Dec. 19, 2024

Mr. William McGinley
General Counsel
Department of Government Efficiency

Dear Mr. McGinley,

The National Community Pharmacists Association (NCPA) represents the interests of over 18,900 independent community pharmacies across the United States. These pharmacies are the backbone of our health care system, providing essential services to millions of Americans, especially in underserved communities.

We were encouraged to hear that the newly formed Department of Government Efficiency (DOGE) will be looking at ways to eliminate waste and inefficiencies in federal programs. We would strongly urge you to start your search with the pharmacy benefit managers (PBMs) who, unfortunately, escaped accountability again this week with the failure of the continuing resolution. The excesses in that package notwithstanding, included several provisions that would do precisely what DOGE was created to accomplish: create efficiencies and tax savings in government programs. First, it would save taxpayers $5 billion by providing common sense reforms to big insurance/PBMs. Moreover, because they engage in blatantly anticompetitive behaviors – such as price fixing and patient steering, which this package would also have assisted with – PBMs prevent the overall health care market from operating efficiently for consumers, resulting in higher drug costs.

The increasing dominance of PBMs poses a significant threat to consumers' convenient access to prescription medications, while at the same time charging taxpayers excessively and draining limited health care resources in public health programs like Medicare Part D, Medicaid, Tricare, and the Federal Employees Health Benefit Plan (FEHBP).

PBMs are largely unrecognized by most patients and misunderstood by many employers and payers (including governmental entities and taxpayers), but they profoundly influence U.S. health care decision-making and drug spending. They have the power to determine which drugs patients may have, which pharmacies patients may use, and, through their affiliations or ownership of pharmacies, control how much their competitors can be reimbursed for prescription drugs and other pharmacy services. They use this influence to increase their outlandish profits at the expense of taxpayers, patients, and local, independently run pharmacies. Due to vertical integration, the three largest PBMs (representing over 80 percent of covered lives in this country) are owned by or own the three largest health insurance companies.

PBMs' anticompetitive practices, opaque reimbursement models, and restrictive contract terms have created an environment in which they can use their overwhelming market power to steer patients away from their competitors to their own pharmacies and pay themselves higher prescription reimbursement rates. Shockingly, these health insurance PBMs received billions of

dollars in bailout subsidies from the federal government to keep premiums stable in Medicare Part D. This particular wasteful use of taxpayer dollars is one in which DOGE should have a strong interest. The PBMs essentially hold states and the federal government hostage by threatening to jack up premiums if they are required to behave fairly or openly. Indeed, they've spent tens of millions of dollars fighting against any legislation that would require more transparency, let alone changes to their business model. And of course, they would because they are perhaps the only businesses in the world with the power to set prices for their smaller competitors and tell their competitors' customers where to shop.

Another egregious example of PBM abuse of taxpayer funded programs was their fleecing of the United States Postal Service health plan. In an audit released in March 2024, the Inspector General of the US Office of Personnel Management (OPM) found that Express Scripts (ESI) overcharged the American Postal Workers Union (the Carrier) Health Plan and the FEHBP nearly $44.9 million by not passing through all prescription drug discounts and credits required under the Carrier's contract with OPM.[1]

As the Trump administration moves forward with this oversight, we recommend that you audit how PBMs administer the following taxpayer funded or subsidized public health programs:

- **Insurers/PBMs administering the Medicare Part D benefit.**
- **Express Scripts' (ESI) contract with the Department of Defense. (ESI is the Cigna-owned PBM which administers the TRICARE pharmacy benefit on behalf of the Department of Defense.)**
- **Insurers/PBMs administering the FEHBP.**

Upon conclusion of these audits, you may find the only parties who benefit from contracting with these entities are the big insurers and dominant PBMs. There is scant objective evidence that they save the government-administered health plans money. In fact, as many states have discovered in their Medicaid programs, the PBMs are overcharging them to the tune of hundreds of millions of dollars.

Additionally, we respectfully request the administration either eliminate or make significant reforms to the Medicare Drug Price Negotiation Program of the Inflation Reduction Act. The Centers for Medicare & Medicaid Services (CMS) released the negotiated prices of 10 drugs in the Medicare Drug Price Negotiation (MDPN) Program in Medicare Part D, effective CY 2026. The negotiated price is referred to as the maximum fair price (MFP). CMS will announce the selection of up to 15 additional drugs covered by Part D for the second cycle of negotiations by Feb. 1, 2025.

We recognize that lower drug costs for seniors are essential. That said, NCPA is concerned that pharmacies will have to float this government program to the tune of roughly $27,000 per independent pharmacy per month; that pharmacies will not be paid fairly by PBMs; and that manufacturer refund payments to pharmacies will be delayed. All of these added pressures could

[1] https://www.oversight.gov/reports/audit/audit-american-postal-workers-union-health-plans-pharmacy-operations-administered-0

cause increased pharmacy closures and decreased patient access. Unfortunately, the current way CMS plans to administer the program will result in community pharmacies being collateral damage. CMS has taken a head-in-the-sand approach to how PBMs will reimburse pharmacies for MFP drugs and how slowly manufacturers will refund them. This approach sets the program up for colossal failure. Lower drug prices for seniors are of little value if seniors can't find a pharmacy to dispense the drugs.

Should the new administration decide to go forward with the MDPN Program, we have the following suggested reforms:

- **CMS must require Part D plans and PBMs to pay pharmacies no less than the MFP plus a commensurate dispensing fee.**
- **CMS must require that manufacturer refund payments be received by pharmacies within 14 days of filling the prescription.**
- **Independent pharmacies cannot and should not pre-fund the MDPN Program, nor was it the intent of Congress that pharmacy do so. CMS should ensure the program is pre-funded.**
- **Delay the start of the MDPN Program for at least 2 years.**
- **Run the MDPN Program like the Coverage Gap Discount Program.**

Without CMS making the necessary changes that we outline, pharmacies will not be able to afford to dispense these drugs and the MDPN Program will fail. An informal NCPA poll of community/long-term care pharmacy owners and managers in October 2024 finds that 92 percent of them are considering not stocking MFP drugs as a result.

Finally, we would like to share two reports released late last summer that warrant the incoming administration's attention. Both the Federal Trade Commission (FTC) and the House of Representatives' Committee on Oversight and Accountability released scathing reports on PBM practices, focusing heavily on their anticompetitive business practices and their responsibility for inflated drug costs. These largely unregulated PBMs are administering the pharmacy benefit for every single public health program with little oversight or accountability.

1. PBM interim report published by the FTC, titled "Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies"
    a. The interim report is part of an ongoing inquiry launched in 2022 by the FTC and shows how increasing vertical integration and concentration has enabled the six largest PBMs to control patient and pharmacy choices for nearly 95 percent of all prescriptions filled in the United States.
    b. According to the report, this vertically integrated and concentrated market structure has allowed PBMs to profit at the expense of patients and independent pharmacies. The report finds that PBMs wield enormous power over patients' ability to access and afford their prescription drugs, allowing PBMs to significantly influence what drugs are available and at what price. This can have dire consequences, with nearly 30 percent of Americans surveyed reporting rationing or even skipping doses of their prescribed medicines due to high costs, the report states.

c. The interim report also finds that PBMs hold substantial influence over independent pharmacies by imposing unfair, arbitrary, and harmful contractual terms that can impact independent pharmacies' ability to stay in business and serve their communities.
d. Additionally, the report details findings on PBM power and influence, self-prescribing, and efforts to limit access to low-cost competitors.
e. The report had strong bipartisan support from the FTC commissioners.
f. For FTC's press release click here. For FTC's full interim report, click here.

2. House Oversight and Accountability Committee report, titled "The Role of Pharmacy Benefit Managers in Prescription Drug Markets"
   a. The committee found that the three largest PBMs have monopolized the market through deliberate, anticompetitive practices which have increased the cost of prescription drugs and put community pharmacies and patients at risk for their own financial advantage.
   b. The committee also found evidence that PBMs share patient information and data across their many integrated companies for the specific and anticompetitive purpose of steering patients to pharmacies a PBM owns.

As a reminder, President Trump discussed his concerns about the PBM middlemen in his first term. In 2018, NCPA was pleased to see President Trump artfully describe the harm these "middlemen" cause and in a recent interview on Meet the Press and a press conference this week he again mentioned these middlemen and their responsibility for increased drug costs.

NCPA thanks DOGE and the transition team for their efforts, and we stand ready to work with the agency to offer possible solutions and ideas. Please let us know how we can assist further. Should you have any questions or concerns, please feel free to contact Anne Cassity, Senior Vice President of Government Affairs, at anne.cassity@ncpa.org.

Sincerely,

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