AMERICAN PHARMACISTS ASSOCIATION
STATEMENT FOR THE RECORD

BEFORE THE U.S. SENATE COMMITTEE ON FINANCE

PHARMACY BENEFIT MANAGERS AND THE PRESCRIPTION DRUG SUPPLY CHAIN:
IMPACT ON PATIENTS AND TAXPAYERS

THURSDAY, MARCH 30, 2023

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Chair Wyden, Ranking Member Crapo, and Members of the Committee:

On behalf of our nations over 310,000 pharmacists, the American Pharmacists Association (APhA) is pleased to submit the following Statement for the Record to the U.S. Senate Committee on Finance hearing "Pharmacy Benefit Managers and the Prescription Drug Supply Chain: Impact on Patients and Taxpayers."

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 Committee's ongoing leadership and recognition federal legislation must be passed to address pharmacy benefit managers' (PBMs) harmful business practices that are increasing prescription drug costs at the expense of patients and creating 'pharmacy deserts' in minority and underserved communities, where the neighborhood pharmacy may be the only health care provider for miles.[1] PBMs' business practices have undermined the community pharmacy business model, resulting in many pharmacies having to make the challenging choice of taking a loss when filling a prescription to ensure patients are not denied access to their needed medications. As the most accessible healthcare professional, pharmacists should be able to provide the high-quality care they are trained to provide without fear it will cause them to go out of business. In a February 2023 national survey conducted by APhA, 91.5% of respondents reported that current PBM practices negatively impact their practice and ability to provide patient care.[2] As explained during APhA's recent PBM 101 briefing for congressional staff,[3] there are already mountains of data for Congress to take action from Medicare, Medicaid and commercial plans on PBMs' uncompetitive and deceptive trade practices that target patients with chronic conditions, and force them to use PBM-owned specialty and mail order pharmacies rather than their local pharmacy. It's way past time to put patients over PBM profits, and Congressional action is overdue.

Background

- PBMs originally emerged over 40 years ago as middlemen between health plans and pharmacies to adjudicate claims.

[1] https://www.japha.org/article/S1544-3191(22)00230-8/fulltext

[2] https://www.pharmacist.com/APhA-Press-Releases/apha-releases-survey-results-quantifying-the-impact-of-pbms

[3] https://nam10.safelinks.protection.outlook.com/?url=https%3A%2F%2Fapha.msgfocus.com%2Fc%2F11HbcOknPGFkG5EnaeGtULx9O4KoUj&data=05%7C01%7Cmbaxter%40aphanet.org%7C93f200d5701a4088bcde08db21aed8a7%7C6577def6f03f4adba697e1535f172506%7C1%7C0%7C638140807069554809%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=hhBrgcsMgLnW4Sg4%2F%2ByGVtZf6qC9XtdCzkz66e0l7UY%3D&reserved=0

- Over the years, three PBMs have come to control 80% of the total market share[4] and have vertically integrated with insurers, chain pharmacies and specialty pharmacies.
- Numerous reports from pharmacists and media over the years have documented unfair and anticompetitive practices from PBMs on community pharmacies. These include clawbacks (known under Medicare as direct and indirect remuneration (DIR) fees which PBMs often assess weeks, or even months, after Part D beneficiaries' prescriptions are filled, resulting in pharmacies realizing only long after the prescription was filled that they did not recoup their costs), gag clauses (preventing sharing cash prices with patients), spread pricing (overcharging the payer, underpaying the pharmacy and keeping the spread), patient steering to PBM-owned pharmacies, mandatory mail-order raising patient safety concerns, and many other concerning practices.
- In December 2020, the U.S. Supreme Court unanimously ruled on Rutledge v. PCMA in the pharmacy communities favor, opening the door for state oversight of PBMs.[5]

Why PBM Reform is Needed

- The pharmacy reimbursement and drug pricing scheme in the U.S. has grown out of control, with misaligned incentives that neither benefit the patient nor lead to better health outcomes. These misalignments are causing pharmacies across the country to shut their doors, leaving patients without access to their local pharmacies.
- As a result of the predatory practices of PBMs:
    - Patients' access to medications from their local pharmacist across the country has declined[6],
    - Taxpayer dollars have been funneled into corporate profits,[7] and
    - Generationally owned community pharmacies have been driven out of business.[8]
- Patients' access to their medications and their trusted healthcare professional, the pharmacist, should not be jeopardized due to misaligned incentives in the PBM industry that prioritize profits over patients.
- The unsustainable reimbursement model for medications caused by PBMs has contributed to negative workplace conditions for pharmacists and pharmacy teams.

PBMs are Costing Medicare and the U.S. Taxpayer

- Between 2010 and 2020 the Centers for Medicaid and Medicaid Services (CMS) reports that pharmacy direct and indirect remuneration (DIR) fees increased by more than 107,400 percent.[9] The increase in point-of-sale and retroactive pharmacy price

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[4] Pharmacy Benefit Managers: Market Landscape and Strategic Imperatives. Hirc. Available at https://www.hirc.com/PBM-market-landscape-and-imperatives

[5] Supreme Court of the United States. RUTLEDGE, ATTORNEY GENERAL OF ARKANSAS v. PHARMACEUTICAL CARE MANAGEMENT ASSOCIATION. Available at https://www.supremecourt.gov/opinions/20pdf/18-540_m64o.pdf.

[6] Rose J, Krishnamoorth R. Why your neighborhood community pharmacy may close. *The Hill*. Available at https://thehill.com/blogs/congress-blog/healthcare/530477-why-your-neighborhood-community-pharmacy-may-close

[7] 3 Axis Advisors. Analysis of PBM Spread Pricing in New York Medicaid Managed Care. Available at http://www.ncpa.co/pdf/state-advoc/new-york-report.pdf

[8] Callahan C. Mom-and-pop pharmacies struggle to hang on. *Times Union*. Available at https://www.timesunion.com/hudsonvalley/news/article/Mom-and-pop-pharmacies-struggle-to-hang-on-16187714.php

[9] Medicare Program; Contract Year 2023 Policy and Technical Changes

concessions have contributed to an unsustainable environment for community pharmacies to keep their doors open.

- This month, **the Medicare Payment Advisory Commission's (Medpac) March 2023 report found that pharmacy DIR payments to PBMs in Medicare PartD were an astounding $12.6 billion for 2021—which represents a $3.1 billion (+33%) increase from the 2020 figure of $9.5 billion.**[10]

Congressional Ask

- **Transparency:** APhA supports transparency and accountability in reimbursement and pricing to ensure consistent practices throughout the drug supply chain.
- **Sustainability:** APhA supports pricing models that allow for the fair reimbursement of drug products and dispensing fees that can support a sustainable business model within community pharmacies.
- **Accountability:** APhA encourages appropriate oversight from state and federal agencies to prohibit pricing manipulations and anticompetitive practices that harm patient access to their medications and their pharmacist.

Legislation

- APhA supports the amended Pharmacy Benefit Manager Transparency Act (S. 127) that recently passed the Senate Commerce, Science and Transportation Committee. Initial estimates from the Congressional Budget Office (CBO) found that S.127 saves taxpayers $740 million. We would also support removing the exemption for passing along 100 percent of rebates to health plans or payers as this provision does not guarantee plans and payers will pass these "savings" onto patients or ensure adequate pharmacy reimbursement.
- APhA also supports the Drug Price Transparency in Medicaid Act, which would reign in PBMs' unfair use of "spread pricing." Spread pricing is a practice in which a PBM charges the state or health plan more than they pay the pharmacy for a medication and then keeps the "spread" as a profit, often reimbursing the pharmacy for less than their cost to acquire the drug. This hurts pharmacies' ability to stay in business and provide care to the vulnerable Medicaid beneficiaries whom they serve. This legislation would also move all state Medicaid managed care programs to a market-based reimbursement model that more closely reflects the true acquisition costs of prescription drugs in Medicaid plus a fair professional dispensing fee. APhA previously sponsored a study that found that utilizing a model of Medicaid's National Average Drug Acquisition Cost (NADAC) plus a professional dispensing fee offered an overall point-of-sale spending decrease for prescription drugs at pharmacies, which would result in billions of

[10] Medpac. March 2023 Report to Congress – Medicare Payment Policy. Page 399. https://www.medpac.gov/wp-content/uploads/2023/03/Mar23_MedPAC_Report_To_Congress_SEC.pdf#page=427

projected savings to Medicare beneficiaries as a result of their reduced cost-sharing obligations.[11]

Patient Need

- Patients are harmed by insurer and PBM practices that mask the real prices of medications, increase the amount they pay at the pharmacy counter, and interfere with pharmacists' ability to provide patient care.
- As a result of anticompetitive practices, PBMs have caused pharmacies to close, contributing to pharmacy deserts which are especially prominent in racial and ethnic minority communities.[12]
- These practices impact taxpayers as they contribute to inflated prices of medications reimbursed under public health plans. **A study found that PBM tactics forced Oregon Medicaid to overpay $1.9M on a single drug, where PBMs marked up the drug by 800 percent**.[13]

APhA would like to thank the Committee for the opportunity to comment on the importance for Congress to pass PBM reform legislation. APhA looks forward to working with the Committee to restore transparency, accountability, competition, and equity to our nation's supply chain and health care marketplace. Please contact Doug Huynh, JD, APhA Director of Congressional Affairs, at dhuynh@aphanet.org if you have any additional questions or additional information.

[11] https://www.pharmacist.com/About/Newsroom/new-study-medicare-could-save-seniors-billions-by-fixing-part-d-incentives

[12] Fewer Pharmacies In Black And Hispanic/Latino Neighborhoods Compared With White Or Diverse Neighborhoods, 2007–15. *Health Affairs*. Available at https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.01699.

[13] https://oregonpharmacy.org/2022/10/27/oregon-report/