APhA
American Pharmacists Association

September 11, 2024

The Honorable Thomas Massie
U.S. House of Representatives
House Subcommittee on Administrative State,
Regulatory Reform, and Antitrust
2453 Rayburn House Office Building
Washington, DC 20515

The Honorable Luis Correa
U.S House of Representatives
House Subcommittee on Administrative State,
Regulatory Reform, and Antitrust
2301 Rayburn House Office Building
Washington, DC 20515

Dear Chair Massie, ranking member Correa, and members of the House Judiciary Subcommittee on the Administrative State, Regulatory Reform, and Antitrust:

The American Pharmacists Association (APhA) appreciates the opportunity to submit this Statement for the Record on the highly vertically integrated pharmacy benefit manager (PBM) industry's role in controlling access to and pricing of medications. APhA supports the urgent need for Congress to pass meaningful pharmacy benefit manager (PBM) reforms.

APhA is the largest association of pharmacists in the United States advancing the entire pharmacy profession. APhA represents pharmacists and pharmacy personnel in all practice settings, including community pharmacies, hospitals, long-term care facilities, specialty pharmacies, community health centers, physician offices, ambulatory clinics, managed care organizations, hospice settings, and government facilities. Our members strive to improve medication use, advance patient care, and enhance public health.

APhA applauds the Subcommittee's efforts to address the role PBMs have on the rising costs of prescription drugs and its unsustainable impact on pharmacies, pharmacists, and our patients. APhA expresses our gratitude for the many bipartisan efforts in this Congress aimed at reforming the operations and harmful business practices of PBMs. This hearing is illustrative of that effort. APhA believes that addressing PBM reform will achieve a health care system that prioritizes patient well-being, promotes competition, ensures fair pricing, increases access to essential medications, and ultimately reduces the costs of prescription drugs.

While APhA applauds these efforts and is encouraged by the progress that has been made, there is still a lot of work that is left to be done. One of our biggest concerns is the lack of transparency PBMs have engaged in, which has created an environment of anti-competitive and deceptive business practices that harm patients and pass on hidden costs to pharmacies and plan sponsors, which often results in an increase in the costs of prescription drugs to American families.

Data submitted and compiled by the Federal Trade Commission (FTC), states (mainly Medicaid programs), and commercial markets have clearly shown that PBMs:

- artificially inflate the cost of drugs without fully reimbursing pharmacies for the drugs they dispense.
- increase purchasers' and patients' drug prices through price discrimination.
- use "list prices" that do not reflect the final cost of drugs.
- force harmful retroactive direct and indirect fees and other "clawback" mechanisms on pharmacies, forcing smaller and independent pharmacies to close.

In the House Committee on Oversight and Accountability's recent report, one of the key findings was that the three largest PBMs, which control 80% of the PBM market, have used their position as middlemen and integration with health insurers, pharmacies, providers, and recently manufacturers, to enact anti-competitive policies and protect their bottom line. In one example, it is a well-known practice that PBMs often share data across their many integrated companies to steer patients towards pharmacies the PBMs own. Some of the practices used by PBMs include only covering specialty medications if they are dispensed from a particular pharmacy, charging patients higher copays at competing pharmacies to incentivize patients to use the pharmacies owned by PBMs, and making it difficult to receive prescription drugs at competing pharmacies, creating a huge conflict of interest that goes against the very fabric of intent for the original establishment of PBMs. Additionally (see, Figure 11 of the House report), PBMs have also been shown to shift patients from medications going off patent exclusivity to other high-cost medications to maximize profits, "costing patients more at the counter, employers more to subsidize their prescription drug plans, and taxpayers more for federal health care programs." "[The Committee found 300 examples…of the three largest PBMs preferring medications that cost at least $500 per claim more than the medication they excluded on their formulary." The result is that PBMs have developed business interests in the very marketplace they were hired to control. In addition, data shows that PBM profits generated off prescription drug transactions heavily distort their incentives to control drug spending.

Another finding in the House report states that the anti-competitive policies of the largest PBMs have cost taxpayers and reduced patient choice. It has been shown that PBMs have intentionally overcharged or withheld rebates and fees from many taxpayer-funded health programs. In fact, these savings, or rebates hardly go towards the patient at all, but rather back to the PBMs themselves. CMS data reveals, "in recent years, less than 2 percent of plans have passed through any price concessions to beneficiaries at the point-of-sale." Some legislation proposed this year in Congress has required that these rebates go back toward the plan sponsors. However, APhA notes that these large vertically integrated companies also own the PBMs. Accordingly, APhA believes it would be more beneficial if the savings from rebates go back directly toward the patients and cover the costs for pharmacies to acquire these medications from wholesalers.

Along those same lines, the issue of spread pricing has also become an issue. Spread pricing occurs when the PBM charges payors more than they pay the pharmacy for the medication and then keeps the difference as profit. APhA applauds the House of Representatives for passing legislation that would prohibit spread pricing in Medicaid managed care programs, however, this should only be the first step among many to curb these abusive business practices.

Some of the deceptive PBM practices were highlighted in a July hearing with the House Committee on Oversight and Accountability where the committee suggested that PBMs abuse their influence to put profits over patient care. In this particular example, one of the larger PBMs in the U.S. was found to have been guilty of improperly penalizing doctors for stopping cancer treatments, even if those decisions were made for medical reasons. The penalties in this case amounted to $17 million in fees that were subtracted from subsequent Medicaid reimbursements. This further illustrates the fact that PBMs often engage in unfair business practices at the expense of patients.

The above examples are indicative of the problems PBMs create when they are unregulated and monitored. PBMs are often incentivized to engage in deceptive practices that steer patients away from lower-cost medicines, such as biosimilars or generics, which ultimately results in higher costs to the patient and increased drug prices. Another consequence of these deceptive business practices is the closure of pharmacies across the country, which cannot afford to operate under the current model by which the PBM system exists. Pharmacies are often forced to close their doors when reimbursed below the acquisition costs of the medications they dispense or have to deal with clawbacks through the PBMs. Because many Americans are closer to a pharmacy than their primary care physicians or other healthcare providers, the closure of pharmacies creates a real patient access issue, creating pharmacy deserts, especially in rural or underserved areas.

Thank you for the opportunity to comment on this very important hearing. With the limited time left in this congressional session, APhA strongly encourages the Subcommittee to come together and pass meaningful PBM reforms in this Congress to protect patients, keep pharmacy doors open, and restore competition to the health care marketplace.

If you have any additional questions or would like to arrange meetings with community pharmacies in your congressional districts to discuss the impact of harmful PBM business practices on local communities, please contact Doug Huynh, JD, APhA Director of Congressional Affairs, at dhuynh@aphanet.org.

Sincerely,

Michael Baxter

Michael Baxter

Vice President, Federal Government Affairs