United States Senate

WASHINGTON, DC 20510

November 21, 2023

Christi Grimm
Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Dear Inspector General Grimm,

We are writing regarding vertical integration in the health care industry and its role in raising already sky-high prescription drug costs. In particular, we are concerned by a recent report suggesting that large insurance companies – including Cigna, CVS Aetna, and UnitedHealth – are hiking drug prices at their vertically integrated specialty pharmacies to evade the Medical Loss Ratio (MLR), a statutory requirement for health insurers to spend at least 80 or 85 percent of health care premium dollars on medical claims.[1] We therefore request that the Health and Human Services Office of the Inspector General (HHS OIG) investigate the extent of this potential MLR gaming and its harm on patients and taxpayers.

Last month, the *Wall Street Journal* published a report revealing significant markups of generic drugs at specialty pharmacies owned by CVS Aetna, Cigna, and UnitedHealth. In each case, prices for these products were far higher at vertically integrated specialty pharmacies than they were at Cost Plus, the independent pharmacy the *Wall Street Journal* used as a baseline. Cigna, CVS Aetna, and UnitedHealth charged 27.4, 24.2, and 3.5 times more, respectively, than Cost Plus across a selection of 19 drugs.[2]

These findings are alarming. In functioning markets, generic drugs cost 80 to 85 percent less than their name-brand equivalents, giving patients much-needed relief from high drug costs and saving taxpayer dollars.[3] For example, the *Journal*'s analysis found that the generic version of Tarcera, a lung cancer drug, costs only $73 a month at Cost Plus, compared to a staggering $4,553 a month for the brand-name version. But patients – including patients in public health care programs like Medicare and Medicaid – who either use or are compelled to use vertically integrated specialty pharmacies are not seeing this relief. By comparison, Cigna charges $4,409 a

[1] Centers for Medicare & Medicaid, "Medical Loss Ratio," https://www.cms.gov/marketplace/private-health-insurance/medical-loss-ratio.
[2] The Wall Street Journal, "Generic Drugs Should Be Cheap, but Insurers Are Charging Thousands of Dollars for Them," Joseph Walker, September 11, 2023, https://www.wsj.com/health/healthcare/generic-drugs-should-be-cheap-but-insurers-are-charging-thousands-of-dollars-for-them-ef13d055?ns=prod/accounts-wsj.
[3] The Federal Trade Commission, "How to Get Generic Drugs and Low-Cost Prescriptions," https://consumer.ftc.gov/articles/generic-drugs-low-cost-prescriptions#:~:text=Prescription%20drugs%20can%20be%20expensive,and%20Drug%20Administration%20(FDA).

month – or roughly the same price as the brand-name version – while CVS Aetna charges $2,056 a month.[4]

One key factor driving these high prices appears to be the fact that insurers own other key links in the drug supply chain: pharmacy benefit managers (PBMs) and pharmacies. Cigna, United Health, and CVS Aetna each own or are affiliated with the country's three largest PBMs, which in theory negotiate drug prices with pharmaceutical manufacturers on behalf of insurers and set prices at the pharmacy. However, when those same insurers and their vertically integrated PBMs also own their own specialty pharmacies, they can profit handsomely. That's because insurers are not just the payers at the end of the transaction; instead, through their PBMs and pharmacies, they are also the recipients of those funds. According to the *Journal*, "PBMs try to pay as little as possible for drugs distributed through independent retail pharmacies. But when their own pharmacies dispense prescriptions, PBMs profit from the higher prices."[5]

Consumers and taxpayers foot the bill for these games through higher insurance premiums and out-of-pocket costs: "Even when their health insurance picks up most of the cost of a drug, patients can face a larger expense from higher priced generics if they have an out-of-pocket contribution like a deductible or coinsurance pegged to the price." [6] Even worse, insurers can use their PBMs to steer patients to their own pharmacies, while disadvantaging competing pharmacies with lower reimbursements and predatory fees.[7]

This anticompetitive behavior raises costs, hurts independent pharmacies, and undercuts Congress' ability to rein in excessive profits of insurance companies. Over a decade ago, Congress instituted the MLR to limit the percentage of premium dollars insurers could spend on administrative costs and profits to 15 percent. Federal law requires companies to spend the remaining 85 percent on medical claims. But insurance companies are exploiting loopholes in the law by buying up entities that are eligible for medical claims payments, including pharmacies, so they can get a cut from both sides of the transaction.

Just a year after the MLR requirement was put in place, UnitedHealth Group formed Optum, which now includes a PBM and a specialty pharmacy, as well as over 70,000 physicians. Today, UnitedHealth Group sends 25 percent of its medical claim revenue to its Optum subsidiaries – in other words, to itself.[8] Similarly, in 2019, CVS Health sent 13 percent of its profits to its own providers and pharmacies.[9]

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[4] The Wall Street Journal, "Generic Drugs Should Be Cheap, but Insurers Are Charging Thousands of Dollars for Them," Joseph Walker, September 11, 2023, https://www.wsj.com/health/healthcare/generic-drugs-should-be-cheap-but-insurers-are-charging-thousands-of-dollars-for-them-ef13d055?ns=prod/accounts-wsj.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] Letter from Senator Elizabeth Warren to the Department of Justice Antitrust Division and the Federal Trade Commission, October 4, 2023, *https://www.warren.senate.gov/oversight/letters/warren-jayapal-call-on-doj-ftc-to-scrutinize-unitedhealth-amedisys-merger*.
[9] BIG by Matt Stoller, "How Obamacare Created Big Medicine," Matt Stoller, April 4, 2023, https://www.thebignewsletter.com/p/how-obamacare-created-big-medicine.

The calculation is simple. By owning every link in the chain, a conglomerate like UnitedHealth Group – which includes an insurer, a PBM, a pharmacy, and physician practices – can send inflated medical payments to its pharmacy. Then, by realizing those payments on the pharmacy side – the side that charges for care – rather than the insurance side, the insurance line of business appears to be in compliance with MLR requirements, while keeping more money for itself.[10]

This type of vertical integration in the drug supply chain is raising prescription drug costs, which are already far too high, while undermining Congress' intent of improving health care quality. To examine the extent to which these corporations' price setting strategies increase costs for patients and evade federal MLR requirements, we request that you conduct an evaluation, consistent with your mission to "provide objective oversight to promote the economy, efficiency, effectiveness, and integrity of HHS programs,"[11] and that this evaluation include a review of:

1. The extent to which health insurers have vertically integrated components of the prescription drug delivery system, such as pharmacies and PBMs.
2. The impact of this vertical integration on the Medicare and Medicaid programs, and the programs established under the Affordable Care Act, including the extent to which this consolidation:
    a. Affects overall costs for prescriptions drugs at the pharmacy counter and at various points in the supply chain.
    b. Affects out-of-pocket costs for prescription drugs for insured patients.
    c. Drives up insurance costs.
3. The extent to which vertical integration allows insurers to evade, or use profit-shifting approaches, to undermine MLR requirements.

Sincerely,

Elizabeth Warren
United States Senator

Mike Braun
United States Senator

[10] Brookings, "Related business and the preservation of Medicare's Medical Loss Ratio rules," Richard Frank and Conrad Milhaupt, June 29, 2023, https://www.brookings.edu/articles/related-businesses-and-preservation-of-medicares-medical-loss-ratio-rules/.
[11] U.S. Department of Health and Human Services Office of Inspector General, "Strategic Plan," https://oig.hhs.gov/about-oig/strategic-plan/.