans has caused severe inequities to pharmacies and Medicare Part D beneficiaries alike. These are startling developments.

ESI's Contracts Do Not Contain Reasonable and Relevant Terms

Our members are reporting that ESI is paying pharmacies rates that are less than their cost to acquire prescription medications as part of Medicare Part D participation. This violates federal law and guidance under Medicare Part D, which requires Part D Plans and their First Tier Entities to offer "reasonable and relevant" terms and conditions for participation in a pharmacy network,¹ as it is never reasonable to reimburse a pharmacy below its acquisition costs and that reasonable people would agree. By doing this, ESI is threatening access to pharmacy services for millions of Americans.

Our members also report that ESI uses vague terms to base reimbursement calculations. Vague terms result in considerable unpredictability and inequity in pharmacy reimbursement rates, just as we witnessed with DIR fees. These vague and flexible terms on their face provide another example of how ESI is violating its obligation to offer "reasonable and relevant" terms and conditions for participation in a pharmacy network.

ESI "Bonus Pool Fees" Not in Compliance with Final Rule

NCPA has also heard on good authority from our members that ESI has an additional in-network per claim "bonus pool fee" that is not being applied at point of sale, which NCPA believes is in violation of the CMS' Medicare Program; Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs; Policy and Regulatory

¹ See 42 C.F.R. § 423.505(b)(18).

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 (Final Rule).

Clearly, these per claim fees are pharmacy price concessions and therefore should be assessed at the point of sale, rather than be assessed in the aggregate on pharmacies' remittance advices, as they are currently being handled since January 1, 2024. These price concessions amount to millions of dollars that have been assessed since January 1, all to enrich ESI, while our members wait to see if they will earn any of their money back later in the year.

Misrepresentation of Networks

Additionally, our members have noted the following:

- ESI created mass confusion as to the participation status of our members in ESI networks during open enrollment for plan year 2024. This was because of opt-out, e-faxed contracts.
 - The “opt out” nature of these adhesion contracts, with tight timelines for opting out, essentially creates a default network inclusion.
 - The e-faxed nature of contract updates made those updates easy to overlook and lose in the normal course of business.
 - **To remedy these problems, NCPA asks ESI to make its contracts negotiable opt in contracts with adequate time to respond and not opt out. NCPA also asks that ESI send contract terms through certified mail, or some other trackable means with clear and reasonable deadlines for response.**
- ESI created additional mass confusion by ESI sending erroneous letters to patients misrepresenting that their pharmacies were out of network.
 - This created administrative burden and economic disruption to our pharmacies before updates were made to Plan Finder. In the meantime, patients went elsewhere for business, and often did not return to our member pharmacies.
- **ESI should have its pharmacy network set by September 15, 2024, where plans agree to have standard contracts effective January 1, 2025 available to pharmacies with reasonable and relevant terms and conditions of participation whereby any willing pharmacy may access the standard contract and participate as a network pharmacy.² ESI should not attempt to re-contract with pharmacies after September 15, 2024.**

Such misrepresentation of networks is unacceptable, and such massive mistakes cannot be allowed in the future. We cannot help but note that Cigna-Express Scripts has publicly announced a desire to work with independent pharmacies and has even formed an Independent Advisory Committee in the last year. Unfortunately, and ironically, business conditions dictated by ESI to independent pharmacies have only gotten worse since ESI's announcements—especially regarding Medicare Part D terms that our members tell us are out of market relative to Cigna-ESI's competitors.

² See [eCFR :: 42 CFR 423.505\(b\)\(18\)](#).

In summary, NCPA asks that ESI consider revising its contract terms to align with ESI's obligation to offer "reasonable and relevant" terms and conditions for participation in a pharmacy network, and to revise its "bonus pool fee" to align with the Final Rule. NCPA requests that ESI immediately address our above concerns before more independent pharmacies close. Once an independent pharmacy closes, it will not re-open, and patients will be harmed as a result.

Should you have any questions or concerns, please feel free to contact me at doug.hoey@ncpa.org or my colleague Ronna Hauser at ronna.hauser@ncpa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Douglas Hoey". The signature is fluid and cursive, with the first name "B." and last name "Hoey" being the most prominent parts.

B. Douglas Hoey, Pharmacist, MBA
Chief Executive Officer
National Community Pharmacists Association

CC: Adam Stacy, Senior Vice President, PBM Provider Strategy, Express Scripts
The Honorable Chiquita Brooks-LaSure, Administrator, Centers for Medicare & Medicaid Services
The Honorable Cathy McMorris Rodgers, Chair, House Energy and Commerce Committee
The Honorable Frank Pallone, Ranking Member, House Energy and Commerce Committee
The Honorable Jason Smith, Chair, House Ways & Means Committee
The Honorable Richard Neal, Ranking Member, House Ways & Means Committee
The Honorable James Comer, Chair, House Oversight & Accountability Committee
The Honorable Jamie Raskin, Ranking Member, House Oversight & Accountability Committee
The Honorable Ron Wyden, Chair, Senate Finance Committee
The Honorable Mike Crapo, Ranking Member, Senate Finance Committee