



May 23, 2022

Tim Buckley
Chairman and Chief Executive Officer
Vanguard, Inc.
100 Vanguard Blvd.
Malvern, PA 19355

Dear Chairman Buckley and Vanguard Managing Directors:

American Pharmacy Cooperative, Inc. ("APCI"), owned by more than 1,600 community pharmacies across thirty states, writes to you in Vanguard's capacity as one of the largest shareholders of UnitedHealth Group, CVS Health, and Cigna Healthcare. According to available records, it appears Vanguard is the largest shareholder of both UnitedHealth and CVS stock owning approximately 9% of each company respectively and is the second largest shareholder of Cigna owning approximately 8.5% of the company.¹

Because of Vanguard's significant ownership stake in each of these companies, APCI is reaching out to you to ensure you are aware of the problematic business tactics utilized in their pharmacy benefits manager (PBM) business lines and to seek your assistance in and commitment to working to curtail these harmful practices.

Here, it is important to note that these three companies control approximately 80% of the total PBM market share in this country² and that certain of these business practices are not outlier practices of these companies but rather, they are central to the PBM services they provide and impact millions of lives in terms of the price patients pay for prescription drugs, patients' ability to access prescription drugs, and patients' ability to select their pharmacy provider of choice. These core problematic practices include:

- Rebates: Rebate practices of large PBMs include (1) denying patients the benefit of drug maker rebates at the point of sale; (2) mandating that patients pay for more expensive brand drugs as a condition of coverage when there are lower cost generic equivalents available, including in the deductible phase; and (3) engaging in rebate driven restrictive/exclusionary formulary practices.³

¹<https://finance.yahoo.com/quote/UNH/holders>;
<https://finance.yahoo.com/quote/CVS/holders>;
<https://finance.yahoo.com/quote/UNH/holders>.

² Drug Channels (2023) The Big Three PBMs' 2023 Formulary Exclusions . . . Available online at <https://www.drugchannels.net/2023/01/the-big-three-pbms-2023-formulary.html> (identifying three largest PBMs as Caremark (CVS Health), Express Scripts (CIGNA), an OptumRx (United Health Group).

³ Xcenda (2022) Skyrocketing growth in PBM formulary exclusions continues to raise concerns about patient access. Available online at https://www.xcenda.com/-/media/assets/xcenda/english/content-assets/white-papers-issue-briefs-studies-pdf/xcenda_pbm_exclusion_may_2022.pdf; see also 46Brooklyn (2021): Wresk-fidera: How Medicare Part D has hidden the benefits of generic competition for a blockbuster Multiple Sclerosis treatment. Available online at: <https://www.46brooklyn.com/research/2021/12/1/tecfigidera>.

- Drug pricing methodologies: PBMs use a variety of complex methodologies to set the prices patients and payers pay for prescription drugs. PBMs are often able to play arbitrage, exploiting pricing variations between the parties as well as through the use of drug maker rebates and pharmacy discounts.⁴ These practices include the practice of spread pricing (charging plan sponsors more for a drug than a pharmacy is reimbursed), and DIR fees in Medicare Part D whereby patient cost shares and deductibles are based on inflated prices at the counter with the PBMs clawing pharmacy discounts back from pharmacies retroactively thereby denying patients the benefit of the discounts and increasing the prices patients pay at the counter.⁵
- Patient steering: A practice that has grown as a result of vertical integration, PBMs are engaging in tactics to steer patients to PBM/insurer affiliated pharmacies.⁶ Large PBMs aggressively target patients on specialty medications to treat serious conditions such as cancer and HIV, as well as patients on medications to manage chronic conditions such as diabetes, high blood pressure and heart disease.⁷

The high cost of PBM rebate practices, drug pricing methodologies, and patient steering

All three of these practices, rampant amongst the largest PBMs, have a negative impact with regard to access to care. Exclusionary formulas and brand mandates have the obvious effect of reducing access to needed medications.⁸

Indeed, the exclusionary practices of these PBMs are prolific with 1,156 prescription drugs excluded from at least one of these PBMs in 2022, representing an increase of 961% in less than ten years.⁹ Steering likewise has a negative impact on access to care, often preventing patients from obtaining drugs from their trusted pharmacists or physician.¹⁰

The problems go well beyond access to care, however.

With regard to rebates, while PBMs maintain that drug manufacturer rebate practices are implemented to lower the cost of drugs, often these rebates, perversely, drive up prices for prescription drugs.¹¹ Broadly speaking,

⁴ Frier Levitt - commissioned by the Community Oncology Alliance (2022): Pharmacy Benefit Manager Expose: How PBMs Adversely Impact Cancer Care While Profiting at the Expense of Patients, Providers, Employers, and Taxpayers. Available online at: https://mycoa.s3.amazonaws.com/1678994901525_COA_FL_PBM_Expose_2-2022.pdf.

⁵ Id.

⁶ Id.; see also Marty Schladen, Catherine Candisky, "Mail-order pharmacy system delays care for some patients," The Columbus Dispatch. June 3, 2018, available online at <https://www.dispatch.com/story/lifestyle/health-fitness/2018/06/03/mail-order-pharmacy-system-delays/12069189007/>.

⁷ Frier Levitt - commissioned by the Community Oncology Alliance (2022): Pharmacy Benefit Manager Expose: How PBMs Adversely Impact Cancer Care While Profiting at the Expense of Patients, Providers, Employers, and Taxpayers. Available online at: https://mycoa.s3.amazonaws.com/1678994901525_COA_FL_PBM_Expose_2-2022.pdf; see also Marty Schladen, "Pharmacist: CVS dominates cancer-drug business," The Columbus Dispatch. June 3, 2018, available online at <https://www.dispatch.com/story/lifestyle/health-fitness/2018/06/03/pharmacist-cvs-dominates-cancer-drug/12069174007/>.

⁸ Xcenda (2022) Skyrocketing growth in PBM formulary exclusions continues to raise concerns about patient access. Available online at https://www.xcenda.com/-/media/assets/xcenda/english/content-assets/white-papers-issue-briefs-studies-pdf/xcenda_pbm_exclusion_may_2022.pdf.

⁹ Id.

¹⁰ Frier Levitt - commissioned by the Community Oncology Alliance (2022): Pharmacy Benefit Manager Expose: How PBMs Adversely Impact Cancer Care While Profiting at the Expense of Patients, Providers, Employers, and Taxpayers. Available online at: https://mycoa.s3.amazonaws.com/1678994901525_COA_FL_PBM_Expose_2-2022.pdf.

¹¹ Sood et al. The Association Between Drug Rebates and List Prices: USC Schaeffer. 2020 Feb. Available online at: <https://healthpolicy.usc.edu/research/the-association-between-drug-rebates-and-list->

there is a strong correlation between rebates and higher list prices so that as rebates paid by pharmaceutical manufacturers to PBMs increase, so to do the list prices of prescription drugs.¹²

In addition, because large PBMs administer plans where patient cost shares and deductibles are based on list prices rather than post rebate net prices, patients are paying more at the counter than the drugs cost to the PBM¹³ In addition, these PBMs often mandate more expensive brand name drugs even when there is a cheaper generic available, often resulting in patients paying more out of pocket.¹⁴

Similarly, PBM pricing methodologies that deprive patients of discounts from pharmacies and base patient cost shares on the pre-discounted price also raise costs for patients at the counter.¹⁵

Higher costs for prescription drugs at the counter, unfortunately, can result in a patient foregoing medication treatment that she or he simply cannot afford. Higher drug prices can also result in lower adherence, non-adherence, as well as delays in treatment, and poorer outcomes.¹⁶

With regard to patient steering, these practices can result in, amongst other things, not only loss of patient choice, but also fragmented patient care, delays to and impeding access to care, and poorer patient outcomes.¹⁷

PBM practices drawing scrutiny at state and federal level

In light of the foregoing, it is no wonder that these PBM practices, along with other tactics, are garnering significant negative attention and calls for action from both federal and state lawmakers, enforcers, and policy makers alike.

At the federal level, the Federal Trade Commission (FTC) launched an ongoing inquiry into the PBM industry, focusing on the six largest PBMs and seeking information on practices including “fees and clawbacks,” “methods to steer patients toward [PBM] owned pharmacies,” “the use of specialty drug lists and surrounding specialty policies,” and “the impact of rebates and fees from drug manufacturers.”¹⁸

[prices/#:~:text=Key%20Takeaways%3A%201%20Drug%20rebates%20and%20list%20prices,excluding%20drugs%20with%20high%20Medicaid%20share.%20More%20items.](#)

¹² Id.

¹³ Frier Levitt - commissioned by the Community Oncology Alliance (2022): Pharmacy Benefit Manager Expose: How PBMs Adversely Impact Cancer Care While Profiting at the Expense of Patients, Providers, Employers, and Taxpayers. Available online at: https://mycoa.s3.amazonaws.com/1678994901525_COA_FL_PBM_Expose_2-2022.pdf.

¹⁴ Xcenda (2022) Skyrocketing growth in PBM formulary exclusions continues to raise concerns about patient access. Available online at https://www.xcenda.com/-/media/assets/xcenda/english/content-assets/white-papers-issue-briefs-studies-pdf/xcenda_pbm_exclusion_may_2022.pdf.

¹⁵ Frier Levitt - commissioned by the Community Oncology Alliance (2022): Pharmacy Benefit Manager Expose: How PBMs Adversely Impact Cancer Care While Profiting at the Expense of Patients, Providers, Employers, and Taxpayers. Available online at: https://mycoa.s3.amazonaws.com/1678994901525_COA_FL_PBM_Expose_2-2022.pdf.

¹⁶ Eddy et al. How Patient Cost-Sharing trends Affect Adherence and Outcomes: A literature review PT. 2012 Jan; 37(1):45-55. Available online at <https://pubmed.ncbi.nlm.nih.gov/22346336/>.

¹⁷ Frier Levitt - commissioned by the Community Oncology Alliance (2022): Pharmacy Benefit Manager Expose: How PBMs Adversely Impact Cancer Care While Profiting at the Expense of Patients, Providers, Employers, and Taxpayers. Available online at: https://mycoa.s3.amazonaws.com/1678994901525_COA_FL_PBM_Expose_2-2022.pdf; see also Marty Schladen, Catherine Candisky, “Mail-order pharmacy system delays care for some patients,” The Columbus Dispatch. June 3, 2018, available online at <https://www.dispatch.com/story/lifestyle/health-fitness/2018/06/03/mail-order-pharmacy-system-delays/12069189007/>; see also Marty Schladen, “Pharmacist: CVS dominates cancer-drug business,” The Columbus Dispatch. June 3, 2018, available online at <https://www.dispatch.com/story/lifestyle/health-fitness/2018/06/03/pharmacist-cvs-dominates-cancer-drug/12069174007/>

¹⁸ <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-launches-inquiry-prescription-drug-middlemen-industry>.

The FTC also issued a policy statement on the rebates and fees paid by drug manufacturers to PBMs in which the FTC acknowledged the potential of rebate practices to “shift costs and misalign incentives in a way that ultimately increases patients’ costs and stifles competition from lower-cost drugs . . .”¹⁹ The FTC also noted the increased cost of insulin has caused many patients to ration it, causing suffering, severe illness, and death.²⁰

Large PBMs have also drawn the attention of U.S. Congress with hearings in 2023 being held on PBM practices and legislation by the House Energy & Commerce Committee’s Subcommittee on Health, the House Ways and Means Committee, the House Committee on Oversight and Accountability,²¹ and the Senate Committee on Health, Education, Labor & Pensions. In addition, the U.S. Senate Committee on Finance Chair and Ranking member released a bipartisan framework addressing PBMs with the intention of introducing legislation.²² Committee Chair Ron Wyden stated, “[f]or years drug pricing middleman like pharmacy benefit managers have been engaging in practices that are driving up the cost of prescription drugs and clobbering American families at the pharmacy counter.”²³ Unsurprisingly, there have been a number of bills introduced to curtail PBM practices and to increase transparency.

PBM practices have also drawn the attention of the Office of Inspector General with a 2022 report on the impact of Part D prescription drug plan brand requirements in connection with Hepatitis C drugs and found that many plans failed to include lower cost authorized generics of certain Hepatitis C drugs and rather required more expensive brands.²⁴ The report found not only increased costs to the Medicare program as a result of brand preferences but also found that “because beneficiary cost-sharing is based on pre-rebate prices, the use of higher-cost hepatitis C drugs in Part D led to thousands of dollars in additional costs for some Medicare beneficiaries.”

At the state level, just this year, the Attorney General for the state of Ohio filed suit against Cigna, and its affiliates including Express Scripts, accusing them of “illegally driving up drug prices and pushing those costs onto patients who rely on lifesaving drugs such as insulin.” In his press release, the Attorney General Yost stated “PBMs are modern day gangsters . . . [that] have absolutely destroyed transparency, scheming in the shadows to control drug prices on all sides of the market.”

In addition, over the past several years, a number of states have passed legislation addressing problematic PBM practices including but not limited to Alabama, Arkansas, Florida, Georgia, Kentucky, New York, Ohio, Oklahoma, Iowa, and Tennessee.²⁵

In passing, a particular provision dealing with penalties for steering and retroactive fees, the Georgia General Assembly found that:

- (1) The practice of steering by a pharmacy benefits manager represents a conflict of interest;
- (2) The practice of imposing point-of-sale fees or retroactive fees obscures the true cost of prescription drugs in this state; [AND]

¹⁹https://www.ftc.gov/system/files/ftc_gov/pdf/Policy%20Statement%20of%20the%20Federal%20Trade%20Commission%20on%20Rebates%20and%20Fees%20in%20Exchange%20for%20Excluding%20Lower-Cost%20Drug%20Products.near%20final.pdf.

²⁰ Id.

²¹ The U.S. House Committee on Oversight and Accountability held a hearing on the day this letter was sent. It is available online at <https://oversight.house.gov/hearing/the-role-of-pharmacy-benefit-managers-in-prescription-drug-markets-part-i-self-interest-or-health-care/>.

²² <https://www.finance.senate.gov/chairmans-news/wyden-crapo-release-legislative-framework-to-address-pbms-prescription-drug-supply-chain>.

²³ Id.

²⁴ <https://oig.hhs.gov/oei/reports/OEI-BL-21-00200.pdf>.

²⁵ <https://ncpa.org/sites/default/files/2021-09/PBM-laws-by-state.pdf>.

(3) These practices have resulted in harm, including increasing drug prices, overcharging insureds and payors, restricting insureds' choice of pharmacies and other dispensers, underpaying community pharmacies and other dispensers, and fragmenting and creating barriers to care, particularly in rural Georgia and for patients battling life-threatening illnesses and chronic diseases.²⁶

Vanguard can join with lawmakers, regulators, patient groups and providers to demand change on behalf of patients across the country

While admittedly some of these PBM practices are complex and opaque, often by design, APCI hopes that in light of the many billions of dollars Vanguard has invested in these companies, Vanguard will take the time to learn more about these problematic PBM practices and the implications of these practices with regard to patients and payors.

This would seem especially relevant for Vanguard holdings in connection with its environmental, social, and corporate governance criteria-based fund[s]. APCI believes practices that target America's sickest patients and its seniors and deprive them of pharmacy and drug manufacturer discounts forcing them to pay more for prescription drugs and steering them to PBM affiliated pharmacies should rise to the level of socially unacceptable behavior that would draw increased scrutiny in connection with an ESG portfolio.

As one of the largest investors in United Healthcare, CVS, and Cigna, Vanguard is in a unique position to help effectuate real and meaningful change on behalf of patients and the healthcare system in this country. APCI's explicit request is that Vanguard stands with patients, providers, and lawmakers and demand that large PBMs end these practices that drive up the cost of prescription drugs at the counter, take away patient choice, and create barriers to care that lead to fragmentation, poorer adherence, and poorer patient outcomes.

APCI would also welcome the opportunity to engage with you on this issue and share additional information on these practices and how Vanguard can be a positive force for change in working to bring these practices to an end. Should you have any questions, or if you would like to discuss the above issues in more detail, please do not hesitate to contact us. Thank you.

Sincerely,

S/ Greg Reybold

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²⁶ O.C.G.A. 33-64-12.

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