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DLCA Sues Nation’s Largest Pharmacy Benefit Managers, Alleging Drug Pricing Scheme Raised Consumer Costs

The lawsuit accuses Caremark PCS Health, Express Scripts, OptumRx and related group purchasing organizations of using market dominance, rebates and affiliated pharmacies to inflate prescription costs and limit access to cheaper drugs.

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Janeka Simon June 12, 2026

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The V.I. Department of Licensing and Consumer Affairs has filed a major lawsuit against the country’s largest pharmacy benefit managers and related group purchasing organizations, accusing them of operating an unfair and deceptive scheme that inflated prescription drug costs and reduced consumer access to cheaper medications.

The civil complaint, filed this week in Superior Court, alleges that the companies colluded to "siphon increasing amounts of money from the pharmaceutical supply chain through an unfair and deceptive scheme." According to the lawsuit, the alleged scheme "masks Defendants' negative impact on the market while increasing consumers' out-of-pocket costs."

DLCA argues that consumers have less access to effective, lower-cost prescription drugs because of the conduct described in the complaint.

Named as defendants are Caremark PCS Health, Express Scripts and OptumRx, the three largest pharmacy benefit managers in the United States. Caremark PCS is owned by CVS Health Corporation, Express Scripts is owned by Cigna, and OptumRx is owned by UnitedHealth Group.

Together, the three PBM defendants control 80 percent of the pharmacy benefit manager market, according to the lawsuit. DLCA alleges that the companies have abused that dominance to harm independent pharmacies and maximize rebates from drug manufacturers, increasing profits at the expense of consumers.

The complaint says that in 2019, PBMs began using group purchasing organizations, or GPOs, claiming that those entities would negotiate with drug manufacturers and administer rebates and other fees from drug companies. DLCA argues that those are "the same functions the PBM Defendants hold themselves out as performing."

The lawsuit alleges that the real purpose of the GPOs is to add another layer of separation to an already opaque drug pricing system used by health plans and consumers. Caremark PCS has Zinc, which is co-owned by CVS Health. Express Scripts co-owns Ascent Health Services; both are subsidiaries of Evernorth Health. OptumRx and its GPO, Emisar Pharma Services, both share UnitedHealth Group as a parent company.

As a result of the relationship between PBMs and their associated GPOs, DLCA alleges, consumers are often limited to drugs preferred by the entities that control the market. Those "preferred" drugs, the lawsuit says, are often the ones that generate the largest "rebates" and other fees paid by drug manufacturers to PBMs through GPOs.

The complaint points to Humira as an example. The lawsuit describes Humira as a "high cost biologic used to treat arthritis and other inflammatory disorders," and says it was given preferred status over lower-cost alternatives that the U.S. Food and Drug Administration had already approved as "fully interchangeable" with the brand-name drug.

Even with FDA approval, DLCA alleges, those lower-cost alternatives were prevented from becoming accessible to consumers.

The lawsuit further argues that the growing importance of rebates and fees has created a feedback loop that pushes drug prices higher. According to DLCA, drug manufacturers have steadily increased list prices, creating additional cash flow used to fund a growing stream of rebates "and other fees to secure formulary placement for their products."

As a result, the complaint says, drug prices have increased far beyond their actual value and "bear almost no relationship to the true payment manufacturers receive for their products."

DLCA argues that consumers are the ultimate losers in that system, especially those "with cost-share payments tied to a drug's inflated list price."

The lawsuit also says drug manufacturers have acknowledged that their products are priced much higher in the United States than in other markets to account for rebates and fees paid to PBMs. DLCA cites Novo Nordisk as one example, noting that its GLP-1 drug Ozempic costs $969 per month in the United States, compared with $59 per month in Germany.

The complaint also alleges that PBMs use their market power to pressure independent pharmacies. DLCA says the companies reimburse independent pharmacies at “near or below their acquisition costs” for prescriptions with lower profit margins, while “steering prescriptions for higher-profit drugs to Defendants’ own affiliated pharmacies.”

DLCA argues that this practice makes competition between independent pharmacies and large chains unfair, while ultimately increasing consumer prices and reducing consumer choice.

According to the lawsuit, PBMs originally provided electronic claims processing services designed to efficiently manage large volumes of “relatively small dollar claims.” DLCA now alleges that those entities have become entrenched middlemen in the drug distribution chain, profiting “through methods that are secret and unknown” at each stage of the system that moves medication from manufacturers to consumers.

The lawsuit is the latest action by DLCA aimed at addressing rising prescription drug prices and the systems the department says contribute to them.