



NATIONAL ASSOCIATION OF
CHAIN DRUG STORES

Statement of:
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For:

United States House Committee on Energy and Committee
Subcommittee on Oversight and Investigations

On:

“Examining The Change Healthcare Cyberattack”

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Introduction

The National Association of Chain Drug Stores (NACDS) appreciates the opportunity to submit a statement for the record for the United States Senate Committee on Finance’s hearing on “Hacking America’s Health Care: Assessing the Change Healthcare Cyber Attack and What’s Next.” NACDS applauds your continued partnership and leadership to improve the effectiveness and the resiliency of the nation’s healthcare system. Based on the experience of our chain pharmacy members since the cyberattack on Change Healthcare more than 8 weeks ago, we thank the Committee for the opportunity to share feedback on the impact of this detrimental disruption and recommendations to help address similar incidents that occur in the future.

Additionally, NACDS applauds your continued dedication to PBM reform as the recent cyberattack has only exacerbated the already dysfunctional reimbursement structure that continues threatening the future of community pharmacies’ ability to serve the nation. NACDS looks forward to continued opportunities to work collaboratively to strengthen the nation’s defenses against cyberattacks, in addition to effectuating comprehensive PBM reform, and addressing other key issues to promote health and healthcare access across communities nationwide.

Pharmacy Lessons Learned from Change Healthcare Cyberattack: Informing Future Responses to Preserve Continuity of Care

Throughout the duration of the disruption stemming from the cyberattack on Change Healthcare, pharmacies have remained fully committed to promoting uninterrupted access to care for the patients and communities they serve nationwide. Feedback from our pharmacy membership indicates that across the country, pharmacies have been significantly impacted by the disruption caused by the cyberattack on Change Healthcare. Since disruptions were first encountered, pharmacies have continued to work tirelessly to mitigate delays and interruptions for their patients, implementing high-burden and unsustainable workarounds with very limited guidance and without indication of the scope of the interruption, nor an estimated duration of the disruption, especially during the first several weeks following the incident.

Despite important progress made over the last 8 weeks since the incident, pharmacies across the country continue to report disruptions as they work to process the backlog of claims that mounted during the outage of various billing systems and processes stemming. Specifically, pharmacies were unable to bill Medicare Part B for certain products and medications for nearly five weeks, with additional disruptions in billing across six state Medicaid programs for nearly six weeks,¹ and interruptions in some workers’ compensation plans as well. Still today, pharmacies are experiencing challenges processing manufacturer coupon cards and patient assistance programs that some patients rely upon to afford their medications. Workarounds for these programs have resulted in high administrative burdens and medication access delays in certain instances. While we appreciate actions taken by CMS, HHS, and UnitedHealth Group, to mitigate the impact of this disruption on pharmacies, other healthcare providers, and the American people, there are several key areas of opportunity outlined in this statement to better resolve current challenges and prepare for similar, future incidents.

¹ <https://www.unitedhealthgroup.com/changehealthcarecyberresponse#latestupdates>

I. Explore Emergency Solutions and Policy Levers to Mitigate Claims Processing Interruptions in Healthcare

During the recent interruptions in billing processes stemming from the Change Healthcare attack, cash flow challenges for pharmacies, hospitals, and medical offices have been reported on an ongoing basis. Most pharmacies and other entities could not seamlessly implement alternate claims processing, which requires substantial time and effort. Therefore, pharmacies and other healthcare providers had no choice but to manually hold transactions for billing at a later, unknown date, once the disruption was resolved. Importantly, holding claims places pharmacies and other providers in an untenable position, taking on financial risk for prescriptions dispensed and services provided without a reliable mechanism and timeframe to be compensated for those products and services.

While provider funds and temporary payment programs are greatly appreciated, reports of meager funds, egregious high-interest loan programs, and closed deadlines have mitigated benefits of such assistance. Also, because restoration timelines were unknown and unreliable earlier in the incident, it was challenging for providers eligible for such programs to determine if the administrative burden was worth the potential for temporary funding assistance. Rather than supporting temporary funding programs, it is critical for HHS and CMS, together with policymakers, to explore effective solutions and policy levers to better respond to emergency disruptions that more seamlessly resolve interruptions from such incidents. Specifically, implementation of emergency solutions, tools, and policies that provide an immediate, alternate mechanism for pharmacy and medical claims processing is an essential lesson learned from the recent cyberattack. It is critical that the response to the next interruption is not built around a temporary patchwork of provider loans, but rather a sturdy and reliable mechanism for healthcare providers to rely on so when emergency disruptions occur, alternate tools exist and can be active to support uninterrupted healthcare for the nation without additional strain on the healthcare providers who are on the front lines of serving the American people. Leveraging lessons learned during the recent Change Healthcare incident, NACDS recommends the following:

NACDS Recommendation 1. Together with policymakers, HHS and CMS should work with pharmacies and other healthcare providers and states to explore, and ultimately implement, solutions to minimize risk and harm to pharmacies and other healthcare entities when pharmacy and medical claims processing is interrupted. For example, a tool such as the Emergency Prescription Assistance Program (EPAP), that may allow pharmacies to temporarily bill for prescriptions for a subset of impacted patients and health plans, is an important concept to explore. Additionally, in circumstances where processing of Medicare Part B claims is disrupted, temporary billing to Medicare Part D, if feasible, should be considered by CMS. **Solutions that allow pharmacies and other healthcare providers to immediately bill and be reimbursed as they usually would, should be prioritized**, rather than temporary funding loans, advance payments, or other programs healthcare providers must apply for and expend additional resources to receive. The most effective solutions will be those that support immediate, alternate billing mechanisms without additional burden on healthcare providers to maintain uninterrupted operations and healthcare delivery.

NACDS Recommendation 2. Together with policymakers, HHS and CMS should work with Change Healthcare and other prescription processing companies to mitigate any friction or unnecessary burden for

pharmacies to partner with multiple, or different, prescription processing companies as a means of mitigating potential future disruptions caused by similar incidents. Partnering with other claims processors to implement an alternate process for prescription claims processing requires tremendous time, effort, and costs. The process to implement alternate claims processing is arduous, and is not conducive to addressing emergent outages or disruptions and must be implemented in advance of an emergency. For example, pharmacies who may elect to switch clearinghouses must manually update their new clearinghouse information individually for each pharmacy store in the Provider, Enrollment, Chain, and Ownership System (PECOS), which is tremendously burdensome. NACDS urges CMS to implement more efficient processes for pharmacies to update any clearinghouse changes across all pharmacy locations in mass. More broadly, removing hurdles to pharmacies and other healthcare providers partnering with multiple processors could help alleviate future impacts of similar incidents.

NACDS Recommendation 3. Together with policymakers, HHS and CMS should seek to proactively mitigate instances when health plan programs are exclusive to only one prescription processor. As demonstrated by the current incident, scenarios when the sole prescription processor is compromised for a certain program are especially disruptive, as no other mechanism exists for billing and reimbursement. Key consideration should be made to support alternate claims processing especially for the following programs: Medicaid Fee-For-Service, manufacturer cash discount cards and Patient Assistance Programs, Medicare Part B prescription claims, including diabetes supplies, major medical plans, and workers' compensation insurance.

II. Mitigation of Harmful PBM Practices & Undue Requirements:

Lack of claims processing, along with PBMs' preexisting draconian behavior (e.g., below-cost reimbursement, egregious audit practices), during this cyberattack intensified the already lopsided reimbursement structure that continues threatening patients' access to their neighborhood pharmacy and the viability of community pharmacies across the country. America's pharmacies are in a crisis and urgently need Congress to advance comprehensive PBM reform now to help address these reimbursement challenges and ensure pharmacies can keep their doors open for the foreseeable future. To that end, NACDS strongly urges Congress to enact comprehensive pharmacy benefit manager (PBM) reforms included in NACDS' Principles of PBM Reform, outlined below. Congress has already recognized the importance of enacting PBM reform as many of these policies have already advanced this Congress with bipartisan and bicameral support. Last December, the House acted with a broad bipartisan vote to pass the *Lower Costs, More Transparency Act*, a bill that provides components of PBM reform, while the Senate Finance Committee advanced the *Modernizing and Ensuring PBM Accountability Act* and the *Better Mental Health Care, Lower-Cost Drugs, and Extenders Act*, two bills also including necessary PBM reforms. We applaud these efforts and urge Congress to take the next step by enacting these important protections for pharmacies without delay.

NACDS' Principles of PBM Reform

- **Help to Preserve Patient Access to Pharmacies by Addressing PBM's Retroactive Pharmacy Fees**
 - **Retroactive DIR Fees/Claw Backs** – Pharmacy access can be undermined when health plans and their middlemen, PBMs, arbitrarily “claw back” fees retroactively from pharmacies weeks or months after a claim has been adjudicated/processed. This manipulation of pharmacy

reimbursements may diminish access to care (*e.g., pharmacies being forced to close their doors or pare back hours and healthcare services*) when PBMs are unpredictable, not transparent, and payment falls below a pharmacy's costs to acquire and dispense prescription drugs. Policymakers should consider enacting laws that prohibit payers or PBMs from retroactively reducing and/or denying a processed pharmacy drug claim payment and obligating them to offer predictable and transparent pharmacy reimbursement to better protect pharmacies as viable and reliable access points of care for patient services.

- **Provide Fair and Adequate Payment for Pharmacy Patient Care Services**

- **Reasonable Reimbursement & Rate Floor** – Pharmacy access remains at risk when PBMs reimburse pharmacies below the cost to acquire and dispense prescription drugs. Pharmacy reimbursement that falls below the costs to acquire and dispense prescription drugs threatens future sustainability for pharmacies to continue providing valuable medication and pharmacy care services to communities. Policymakers should enact laws to adopt a reimbursement rate floor that requires PBMs to use comprehensive reimbursement models that are no less than the true cost to purchase and dispense prescription drugs to help maintain robust public access to pharmacies.
- **Standardized Performance Measures** – A crucial part of comprehensive DIR fee reform is advancing pharmacy quality that improves outcomes for beneficiaries and drives value in care which are essential to controlling costs in the healthcare system. Arbitrary performance measures developed by PBMs assess the performance of the pharmacy without pharmacies' input and create a moving target for pharmacies to show value and improve health outcomes. Measures vary across the various plans and dictate DIR fees (or claw backs at the State level) imposed on pharmacies, as well as help create substantial system dysfunction and unnecessary spending in the Part D program. Policymakers should enact laws to standardize PBM's performance measures for pharmacies to help set achievable goals for pharmacies before signing a contract to promote harmonization in the healthcare system and improvements in health outcomes.

- **Protect Patient Choice of Pharmacies**

- **Specialty** – Some PBMs require patients with rare and/or complex diseases to obtain medications deemed “specialty drugs” from designated “specialty pharmacies” or mail-order pharmacies which impedes patient access to their convenient local neighborhood pharmacies where specialty drugs are filled as well. Prescription drugs should not be classified as “specialty drugs” based solely on the cost of the drug or other criteria used to limit patient access and choice—instead, should focus on clinical aspects such as requiring intensive clinical monitoring. Policymakers should enact laws to establish appropriate standards for defining and categorizing specialty drugs to ensure comprehensive and pragmatic patient care and access and prohibit PBMs from steering patients to only specialty pharmacies, including those owned by the PBMs, for their prescription needs.
- **Mail Order** – Medication access and care can be weakened when PBMs manipulate the system by requiring patients to use mail-order pharmacies only. Some plans impose penalties such as

higher copays or other financial disincentives for choosing a retail pharmacy instead of a mail-order pharmacy which is often owned by the PBM. Policymakers should support patient choice and access by enacting laws to prohibit PBMs from requiring or steering patients to use mail-order pharmacies.

- **Any Willing Pharmacy** - Due to PBMs' network and contract barriers, pharmacies willing and ready to serve patients may be ineligible to provide important pharmacy services and patients may experience unnecessary delays and interruptions in patient care. Patients should have the choice and flexibility to utilize the pharmacy that best meets their healthcare needs. Policymakers should enact laws that require PBMs and plans to include any pharmacies in their networks if the pharmacy is willing to accept the terms and conditions established by the PBM to help maximize patient outcomes, and cost savings and ensure patient access to any willing pharmacy of their choice.
- **Enforce Laws to Stop PBM Manipulation and Protect Pharmacies and Patients**
 - **Audits** – PBMs routinely conduct audits to monitor a pharmacy's performance and reverse or claw back pharmacy payments when there are alleged issues with a particular pharmacy claim. PBM audits interrupt the pharmacy workflow, can extend wait times, and detract attention from the quality-of-care patients receive. Policymakers should enact laws that support fair pharmacy audit practices to ensure timely patient care delivery at community pharmacies and bring efficiency, transparency, and standardization to the PBM audit process.
 - **Oversight Authority** – There are growing concerns that pro-pharmacy and pro-patient legislative successes might be undercut if PBMs fail to comply with such laws and/or states fail to fully enforce these laws. Such failure could significantly impact pharmacy reimbursement and overall patient access. Policymakers should establish and enforce laws already on the books to regulate harmful PBM reimbursement practices that may harm patients and the healthcare system as we know it, especially at the pharmacy counter, and empower state regulators to do the same to enforce PBM transparency and fair and adequate pharmacy reimbursements.

Additionally, in late February, Optum Rx, the PBM affiliate of UnitedHealth Group, has indicated they will make payment for pharmacy claims in good faith given lacking system functionality resulting from the cyberattack incident. However, pharmacies have seen claim rejections from other health plans and PBMs who have not acknowledged these extreme and uncontrollable circumstances, worsening challenges for patients and pharmacies during this already difficult time. Based on feedback from our membership, pharmacies continued to see billing rejections after the incident (e.g., refill too soon, prior authorization required), demonstrating that some PBMs impacted were not acting in good faith to support patient access and claims processing during the incident, disregarding the lack of system functionality during the outage. In late March, Optum Rx committed *not* to audit pharmacy claims that were impacted in any way during the disruptions, as audits in this climate could lead to retroactive claw backs to pharmacy reimbursement. However, information related to audits from other health plans and PBMs impacted has been sparse. Therefore, NACDS urges:

NACDS Recommendation 4. Together with policymakers, HHS and CMS should work closely with all health plans and Pharmacy Benefit Managers (PBMs) impacted by the Change Healthcare disruption to strongly encourage PBMs to publish their intent to: act in good faith on claims affected by the current incident as an important means of preserving patient access to care; and not to audit on pharmacy and medical claims impacted by this cyberattack. Additionally, HHS and CMS should seek to ensure that impacted PBMs do not attempt to seek monetary compensation for their financial impact of this incident in the form of fees, reimbursement concessions, or any other form of financial adjustment imposed on pharmacies. In planning for future incidents, Congress and the Administration should work with CMS, other health plans, and PBMs to proactively establish policies that commit to a reasonable approach to claims review by 1) paying claims in good faith and 2) exempting claims from auditing during the impacted time period of such incidents. Additionally, CMS, health plans and PBMs should develop proactive guidance for pharmacies and other healthcare providers on billing a backlog of claims during periods of disruptions and such guidance should emphasize a reasonable approach to claims review, and ensure waiving of any existing penalties, extraneous requirements, or deadlines to reasonably support pharmacies' and other healthcare providers' delayed billing of claims when extreme and uncontrollable circumstances arise, like those observed during the Change Healthcare incident.

III. Data Transparency & Privacy

Since this incident was first reported, the severe lack of transparency on the full scope of the disruption has been extremely problematic, including lack of clarity on the estimated restoration timeline. Also, just 5 days after the incident was reported, a February 26 statement from UnitedHealth Group indicated that all pharmacies had implemented either modified electronic claims processing or offline workarounds to address this incident.² However, lacking data transparency prevented other entities from being able to cross-reference or confirm that data was accurate. Unsubstantiated representations of the situation may have stifled attention and action on the disruptions for pharmacies early in this incident.

In fact, the statement from UnitedHealth Group was in direct conflict with the impacts and disruptions being reported by the nation's pharmacies.³ Later reports from UnitedHealth Group indicated that 99% of pharmacy claims were flowing, however this data could not be substantiated by pharmacies. Also, consider that 6.7 billion prescriptions were filled by pharmacies in 2022.⁴ If 1% of those prescriptions were disrupted during a 2-month period, that equates to more than 11 million impacted prescriptions. Consider the millions of Americans who either may have faced challenges in accessing their medication or more than 11 million prescriptions that pharmacies dispensed at the financial risk of not being paid for their critical services, placing the nation's pharmacies in an even more untenable position as they simultaneously work to combat underwater reimbursement from market dominant PBMs and advocate for PBM reform. However, due to lacking data transparency on the issue, the full scope of the incident, including prescriptions impacted, remains unclear.

² <https://www.beckershospitalreview.com/cybersecurity/unitedhealth-says-most-pharmacies-have-effective-workarounds-amid-change-cyberattack.html>

³ <https://www.nacds.org/news/nacds-letter-to-hhs-cms-urges-immediate-action-to-preserve-americans-access-to-care-amid-disruption-caused-by-change-healthcare-cyberattack/>

⁴ <https://www.iqvia.com/insights/the-iqvia-institute/reports-and-publications/reports/the-use-of-medicines-in-the-us-2023#:~:text=Total%20prescriptions%20E2%80%94%20adjusted%20for%20prescription,from%206.1%20billion%20in%202018.>

Further, throughout the incident, NACDS has continued to urge for more information from UnitedHealth Group about how they will address any HIPAA breaches that result from this incident. Recent information from UnitedHealth Group indicates, “Based on initial targeted data sampling to date, the company has found files containing protected health information (PHI) or personally identifiable information (PII), which could cover a substantial proportion of people in America.”⁵ NACDS appreciates UnitedHealth Group’s commitment to provide appropriate notifications and to help ease reporting obligations on other stakeholders whose data may have been compromised as part of this cyberattack, as UnitedHealth Group has offered to make notifications and undertake related administrative requirements on behalf of any provider or customer.⁵ UnitedHealth Group, however, has stated that the notifications it is willing to make are not official breach notifications.⁵

NACDS Recommendation 5. NACDS strongly urges HHS and its Office for Civil Rights (OCR) to exercise enforcement discretion such that UnitedHealth Group is required to provide notification of any breaches that may have occurred, or will occur, as required under the HIPAA rules, rather than requiring every covered entity to provide HIPAA-required breach notifications. Because of the size and extent of the cyberattack, a single, coordinated reporting process is needed. Otherwise, millions of Americans could receive multiple reports of the same breach, which would cause more confusion, misunderstanding, and stress.

Conclusion

NACDS looks forward to partnering with policymakers, HHS, CMS, states, and other key stakeholders to support uninterrupted access to care for the American people during this immediate incident and to better prepare for future challenges. Underpinning the ability for pharmacies to continue serving Americans is the importance of implementing comprehensive PBM reform now. It is unacceptable that PBMs continue to profit at the expense of patients, pharmacists, and pharmacies, especially in a time of uncertainty and massive disruption in healthcare. We need to strengthen our defenses against future cyberattacks and pass PBM reform now to ensure affordable, high-quality, and uninterrupted access to healthcare for Americans.

We greatly appreciate the opportunity to inform timely action on this critically important issue. For questions or further discussion, please contact NACDS’ Sara Roszak, Senior Vice President, Health and Wellness Strategy and Policy at sroszak@nacds.org or 703-837-4251.

⁵ <https://www.unitedhealthgroup.com/newsroom/2024/2024-04-22-uhg-updates-on-change-healthcare-cyberattack.html>