

The Honorable Chuck Schumer
United States Senate Majority Leader
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
United States Senate Minority Leader
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Mike Johnson
Speaker of the United States House of Representatives
568 Cannon House Office Building
Washington, D.C. 20515

The Honorable Hakeem Jeffries
United States House of Representatives Minority Leader
2433 Rayburn House Office Building
Washington, D.C. 20515

December 9, 2024

RE: Pharmacy Benefit Manager Reform

Dear Senate Majority Leader Schumer, Senate Minority Leader McConnell, Mr. Speaker Johnson, and House Minority Leader Jeffries:

We write to urge Congress during the lame-duck session to enact policies that will allow independent pharmacies to stay in business.

Congressional leaders on both sides of the aisle have demonstrated a desire to address the harms stemming from pharmacy benefit managers (PBMs), middlemen who negotiate prescription drug benefits on behalf of health plans with drug manufacturers and pharmacies. The “Big Three” — CVS Caremark, Cigna Group’s Express Scripts, and UnitedHealth Group’s OptumRx — account for nearly 80% of U.S. prescription drug claims. Each is also vertically integrated with an insurer that owns pharmacies. This market power enables the Big Three to drive up the cost of prescription drugs — by more than 1,200% between 1999 and 2017, in the case of one brand-name insulin — leaving patients unable to afford life-saving medication.¹

The Big Three also leverage this market power to demand untenably low reimbursement rates from independent pharmacies in exchange for inclusion in their networks.² Many pharmacies accept these rates for fear of losing access to a large share of the covered patients who make up their customer base. But

¹ “FTC Sues Prescription Drug Middlemen for Artificially Inflating Insulin Drug Prices,” Federal Trade Commission, Sept. 20, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-sues-prescription-drug-middlemen-artificially-inflating-insulin-drug-prices>.

² “Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies,” Federal Trade Commission, July 9, 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/pharmacy-benefit-managers-staff-report.pdf; “The Role of Pharmacy Benefit Managers in Prescription Drug Markets,” House Committee on Oversight and Accountability, July 23, 2024, <https://oversight.house.gov/wp-content/uploads/2024/07/PBM-Report-FINAL-with-Redactions.pdf>.

these rates are squeezing them out of business, stranding their most vulnerable customers — including older Americans, rural residents, and individuals with chronic conditions — in pharmacy deserts without access to care.³ Indeed, since 2015, nearly 800 ZIP codes that had at least one pharmacy now have none.⁴ This desertification is intensifying, with 2,275 pharmacy closures — evenly split between small and mid-sized independents and large chains like Walgreens and Rite Aid — in the first eight months of this year alone.⁵

This session, committees in both chambers — including the Senate Committee on Commerce, Science, and Transportation and on Finance; the House Committee on Oversight and Accountability; and the House Judiciary Subcommittee on the Administrative State, Regulatory Reform, and Antitrust — have held hearings highlighting these PBM abuses.⁶ During one such hearing, the last in a three-part series held by the House Oversight Committee on July 23, 2024, members grilled executives of the largest PBMs and, when those executives lied about patient steering and use of nonnegotiable contracts, threatened them with fines and jail time for alleged perjury.⁷

Meanwhile, members of Congress have applauded the Federal Trade Commission’s PBM-related actions, including releasing an interim staff report and filing an administrative complaint against the Big Three for creating a perverse rebate scheme to inflate brand-name insulin prices and block access to cheaper alternatives.⁸ This scheme extends to other critical medications, including generic cancer treatments and blockbuster weight-loss drugs, with sometimes deadly consequences.⁹ For example, in January 2023,

³ Rachel Wittenauer et al., “Locations and characteristics of pharmacy deserts in the United States: a geospatial study,” *Health Affairs Scholar*, March 16, 2024, <https://pmc.ncbi.nlm.nih.gov/articles/PMC11034534/#:~:text=Pharmacy%20desert%20communities%20have%20a,001>); Claire Gillespie, “Pharmacy Deserts Are on the Rise. Here’s What That Means for Your Health,” *HealthCentral*, Nov. 15, 2024, <https://www.healthcentral.com/chronic-health/pharmacy-deserts-are-on-the-rise-heres-what-that-means-for-your-health>.

⁴ Reed Abelson and Rebecca Robbins, “The Powerful Companies Driving Local Drugstores Out of Business,” *The New York Times*, Oct. 19, 2024, <https://www.nytimes.com/2024/10/19/business/drugstores-closing-pbm-pharmacy.html>.

⁵ Benjamin Jolley, “2275 pharmacies have closed so far in 2024,” *Ramblings of a pharmacist*, Sept. 16, 2024, https://benjaminjolley.substack.com/p/df63c75f-2215-4dbf-95c9-f94c7e38cfe3?postPreview=paid&updated=2024-09-12T16%3A44%3A06.874Z&audience=everyone&free_preview=false&freemail=true.

⁶ “Bringing Transparency and Accountability to Pharmacy Benefit Managers,” U.S. Senate Committee on Commerce, Science, & Transportation,” Feb. 16, 2023, <https://www.commerce.senate.gov/2023/2/bringing-transparency-and-accountability-to-pharmacy-benefit-managers>; “Statement for the Record re: ‘Building Transparency and Accountability to Pharmacy Benefit Managers,’” American Economic Liberties Project, Feb. 16, 2023, https://www.economicliberties.us/our-work/pbm_statement_cantwell/; “Pharmacy Benefit Managers and the Prescription Drug Supply Chain: Impact on Patients and Taxpayers,” U.S. Senate Committee on Finance, March 30, 2023, <https://www.finance.senate.gov/hearings/pharmacy-benefit-managers-and-the-prescription-drug-supply-chain-impact-on-patients-and-taxpayers>; “The Role of Pharmacy Benefit Managers in Prescription Drug Markets Part III: Transparency and Accountability,” House Committee on Oversight and Accountability, July 23, 2024, <https://oversight.house.gov/hearing/the-role-of-pharmacy-benefit-managers-in-prescription-drug-markets-part-iii-transparency-and-accountability/>; “The Role of Pharmacy Benefit Managers,” House Judiciary Subcommittee on the Administrative State, Regulatory Reform, and Antitrust, Sept. 11, 2024, <https://judiciary.house.gov/committee-activity/hearings/role-pharmacy-benefit-managers-0>.

⁷ “Chairman Comer Calls on PBM Executives to Correct Hearing Testimony,” House Committee on Oversight and Accountability, Aug. 28, 2024, <https://oversight.house.gov/release/chairman-comer-calls-on-pbm-executives-to-correct-hearing-testimony/>.

⁸ “FTC’s Proposed Overhaul of PBM Payments May Shift Conversation in Congress to Structural Remedies, Lawmakers Say,” *The Capitol Forum*, Sept. 30, 2024, <https://thecapitolforum.com/ftcs-proposed-overhaul-of-pbm-payments-may-shift-conversation-in-congress-to-structural-remedies-lawmakers-say/>; *ibid.* at 1 and 2.

⁹ *Ibid.* at 2; “Novo Nordisk CEO blames PBMs, insurers for Ozempic price tag,” *Roll Call*, Sept. 24, 2024, <https://rollcall.com/2024/09/24/novo-nordisk-ceo-blames-pbms-insurers-for-ozempic-price-tag/>.

Cole Schmidtknecht, a 22-year-old with asthma, tried to refill his rescue inhaler prescription, but he left the pharmacy empty-handed after learning that his PBM had increased his co-pay from \$66 to nearly \$540, which he could not afford; days later, he suffered a fatal asthma attack.¹⁰

While congressional focus on PBMs to date is admirable, if Congress is serious about stopping the national crisis of pharmacy closures and preserving patients' access to care, members must act now to re-establish a viable business model for independent and chain retail stores alike. As even Walgreens CEO Tim Wentworth recently noted, "We are at a point where the current pharmacy model is not sustainable."¹¹

Legislative Solutions

Several legislative approaches can address America's pharmacy crisis.

First, Congress should consider implementing a "Glass-Steagall" law for health care. The Glass-Steagall Act was a New Deal-era reform that structurally separated commercial and investment banks in the wake of the Great Depression. Similarly, PBMs and pharmacies should be structurally separate given the inherent conflicts of interest of such common ownership.¹²

The Pharmacists Fight Back Act (H.R. 9096), introduced by Representatives Jake Auchincloss (D-MA-4) and Diana Harshbarger (R-TN-1) and now co-sponsored by 52 bipartisan members, would bolster independent pharmacy revenue by setting baseline pharmacy reimbursement rates in federal healthcare programs. Like the price benchmarks already used in state Medicaid programs, these baseline rates would shield independent pharmacies from the largest PBMs' immense buying power, which they use to underpay pharmacists.

The legislation would also prohibit PBMs acting on behalf of federal healthcare programs from engaging in anticompetitive business practices, such as patient steering and spread pricing, in which a PBM charges a health plan far more for a prescription than it reimburses a pharmacy for dispensing it.

The Lower Costs, More Transparency Act (H.R. 5378) by Representative Cathy McMorris Rodgers (R-WA-5) would similarly require all state Medicaid managed care programs and the PBMs with whom they contract to reimburse pharmacies according to their acquisition and dispensing costs. In doing so, the bill would establish parity in pharmacy reimbursements across Medicaid managed care and fee-for-service settings.¹³ It would also prohibit spread pricing.

Critically, a Glass-Steagall for health care, the Pharmacists Fight Back Act, and the Lower Costs, More Transparency Act would go beyond just increasing transparency around PBMs' anticompetitive business practices. Respectfully, transparency requirements — which would require PBMs to disclose the net prices they pay manufacturers and pharmacies for drugs — are not enough. Knowing how much they are

¹⁰ Earl "Buddy" Carter, Bil Schmidtknecht, and Shanon Schmidtknecht, "The Human Cost of Inaction on PBM Reform," *DC Journal*, Nov. 18, 2024, <https://dcjournal.com/the-human-cost-of-inaction-on-pbm-reform/>.

¹¹ "Walgreens Boots Alliance, Inc. Third Quarter 2024 Earnings Conference Call," Walgreens Boots Alliance, June 27, 2024, <https://investor.walgreensbootsalliance.com/events/event-details/walgreens-boots-alliance-inc-third-quarter-2024-earnings-conference-call>.

¹² Ashley Nowicki and Hayden Rooke-Ley, "Too big to care: It is time for a Glass-Steagall Act for health care," *The Hill*, May 1, 2024, <https://thehill.com/opinion/healthcare/4633316-unitedhealth-group-change-cyberattack-glass-steagall-act-healthcare-too-big-to-fail/>.

¹³ Rachel Dolan and Marina Tian, "Pricing and Payment for Medicaid Prescription Drugs," KFF, Jan. 23, 2020, <https://www.kff.org/medicaid/issue-brief/pricing-and-payment-for-medicaid-prescription-drugs/>.

being underpaid by PBMs does not help pharmacies stay in business. Research also shows that transparency requirements are difficult to implement and, when imposed, can increase consumer costs by enabling seller price fixing.¹⁴

House Oversight Committee Chairman James Comer (R-KY-1), who has endorsed the Pharmacists Fight Back Act and supports requiring a fair dispensing fee in state Medicaid managed care programs, recently acknowledged as much. Speaking at an event, he cited the Committee’s recent investigation into PBMs, which found that the Big Three under-reimburse independent pharmacies, leaving them unable to compete on a level playing field with PBM-affiliated pharmacies.¹⁵ “I want to go as far as we can possibly go to disrupt the PBMs, to change the PBMs, to reform the PBMs,” he said. “Of course, I’m for transparency, but I don’t think transparency does a lot at the end of the day.”

As negotiations continue over a bill to address PBM abuses, we strongly support structurally separating PBMs from pharmacies, the Pharmacists Fight Back Act, and the Lower Costs, More Transparency Act. These policies would extend a lifeline to small business owners and their customers, who rely on these businesses to access life-saving medical care. Without such congressional action, more pharmacies will close, drug costs will continue to rise, and more patients will suffer and, in some cases, die from avoidable causes.

Sincerely,

ACA Consumer Advocacy
American Economic Liberties Project
Beta Cell Action
Center for Health and Democracy
Center for Medicare Advocacy
Citizen Action/Illinois
Consumer Action
Doctors for America
Just Care USA
Labor Campaign for Single Payer
Main Street Alliance
Pharmacists United for Truth and Transparency
Physicians for a National Health Program
Rise Up WV
Social Security Works
Progressive Maryland
Unity Fellowship of Christ Church-NYC

¹⁴ Justin Lo et al., “Ongoing challenges with hospital price transparency,” Peterson-KFF Health System Tracker, Feb. 10, 2023, <https://www.healthsystemtracker.org/brief/ongoing-challenges-with-hospital-price-transparency/#Percent%20of%20acute-care%20hospitals%20with%20at%20least%20one%20negotiated%20rate%20for%20MS-DRGs>; Kayleigh Barnes et al., “The Impact of Price Transparency in Outpatient Provider Markets,” National Bureau of Economic Research, June 2024, https://www.nber.org/system/files/working_papers/w32580/w32580.pdf.

¹⁵ American Pharmacy Cooperative, Inc., “APCI Hosts Congressional Leaders, Expert Panel for Robust Bipartisan Discussion on the Pharmacists Fight Back Act and the Importance of Empowering Independent Pharmacies,” PR Newswire, Nov. 15, 2024, <https://www.prnewswire.com/news-releases/apci-hosts-congressional-leaders-expert-panel-for-robust-bipartisan-discussion-on-the-pharmacists-fight-back-act-and-the-importance-of-empowering-independent-pharmacies-302307348.html?prn>; “The Role of Pharmacy Benefit Managers in Prescription Drug Markets,” House Committee on Oversight and Accountability, July 23, 2024, <https://oversight.house.gov/wp-content/uploads/2024/07/PBM-Report-FINAL-with-Redactions.pdf>.

VOCAL-NY

CC: The Honorable Ron Wyden (D-OR)
The Honorable Maria Cantwell (D-WA)
The Honorable Bernie Sanders (I-VT)
The Honorable Mike Crapo (R-ID)
The Honorable Bill Cassidy (R-LA)
The Honorable Ted Cruz (R-TX)
The Honorable Richard Neal (D-MA 1st District)
The Honorable Frank Pallone (D-NJ 6th District)
The Honorable Jamie Raskin (D-MD 8th District)
The Honorable Adam Smith (D-WA 9th District)
The Honorable James Comer (R-KY 1st District)
The Honorable Mike Rogers (R-AL 3rd District)
The Honorable Cathy McMorris Rodgers (R-WA 5th District)
The Honorable Jason Smith (R-MO 8th District)