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April 14, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-232, U.S. Capitol
Washington, D.C. 20515

The Honorable Charles Schumer
Democratic Leader
U.S. Senate
S-221, U.S. Capitol
Washington, D.C. 20510

The Honorable John Thune
Majority Leader
U.S. Senate
S-208, U.S. Capitol
Washington, D.C. 20510

The Honorable Hakeem Jeffries
Minority Leader
U.S. House of Representatives
H-204, U.S. Capitol
Washington, D.C. 20510

RE: Pharmacy Benefit Managers

Dear Speaker Johnson, Majority Leader Thune, Minority Leader Schumer and Minority Leader Jeffries:

We, the undersigned State Attorneys General ("State AGO's), write to the 119th United States Congress regarding the threat posed to the health and healthcare of the American people stemming from the increasingly consolidated healthcare market under the control of Pharmacy Benefit Managers ("PBMs"). The undersigned State AGOs urge this Congress to address one of the threats posed by PBMs by passing an act prohibiting PBMs, their parent companies, or affiliates from owning or operating pharmacies. This legislation would foster fair competition and promote choice and transparency for the American people.

Pharmacy Benefit Managers are third-party administrators of prescription drug programs for health plans. These PBMs were initially created in the late 1960s to process claims for drug companies. PBMs were *supposed* to help consumers access low-cost pharmaceutical care through negotiated volume-pricing discounts, generic substitution, manufacturer rebates, and other tools.[1] While the promise of PBMs was to lower healthcare costs, the reality has been the

[1] CONN. OFFICE OF LEGIS. RESEARCH, OLR RESEARCH REPORT: PHARMACY BENEFIT MANAGERS (Dec. 24, 2023) ("Conn. OLR Report").

opposite: healthcare costs in the United States have skyrocketed. PBMs are using manufacturer rebates to increase, rather than decrease, drug prices. Healthcare costs are higher in the United States than any other developed country in the world, but healthcare outcomes in the United States are not equally extraordinary.[2]

PBMs have overtaken the market and now wield outsized power to reap massive profits at the expense of consumers. The rise of PBMs as middlemen in the prescription drug market has resulted in patients facing fewer choices, lower quality care, and higher prices.[3] PBMs' use of affiliated pharmacies—pharmacies owned by either the PBM itself or the PBM's parent company—has exacerbated the problem of manipulated prices and unavailability of certain prescription medications.

Over the past few decades, horizontal consolidation and vertical integration have transformed PBMs from useful administrative service providers into market-dominating behemoths that control the industry. The three largest PBMs process 80% of the nation's prescriptions and bring in 70% of the specialty drug revenue.[4] Furthermore, these same PBMs, along with the next largest three, are vertically integrated both upstream and down. Each of the top six PBMs operate their own affiliated pharmacies, while five of the top six are also a part of parent conglomerates that operate insurance companies and health care clinics.[5] Even now, PBMs continue to devour more of the pharmaceutical industry: three of the top PBMs have recently opened their own manufacturing subsidiaries or entered into "co-manufacturing" agreements with existing manufacturers.[6] This vertical integration allows PBMs and their parent companies to control every step of the prescription manufacturing, wholesale, retail, and dispensing process.

The PBMs' affiliated pharmacies are major players in the market—representing three of the top five largest pharmacies in the United States by revenue. In addition to owning pharmacies, PBMs also contract with non-affiliated pharmacies, including independent pharmacies, to create pharmacy networks that control where their members can get their drugs and at what prices. This creates the situation where the PBMs—through ownership of affiliated pharmacies—are contracting with and have power over their own

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[2] Arthur L. Kellermann, *The U.S. Spends More on Healthcare than Other Wealthy Nations but Ranks Last in Outcomes*, FORBES (Oct. 24, 2023, 12:56 PM), https://www.forbes.com/sites/arthurkellermann/2023/10/24/the-us-spends-more-on-healthcare-than-other-wealthy-nations-but-ranks-last-in-outcomes/.

[3] HOUSE COMM. ON OVERSIGHT AND ACCOUNTABILITY, THE ROLE OF PHARMACY BENEFIT MANAGERS IN PRESCRIPTION DRUG MARKETS 1 (2024) ("House Comm. Report").

[4] U.S. FED. TRADE COMM'N OFFICE OF POLICY PLANNING, PHARMACY BENEFIT MANAGERS: THE POWERFUL MIDDLEMEN INFLATING DRUG COSTS AND SQUEEZING MAIN STREET PHARMACIES 2 (July 2024) ("Interim Staff Report").

[5] Interim Staff Report 2.

[6] Letter from Ron Wyden, U.S. Senator and Chairman of Committee on Finance, and Sherrod Brown, U.S. Senator, to Lina Khan, Chair, Federal Trade Commission (Sept. 30, 2024).

pharmacies' competition. The PBMs then use their place as middlemen to exert this power in ways that harm independent pharmacies, forcing these small businesses to accept contractual terms that are "confusing, unfair, arbitrary, and harmful."[7] PBMs' position further allows and incentivizes them to provide their affiliated pharmacies with more favorable contract terms, steer consumers away from independent pharmacies to their own affiliated pharmacies,[8] and otherwise engage in tactics aimed at forcing their competition out of business. Over the course of the last decade, approximately ten percent of rural independent pharmacies in the United States have closed.[9]

The closure of independent pharmacies is felt strongly by consumers, as it means that many of them, especially those in rural or otherwise underserved areas, have limited access to retail pharmacies.[10] The coalescence within the market has other, far-reaching detrimental effects on consumers seeking medical care. PBMs control which drugs are prescribed to consumers using complex and opaque formulary tier systems, which dictate the prices and availability of drugs based on negotiations with manufacturers rather than the needs of consumers.[11] Prescription decisions are being made in boardrooms that focus on shareholder profits rather than in doctors' offices that prioritize patient care.

The control of the pharmaceutical ecosystem by PBMs has resulted in decreased access, affordability, and choice for many Americans seeking prescription healthcare. Congressional action is warranted to restore a free market and protect consumers and small businesses.

As self-designated middlemen, PBMs should not be permitted to own or operate affiliated pharmacies. Further, they should not be able to skirt such a prohibition by having a parent company or other affiliated healthcare conglomerate own a pharmacy. PBMs should be prohibited from having direct ownership ties to the parties they purport to be bridging. This requirement would allow pharmacies to compete on fair terms and create a market that is more accessible to consumers.

The undersigned State AGOs urge Congress to take action and protect consumers by enacting a law prohibiting PBMs or their parent companies from owning a pharmacy. The passage of such a law would foster competition in the marketplace and give consumers more access to pharmaceutical care, more choice as to their healthcare providers, and more affordable prices.

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[7] Interim Staff Report 1.

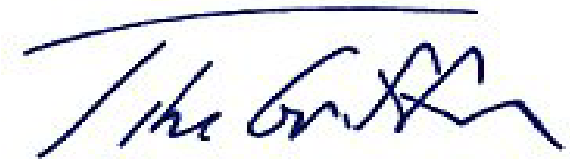
[8] House Comm. Report 15; Interim Staff Report 30.

[9] Interim Staff Report 1.

[10] Interim Staff Report 16.

[11] House Comm. Report 6-7.

Sincerely,



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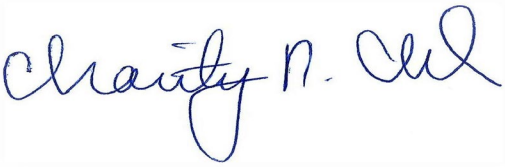

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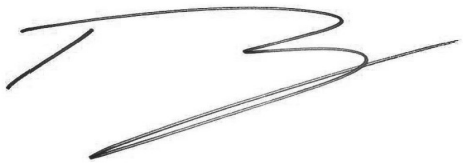

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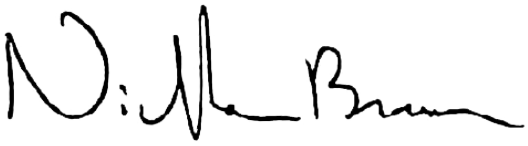

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