



Winds of Change: a Federal and State Legislative Update

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APEX
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Disclosure of Conflicts Statement

The presenter has no relevant conflict of interest related to this presentation. The speaker has no relevant financial relationships with ineligible companies to disclose with regard to this presentation.

I will refrain from making recommendations, regarding products or services. I will not advocate for any product, service or business but only present the current state of federal and state law and anticipated changes to federal and state law that will impact pharmacists and the business of pharmacy.

Learning Objectives for Pharmacists and Pharmacy Technicians

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1. Describe the Medicare Drug Price Negotiation Program and its impact on pharmacies in the program in 2026.
 2. Describe the new PBM reforms in the January 2026 Appropriations Bill and other proposed federal legislation in 2026
 3. Describe the changes resulting from federal agencies such as: (a) the Federal Trade Commission's recent settlement with Express Scripts and anticipated settlement with OptumRx and Caremark (b) TRICARE and (c) the FEHBP OIG audit of CVS Caremark
 4. Describe recent Tennessee and Arkansas laws prohibiting PBM ownership of pharmacies, related litigation and other state legislative updates.



Agenda

- Medicare Drug Price Negotiation Program Impacts
- Federal Legislation
- Federal Agency Actions
- State Legislative Developments



Medicare Drug Price Negotiation Program Impacts



Cash Flow

Timing of Two-Step Payment System

- One payment from the PBM as normal
- Second payment from drug maker through the Medicare Transaction Facilitator

Timing of Payments

14 Days after Claim

21 Days after Claim

PBM Payment Under Normal Process

MFP (Maximum Fair Price)

Drug Maker Rebate Through MTF

WAC minus MFP



**Rebate as a
percentage of
total
reimbursement**

Drug Name	Rebate as a Percentage of Total Reimbursement
ENBREL 50 MG/ML AUTO INJ 4	72.74%
XARELTO TAB 30	65.51%
JANUVIA TAB 30	64.47%
ENTRESTO FCT TAB 60	56.84%
DAPAGLIFLOZIN TAB 30	52.02%
FARXIGA TAB 30	51.94%
JARDIANCE TAB 30	41.77%
ELIQUIS TAB 60	28.04%
FIASP and NOVOLOG PFS 5X3ML	3.84%
FIASPand NOVOLOG 10ML VL	3.83%

Rebate Payment Delay

Manufacturer	BRAND Name	Days Waiting for Rebate Payment
JANSSEN PHARM.	XARELTO	25
NOVO NORDISK	FIASP PENFILL	23.2
NOVO NORDISK	INSULIN ASPART	23.2
NOVO NORDISK	NOVOLOG PENFILL	23.1
PRASCO LABS	DAPAGLIFLOZIN	23.1
ASTRAZENECA	FARXIGA	22.7
NOVO NORDISK	INSULIN ASPART FLEXPEN	22.5
NOVO NORDISK	NOVOLOG	22
NOVARTIS PHARMA	ENTRESTO	21.5
NOVO NORDISK	FIASP FLEXTOUCH	21.5
NOVO NORDISK	NOVOLOG FLEXPEN	21.4
NOVO NORDISK	INSULIN ASPART PENFILL	21.3
BOEHRINGER ING.	JARDIANCE	21.1
NOVO NORDISK	FIASP	21
NOVARTIS PHARMA	ENTRESTO SPRINKLE	20.5
BMS PRIMARYCARE	ELIQUIS	20
NOVO NORDISK	FIASP PUMPCART	19.3
AMGEN	ENBREL MINI	19.1
JANSSEN BIOTECH	STELARA	18.2
AMGEN	ENBREL	17.6
AMGEN	ENBREL SURECLICK	17
MERCK SHARP & D	JANUVIA	15.9
PHARMACYCLICS	IMBRUVICA	13.2



Dispensing Fees



Possible Profitability of MDPNP Drugs

(Example assumes WAC-3% pharmacy acquisition cost)

Gross Profit = PBM Reimbursement **plus** Drug Maker Rebate **minus** Acquisition Cost **plus** Dispensing Fee

Gross Profit = MFP **plus** (WAC minus MFP) **minus** WAC-3% **plus** Dispensing Fee

Gross Profit = 3% of WAC **plus** Dispensing Fee



Dispensing Fees

CMS encourages Part D plan sponsors to work with their network pharmacies to ensure adequate and fair compensation for dispensing selected drugs. **Specifically, we expect Part D plan sponsors' dispensing fees to sufficiently compensate network pharmacies** so that enrollees can be assured network access to selected drugs. As defined at 42 C.F.R. § 423.100, dispensing fees refer to costs that are incurred at the point of sale and pay for costs in excess of the ingredient cost of a covered Part D drug each time a covered Part D drug is dispensed. **Examples of pharmacy costs that can be included within the dispensing fee are salaries, time associated with checking for coverage, filling the container, packaging, and overhead (including IT).**

Source: August 2025 CMS Memo



Federal Legislation

Federal Legislation that Passed

U.S. Congress

January 2026 PBM Reform Package Passed in the Consolidated Appropriations Act

- **Reasonable and Relevant Contract Terms:** By 2029, CMS must set standards for reasonable and relevant contract terms offered by Part D plans to pharmacies. CMS will seek input from stakeholders in developing these standards.
- **Delinking PBM Compensation from Drug Utilization:** By 2028, Part D plans may not compensate PBMs based on utilization of Part D drugs, except through bona fide service fees or flat-fee incentives. Rebates are permitted only if passed entirely to the Part D plan.
- **Essential Retail Pharmacy Designation:** By 2028, establishes the concept of an “essential retail pharmacy” for underserved areas and allows for the study of access and reimbursement trends affecting these pharmacies.
- Medicare Only

Federal Legislation

Bills to Push

Rx Access Act

- TRICARE reform
- NADAC + state Medicaid FFS dispensing fee
- No mandatory mail
- Audit of network adequacy and pharmacy reimbursement
- S. 4106: Sens. Cotton (R-Ark) and Kaine (D-Va)
- H.R. 6400
- Sponsors: Reps. Kiggans (R-Va.), Goodlander (D-N.H.), Luttrell (R-Tex.), and Houlahan (D-Pa.)

Pharmacists Fight Back Act

- Version 1: Medicaid and Medicare (HR 6609)
- Version 2: Federal Employee Health Benefit Plans (HR 6610)
- NADAC + (4% of ingredient or \$50) + Medicaid FFS dispensing fee
- Patient gets rebate at point-of-sale
- Anti-steering provisions
- Reps. Auchincloss (MA-04), Comer (KY-01), Harshbarger (TN-01), Carter (GA-01), Bishop (GA-02), and Tlaib (MI-12)

PBM Reform Act of 2025

- Medicaid Managed Care Reform
- Bans spread pricing in Medicaid
- Requires Medicaid MCOs to set dispensing fees at no less than state Medicaid FFS dispensing fee
- Requires mandatory responses to NADAC surveys
- Passed the House in 2024
- Reintroduced in 2025 as H.R. 4317
- Sponsors: Rep. Buddy Carter (GA-1) and 69 other bipartisan sponsors

Federal Legislation

Bills to Push

Patients Before Monopolies Act

- Prohibit a parent company from owning both a pharmacy and a PBM or insurer.
- Establish financial penalties for noncompliance
- Authorize actions by the FTC, HHS and DOJ
- S 5503
- Sponsors: Sens. Elizabeth Warren (MA); Josh Hawley (MO)

PBM Kickback Prohibition Act

- ERISA Plans
- Prohibits PBMs from paying kickbacks or referral fees to brokers, consultants, advisors, or similar intermediaries in exchange for directing employer health plan or insurer business to the PBM.
- HR 7895
- Sponsor: Rep. Rick Allen (GA-12)

PBM FAIR Act

- ERISA Plans
- Designates PBMs to be fiduciaries to ERISA plans
- Requires disclosure of all compensation it receives from network management or drug maker rebates
- S 3549
- Sponsors: Sens. Roger Marshall (KS); Tim Kaine (VA); Chuck Grassley (IA); Margaret Hassan (NH)



Federal Agency Action

Federal Agency Action

Federal Trade Commission

Federal Trade Commission Settlement With Express Scripts



- Settles FTC lawsuit against ESI alleging ESI inflated insulin prices by coercing drugmakers into ever-higher rebates.
- ESI must offer standard contract to all independent pharmacies (3 or less stores)
- ESI must pay actual acquisition cost if pharmacy provides all acquisition data to ESI
- ESI must pay a dispensing fee
- FTC settled with CVS Caremark March 23; terms unknown but likely mirror settlement with ESI

Problems With FTC Settlement With ESI

As Demonstrated in Evernorth Contract

- Pharmacy must provide ESI all files directly or indirectly validating acquisition cost, including rebate data
- If pharmacy refuses to give all of its acquisition cost information, FTC settlement does not mandate any particular methodology of reimbursement
- No specific dispensing fee mandated
- Opt-Out Contracts Permitted
- “Retail Community Pharmacy” definition only includes three or fewer locations.



March 15, 2026

VIA ELECTRONIC SUBMISSION TO

<https://www.regulations.gov>

Federal Trade Commission

Office of the Secretary

600 Pennsylvania Avenue NW, Mail

Stop H-144 (Annex I)

Washington, DC 20580

Re: Comments of American Pharmacies to *Express Scripts, Inc., et al.; Analysis of Agreement Containing Consent Order To Aid Public Comment* (Express Scripts; Docket No. 9437)

Dear Federal Trade Commission:

I am writing on behalf of American Pharmacies, a national cooperative of over 700 independent pharmacies across the country. American Pharmacies is submitting these comments in response to the above-referenced proposed settlement with Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc. and Ascent Health Services LLC (collectively “ESI”). Our comments are solely directed at Section VIII of the proposed order concerning the Standard Offering to Retail Community Pharmacies (“SORCP”).

A. The FTC Has Recognized That ESI Directly Competes Against Non-Affiliated Pharmacies and Has Used Its Market Power to Discriminate Against Non-Affiliated Pharmacies

ESI is a vertically integrated entity that, together with CIGNA, operates one of the largest insurers and pharmacy benefit managers (“PBMs”) in the United States. ESI also operates the third largest pharmacy in the country collecting one tenth of all prescription revenue in the U.S.¹ As a vertically integrated pharmacy, the Federal Trade Commission (“FTC”) has recognized that ESI directly competes with pharmacies that are not affiliated to ESI and that ESI can abuse its market power to the detriment of its competing non-affiliated pharmacies by:

- Steering patients to affiliated pharmacies and away from non-affiliated pharmacies;
- Engaging in opaque and detrimental reimbursement practices with non-affiliated pharmacies;
- Paying affiliated pharmacies more than non-affiliated pharmacies for the same drugs;
- Pushing competing non-affiliated pharmacies out of the market; and
- Paying non-affiliated pharmacies below their cost to acquire the dispensed drugs.²

Because of ESI’s history of abusive practices against non-affiliated pharmacies with whom ESI directly competes, American Pharmacies is concerned with several elements of the Standard Offering to Retail

¹ Drug Channels, *The Top 15 U.S. Pharmacies of 2024: Market Shares and Revenues at the Biggest Chains, PBMs, and Specialty Pharmacies*, March 11, 2025 <https://www.drugchannels.net/2025/03/the-top-15-us-pharmacies-of-2024-market.html>

² U.S. Fed. Trade Comm’n Office of Policy Planning, *Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies*, Interim Staff Report July 2024, p. 3-4, 50, 53-59.

Federal Agency Action

Department of Labor

Department of Labor Rules to Apply to All ERISA Plans



- PBMs must disclose all payments from drug makers, including rebates
- PBMs must disclose amounts PBMs retain from spread pricing
- PBMs must disclose payments recouped from pharmacies
- Disclosure is to ERISA plan sponsors

Federal Agency Action

U.S. Office of Personnel Management, Inspector General

US Office of Personnel Management Inspector General Audit of CVS Caremark



- OIG Audit of Federal Employees Health Benefit Program (FEHBP)
- CVS Caremark overcharged the FEHBP \$596,317,589 between 2018-2021
- \$487,717,560 were overcharges due to spread pricing manipulation
- \$108,600,029 were for transaction fees



State Legislation



Tennessee

Tennessee Independent Audit of PBM Compliance with Pay Parity Law	
PBM	Range of Overcharge PBM paid its affiliated pharmacies
OptumRx	2.44% to 79.19%
Caremark	10.49% to 16,510.24%
Express Scripts	7.1% to 3,082%

- May 22, 2026: the Freedom, Access and Integrity in Registered Pharmacy (Fair Rx) Act Signed Into Law
- Fair Rx Act Bans pharmacies from being owned by PBMs
- Grace Period through July 2028
- CVS Caremark sued Tennessee on the same day essentially relying on a claim that law discriminated against out-of-state corporations



Tennessee

- May 22, 2026: the Freedom, Access and Integrity in Registered Pharmacy (Fair Rx) Act Signed Into Law
- Fair Rx Act Bans pharmacies from being owned by PBMs
- Grace Period through July 2028
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Federal Courts

Federal Courts

Arkansas

ESI v. Richmond 8th Circuit Court of Appeals

Legal Challenge to Arkansas Act 624

- 2025: Arkansas passed Act 624 banning pharmacies from being owned by PBMs
- Express Scripts and others sued to block the law
- Lower court enjoined the law under the Dormant Commerce Clause which prohibits states from discriminating against out-of-state businesses
- Awaiting court to set appeal for oral argument; likely will be in fall of 2026



Thank You

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