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COMMENTARY

# Patients Before Monopolies Act: A Game Changer for Patients, Pharmacists, and Prices?

## Rheum for Action

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Pharmacy benefit managers (PBMs) have long been a powerful force in the healthcare industry, wielding significant influence over drug pricing, patient access, and the overall delivery of pharmaceutical care. Despite their original intent to streamline the medication distribution process and reduce costs, PBMs have increasingly come under scrutiny for practices that increase drug prices and harm both patients and pharmacists. The monopolistic control exerted by the largest PBMs and their parent companies, coupled with their ownership of pharmacies, including specialty pharmacies, has led to inflated drug prices, reduced patient access to essential medications, and placed financial strain on independent pharmacies.

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This article explores the difficulty in regulating the three big vertically integrated PBMs (Express Scripts, CVS Caremark, and OptumRx) and highlights a new piece of legislation, the Patients Before Monopolies (PBM) Act. Introduced in December 2024, the act would prohibit the "Big Three" PBMs from owning pharmacies, including their largest source of revenue — namely, their specialty pharmacies.

Reforming or regulating these oligopolies — UnitedHealth Group, CVS, and Cigna — including their PBMs (OptumRx, CVS Caremark, and Express Scripts, respectively) and all of their pharmacies has proved extremely challenging over the years. As we try to nibble around the edges of many of the harmful behaviors of PBMs, they always seem to find a way around the intent of the legislation. The ownership of pharmacies by the PBMs has led to anticompetitive behavior, conflicts of interest, and a lack of transparency that are harming independent pharmacists and inflating drug costs for patients. The National Community Pharmacists Association for years has complained that the Big Three PBMs not only steer patients to PBM-owned pharmacies but also pay their pharmacies more than competing independent pharmacies for the same medication. This has forced many

independent pharmacists out of business. Additionally, the Big Three PBMs and their specialty pharmacies tend to favor higher-priced specialty drugs, keeping even the price of "generic" specialty drugs high. The Federal Trade Commission (FTC) just released a second interim report highlighting issues related to the Big Three's specialty pharmacies, including the significant price markups, increase in costs to employers, and the considerable revenue generated by the specialty pharmacies for the parent companies.

### Why Has It Been So Difficult to Break Up These Oligopolies?

Controlling 80% of the prescription market and the other aspects of the drug supply chain, from pricing to distribution, along with medical health coverage, gives the Big Three a market dominance that makes it much harder to dismantle their operations. Additionally, there are many political and legal challenges to regulate these companies, as demonstrated by the inability of Congress to pass any of the PBM reforms that were touted to be included in the recent lame duck session at the end of 2024. These entities have significant political influence and lobby extensively to protect their interests. And when reforms are passed, these healthcare behemoths always seem to find a way around them. Legal battles, such as the Big Three's countersuit against the FTC, complicate efforts to break up these conglomerates. The PBMs are still using the argument that they keep drug prices down and any attempt to regulate them will result in soaring medication prices and a rise in health insurance premiums. These threats should bolster our lawmakers and convince them that allowing these entities to have such power is unacceptable and must be contained.

Over the past few years, the Big Three have begun to create overseas subsidiaries, moving much of their business and data and insulating them from the "prying eyes" of US regulation legislation. These entities hide revenue and make it difficult, if not impossible, to follow the money.

## PBM Revenue From Specialty Pharmacy

Let's take a look at the shifting revenue sources for the Big Three PBMs over the years to understand how a divestiture of their pharmacies would greatly reduce their power and profits. Nephron, a leading healthcare research company, published "Trends in Profitability and Compensation of PBMs & PBM Contracting Entities in 2023." One of the most important takeaways was the shift in PBM revenue dominance from rebates to specialty pharmacy and fees over the years. They found that "...specialty pharmacy, inclusive of compensation from payors and manufacturers, is now the single most important growth component, accounting for 39% of PBM profits." There are a number of factors that go into this revenue shift, but steering patients who are

on expensive medicines to their own specialty pharmacies and mandating “white bagging” of traditional “buy and bill” drugs are clearly contributing to this shift. Despite anti-steering regulation in Medicare Part D, nearly 40% of specialty pharmacy spending went to pharmacies owned by Cigna, CVS, Humana, and UnitedHealth Group, while the national estimates of spending at insurance company-owned pharmacies is much higher.

## The PBM Act

The PBM Act, introduced by senators Elizabeth Warren (D-MA) and Josh Hawley (R-MO) alongside representatives Jake Auchincloss (D-MA) and Diana Harshbarger (R-TN), is a bipartisan, bicameral act that would require PBMs and health insurers (including CVS Health’s Caremark, Cigna’s Express Scripts, and UnitedHealth Group’s OptumRx) to divest their pharmacy businesses within 3 years. Enforcement of the act will include the FTC, the Department of Health and Human Services, the Department of Justice, and state attorneys general. Mandated reporting of all divestitures to the FTC is included to ensure that further anticompetitive behavior does not take place. Any “ill-gotten” revenue will be distributed by the FTC to harmed communities.

It will prevent conflict-of-interest behavior by preventing PBMs from directing patients to their affiliated pharmacies, which many argue inflate drug costs. This bill will also inject much-needed transparency into the realm of drug pricing and reimbursement for pharmacists. It would lead to increased fairness in the pharmacy market, allowing independent pharmacists to compete on a level playing field. It will also sever the PBM grip on specialty pharmacy decisions that keep the price of many generic specialty drugs out of reach for patients.

The American Economic Liberties Project supports this bill and clearly states the harm caused by the PBM-pharmacy integration: “By owning both PBMs and massive pharmacy chains, the largest health insurers — CVS/Aetna, Cigna, and United Healthcare — have rigged the drug delivery system to sideline independent pharmacies, limit patient choice, and inflate costs.” In separating PBMs from their largest revenue stream — specialty pharmacies — PBMs will no longer be able to directly profit from the sales of specialty medications and all of the fees that go along with it, creating a big change in drug supply chain market dynamics.

The PBM Act represents a significant legislative effort to address the monopolistic practices of PBMs and ensure fair competition in the pharmacy market. Although it poses challenges for PBMs, particularly in terms of revenue, it holds the potential to create a more equitable and competitive healthcare landscape.

The Coalition of State Rheumatology Organizations has been at the physician forefront of exposing harmful PBM behaviors for nearly 10 years. Our website’s Action Alerts have had powerful results in terms of notifying our representatives. We will certainly be highlighting the PBM Act in our Action Center when the bill is reintroduced in the new Congress.