

# Congress of the United States

Washington, DC 20515

November 26, 2024

The Honorable Merrick Garland  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

Dear Attorney General Garland,

We write to urge the Department of Justice to launch an investigation into the role pharmacy benefit managers (PBMs) played in the opioid crisis. Recent reports, including confidential files and information from CVS Caremark, Express Scripts, and Optum Rx, suggests the three largest PBMs colluded and conspired to steer patients towards Oxycontin in exchange for \$400 million.

The three largest and vertically integrated PBMs reaped huge profits during the opioid epidemic at the expense of innocent American lives. A Barron's investigation shows how PBMs received millions in payments from the sales of opioids at the peak of the epidemic. During a 12-month period that ended in late 2017, the three largest PBMs — CVS Caremark, Express Scripts, Optum Rx — received about \$400 million in rebates and fees from Purdue Pharma.<sup>1</sup> These rebates are, in theory, supposed to be passed down to the patients at the pharmacy counter or used to cover a patient's out-of-pocket insurance costs. However, PBMs retained a great share of these rebates instead of passing them on to consumers, putting even more money in their pockets. For example, in Medicare Part D, PBMs and their insurers received and retained \$48.6 billion in rebates from drug manufacturers in 2021 alone.<sup>2</sup>

A Barron's investigation shows how PBMs contributed to increased opioid sales at the peak of the epidemic. Contracts between Purdue Pharma and CVS Caremark indicate rebates increased if their health plan covered higher amounts of OxyContin. Internal documents show that CVS Caremark had an agreement with Purdue Pharma that gave CVS double the amount of rebates for authorizing four or more opioid pills a day instead of just two.<sup>3</sup> Furthermore, confidential files uncovered by Barron's show that in 2017 Express Scripts awarded Purdue Pharma with favorable placement on their formularies in exchange for a 40% rebate. This system contributed to a culture of excessive prescribing and dispensing of OxyContin.

PBMs are supposed to act as middlemen between pharmacies, drug manufacturing companies, and health insurance plans to administer prescription drug benefits. Unfortunately, they have vertically integrated, creating health care conglomerates that control pricing with little competition. The three largest PBMs - CVS Caremark, Express Scripts, and OptumRx - control

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<sup>1</sup> [PBMs' Backroom Negotiations Revealed in Confidential Files - Barron's](#)

<sup>2</sup> [Medicare Part D: CMS Should Monitor Effects of Rebates on Drug Coverage and Spending | U.S. GAO](#)

<sup>3</sup> [PBMs' Backroom Negotiations Revealed in Confidential Files - Barron's](#)

over 80% of the market.<sup>4</sup> They own or are owned by insurers and have vertically consolidated their businesses to own everything and everyone between themselves and the patients including doctors, pharmacies, group purchasing organizations, and more. Using their size, leverage, and negotiating power, PBMs play a large role in determining which prescription drugs are covered by insurance plans and how much they cost, while keeping themselves mostly hidden from the American public. This concentrated power enables PBMs to dictate formulary placements and patient access, while in turn collecting billions in fees and rebates from pharmaceutical manufacturers.

The lack of transparency surrounding PBM's rebate agreements and formulary decisions has allowed them to operate with little to no oversight, posing a significant threat to America's public health. That is why we strongly urge the Department of Justice to investigate the role PBMs may have played in the opioid crisis and hold them accountable.

Thank you for your attention to this important matter and we look forward to your response.

Sincerely,



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Earl L. "Buddy" Carter  
Member of Congress



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Raja Krishnamoorthi  
Member of Congress



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Deborah K. Ross  
Member of Congress



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Cliff Bentz  
Member of Congress

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<sup>4</sup> [Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies | Federal Trade Commission](#)