

The Honorable Meredyth Andrus
Federal Trade Commission
Washington, DC 20580

In The Matter of Listening Sessions on Lowering Americans' Drug Prices Through Competition Held June 30th, July 24th, and August 4th, 2025

The American Consumer Institute is an independent 501(c)(3) education and research organization. Its mission is to identify, analyze, and protect the interests of consumers in selected legislative and rulemaking proceedings in information technology, health care, insurance, and other matters.

We are writing to express concerns about the role Pharmacy Benefit Managers (PBM) play in the high pharmaceutical prices faced by patients. As middlemen in the pharmaceutical supply chain, PBMs play a central role in determining the availability of generics and price of pharmaceuticals. However, their profit incentives often don't align with patients' best interests.

One of the most pernicious problems in the pharmaceutical industry is the way PBMs manipulate their formularies to enable "spread pricing." This is a tactic in which PBMs favor high-cost drugs that offer the largest potential rebates or discounts, which the PBMs pocket. Insurance companies—and through their premiums, patients as well—are left paying the full price of more expensive medications without rebates.

More than half of generic drugs are not listed on generic formulary tiers, and brand name drugs are often placed on more favorable formulary tiers than their generic equivalents.¹ By placing high-cost brand name drugs on more favorable formulary tiers, they are prescribed more frequently, offering the PBM more opportunities to pocket the rebates of costly drugs instead of delivering the low cost alternative.

Not only does spread pricing hurt patients directly, it also threatens their access to pharmaceuticals by risking the financial viability of pharmacies.² Spread pricing isn't the only way PBMs reduce pharmacies' profits. PBMs also collect clawback fees—retroactive charges that siphon money from pharmacies after prescriptions are sold.³

¹ Justin Leventhal, "Why Your Pharmacy May Be Disappearing," DC Journal, February 26, 2025, <https://dcjournal.com/why-your-pharmacy-may-be-disappearing/>.

² Julia Maruca, "Here's Why Pharmacies Are On A Financial Precipice," TribLive, March 3, 2024, <https://triblive.com/local/valley-news-dispatch/heres-why-pharmacies-are-on-a-financial-precipice/>.

³ Karen Van Nuys, Geoffrey Joyce, Rocio Ribero, and Dana Goldman, "Overpaying for Prescription Drugs: The Copay Clawback Phenomenon," USC Leonard D. Schaffer Institute for Public Policy & Government Services, March 13, 2018, <https://schaeffer.usc.edu/research/overpaying-for-prescription-drugs/>.

They also employ “performance fees,” where pharmacies don’t know the cost of a drug until months after a prescription is filled.⁴ Steering patients to a PBM’s own affiliated pharmacies is another strategy employed by either refusing to contract with independent outlets⁵ or by offering them lower reimbursement rates.⁶ PBM tactics have contributed to pharmacy decline⁷ for more than a decade.⁸ The impact has been most severe in rural and minority communities.⁹

At the root of these problems is the lack of transparency in how PBMs operate.¹⁰ Insurers, patients, pharmacies, manufacturers, and regulators all have too little information to make informed decisions. Insurers don’t know which PBMs are providing low-cost medications, and which are gaming the system. Patients are either overpaying for medicine, or are part of the 21 percent of adults who have skipped a prescription due to cost.¹¹ Pharmacies don’t know what fees may be imposed on them in the future. Manufacturers don’t know the market value of their products. Regulators don’t know which policies will help and which may do more harm. Only the PBMs themselves have a clear view of how the market functions.

Creating transparency in the PBM market is not a technically complex task—but it has proven to be a politically difficult one. The original version of the One Big Beautiful Bill Act included PBM reporting requirements for Medicare that would have laid a strong foundation for transparency in the industry, especially if extended to the private market.¹² The provisions would have required PBMs to report fees, rebates, discounts, drug dispensing data, pricing, and formulary placement. Additional disclosures would have included data on operational differences between affiliate pharmacies and independent alternatives—such as drug volume, pricing, and a list of affiliate pharmacies.

Increasing transparency would enhance competition among PBMs and provide regulators with the information needed to craft effective regulations. With access to meaningful data, insurers and manufacturers could choose better-value options instead of choosing blindly, thereby forcing PBMs to compete for business by lowering costs and improving service.

⁴ DIR Fees, National Association of Chain Drug Stores, Accessed August 5, 2025, <https://www.nacds.org/dir-fees/>.

⁵ Brooke McCormick, “Insurer-PBM Firms Dominate Medicare Part D Market, Steering Patients to Their Pharmacies,” American Journal of Managed Care, January 17, 2025, <https://www.ajmc.com/view/insurer-pbm-firms-dominate-medicare-part-d-market-steering-patients-to-their-pharmacies>.

⁶ Muhammad Cheema, “PBM Price Negotiations Have Unintended Consequences for Independent Pharmacies,” Pharmacy Times, November 27, 2024, <https://www.pharmacytimes.com/view/pbm-price-negotiations-have-unintended-consequences-for-independent-pharmacies>.

⁷ Jenny Guadamuz, G. Caleb Alexander, Genevieve Kanter, and Dima Mazen Qato, “Medicare Part D Preferred Pharmacy Networks And The Risk For Pharmacy Closure, 2014–23,” Health Affairs, Vol. 44, No. 5, May 2025, <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2024.01452>.

⁸ Jason Milman, “Nearly 1 in 3 Retail Pharmacies Have Closed Since 2010, Widening Health Disparities” USC Leonard D. Schaffer Institute for Public Policy & Government Services, December 3, 2024, <https://schaeffer.usc.edu/research/pharmacy-closures-united-states-health-affairs/>.

⁹ Jenny Guadamuz, G. Caleb Alexander, Genevieve Kanter, and Dima Mazen Qato, “More US Pharmacies Closed Than Opened In 2018–21; Independent Pharmacies, Those In Black, Latinx Communities Most at Risk,” Health Affairs, Vol. 43, No. 12, December 2024, <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2024.00192?journalCode=hlthaff>.

¹⁰ Justin Leventhal, “Open PBM’s Books, Not Another Licensing Office,” DC Journal, July 30, 2025, <https://dcjournal.com/open-pbms-books-not-another-licensing-office/>.

¹¹ Grace Sparks, Lunna Lopes, Alex Montero, Marley Presiado, and Liz Hamel, “Americans’ Challenges with Health Care Costs,” KFF, July 11, 2025, <https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/>.

¹² Justin Leventhal, “A Spoonful Of Medicine May Help The Reconciliation Bill Go Down,” The Economic Standard, June 13, 2025, <https://theeconomicstandard.com/a-spoonful-of-medicine-may-help-the-reconciliation-bill-go-down/>.

At the same time, regulators could identify where PBM incentives are misaligned and determine whether they are best addressed by regulatory intervention, or competitive pressure.

Respectfully,
Justin Leventhal
Senior Policy Analyst
The American Consumer Institute

4350 N. Fairfax Drive
Suite 725
Arlington, VA 22203

Justin@TheAmericanConsumer.Org
www.TheAmericanConsumer.org

