

# Biden administration's limit on drug industry middlemen backfires, pharmacists say

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The Biden administration's first major step toward imposing limits on the pharmacy benefit managers who act as the drug industry's price negotiators is backfiring, pharmacists say. Instead, it's adding to the woes

of the independent drugstores it was partly designed to help.

The so-called PBMs have long clawed back a fee from pharmacies weeks or months after they dispense a [drug](#). A new rule, which governs Medicare's drug program, is set to take effect Jan. 1 and requires PBMs to take most of their "performance fees" at the time prescriptions are filled.

The clawbacks have ballooned from about \$9 million in 2010 to \$12.6 billion in 2021, according to the Medicare Payment Advisory Commission, an agency created to advise Congress on the program for people who are 65 and older or have disabilities.

Performance fees have also boosted Medicare patients' prescription costs at the pharmacy counter by hundreds of millions of dollars, although insurers assert that the fees enable them to charge lower premiums.

Pharmacist groups supported the Medicare rule change, but they didn't anticipate the PBMs' response, which has been to demand they accept new contracts with draconian cuts to their payments for dispensing medicines, said Ronna Hauser, vice president of the National Community Pharmacists Association, which represents independent drugstores. If pharmacies refuse the contracts, they risk losing Medicare customers—likely to the same giant PBM conglomerates, which have absorbed a growing share of the pharmacy business in recent years.

PBMs sit at the center of the U.S. supply chain for drugs, where they say they negotiate lower prices for insurers—including Medicare—and for employers and their workers. But the organizations are loathed by independent drugstores, drugmakers, and patients alike, who accuse them of siphoning money from what is already the world's most expensive health care system without providing additional value.

PBM practices even put the squeeze on national chains like Rite Aid, Kroger, and Walgreens, which aren't part of the conglomerates. Even CVS Health, which owns one of the three leading PBMs, has closed stores or trimmed staff as it pushes consumers to mail-order pharmacy services.

The pressure on in-store pharmacists and technicians has led to a series of walkouts this fall by CVS and Walgreens employees who say tight staffing has caused burnout and threatened patients' safety.

## **Misery for small pharmacies**

Under the current system, when a pharmacy fills a prescription, the PBM tells it what the patient owes and what the PBM will pay the pharmacy. The PBM aggregates these payments and sends a check later. Often, however, the PBM will deduct a performance fee from the pharmacy, said Doug Hoey, CEO of the National Community Pharmacists Association.

"When you're filling the prescription, the PBM tells you the patient pays \$20 for this drug, we'll pay you \$100," Hoey said. "As the pharmacist, I say, OK, I get a total of \$120 for a drug that cost me \$110 from the wholesaler. Then three months later, the PBM says, 'Actually, I'm only going to pay you \$83.' So I lost \$17 on the sale and I have no ability to object."

One performance measure is patient adherence. If patients don't take all their drugs, pharmacists can be slapped with a fee for poor performance, although they have no control over the patient's actions. Sometimes pharmacists are dinged for the prescribing physician's mistakes, Hoey said.

In the early fall, PBM giant Express Scripts sent out confidential

contracts announcing that in 2024 it will pay pharmacies roughly 10% below what they typically pay to buy wholesale brand-name drugs—meaning they could lose money on every prescription they fill, according to two independent pharmacists who received the documents. They declined to share the contracts because they are subject to nondisclosure agreements with Express Scripts.

In a statement, Express Scripts said that "our reimbursement rates to pharmacies for brand drugs vary based on a number of factors." The company said nearly 90% of the nation's 20,000 or so independent pharmacies had accepted its terms.

Kare Drugs, which runs two New Mexico pharmacies, was among those that refused the Express Scripts contract. As a result, the pharmacy is "preparing for the hardest part, which will be potentially transferring patients away," said owner Ashley Seyfarth.

Seniors who are currently enrolling in Medicare plans for next year may be confused when they discover that their insurance will no longer allow them to pick up medications at their usual pharmacy, said Ben Jolley, a Salt Lake City pharmacist and consultant to other independent pharmacists. Jolley said his drugstore expects to lose at least 100 customers after refusing a contract with a large PBM.

## **A double whammy**

For the first months of 2024, pharmacies will face a double whammy. PBMs will pay them less for the drugs they dispense, while the pharmacies also face clawbacks on drugs dispensed in the last quarter of 2023.

The Jan. 1 rule change was partly designed to relieve Medicare patients, who often pay a fixed percentage of a drug's price as a copayment. That

copay is based on the price the drug plan or PBM promises the pharmacy at the moment of sale. But the clawbacks have resulted in patients overpaying by hundreds of millions of dollars, Hoey said. That's because their copays at the counter ended up being a higher percentage of the drug's final pharmacy price, once the performance fees were deducted.

Seyfarth, who said she paid more than half a million dollars in PBM fees last year, said that to deal with the pending pinch her pharmacy was coming up with new ways to earn cash, including charging patients for delivery services and starting an all-cash concierge clinic.

Some pharmacies are setting aside savings or taking out short-term loans to cover losses in the early months of next year. "I'm hoping we've made the right calculations and will get through this," said Marc Ost, co-owner of Eric's Rx Shoppe in Horsham, Pennsylvania.

The unintended consequences of the rule are likely to aggravate the problems of community pharmacists, who find it increasingly difficult to carry the most popular, expensive new drugs, Hauser said.

Integrated PBM-insurance companies—particularly UnitedHealth Group, CVS Health, and Cigna, each of which is composed of a major insurer, PBM, and other companies—have gained an increasing share of their revenues from specialty pharmacy drugs, which account for more than half of U.S. drug spending.

These behemoth companies have negotiating power with drugmakers that enables them to sell a diabetes drug like Ozempic (sold under the name Wegovy for weight loss), for example, for about \$900 a month. "An independent pharmacy can't even buy it at that price," Hauser said. "If they dispense Ozempic, they are losing money."

Express Scripts has said it wants to help independent pharmacies survive,

Hoey said, but hasn't responded to a June letter in which he asked the company to provide breathing space by imposing the 2023 clawbacks gradually over 12 months. CMS this month said it "strongly recommends" but does not require PBMs to come up with payment plans for pharmacies.

In its statement, Express Scripts said it was "committed to reimbursing pharmacies fairly, ensuring Medicare beneficiaries have safe, quality pharmacies in their network, and giving beneficiaries all available discounts at the pharmacy counter."

After a parade of hearings—and an ad campaign from drugmakers—attacking the PBMs, Senate and House committees have advanced bipartisan bills to tighten controls on the companies. Senate Finance Committee bills would require the Department of Health and Human Services to issue rules ensuring that PBM payments to pharmacies and other contract terms are reasonable, and that PBMs no longer impose unfair [pharmacy](#) performance requirements, said Julie Allen, a law firm lobbyist representing the National Association of Specialty Pharmacy.

"These statutory changes are essential to addressing problems with the Medicare Part D program and to saving specialty pharmacies and other pharmacies," she said in an email.

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