Should Independent Drugstores Be More Accountable?
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Inquiries into Improper Medicare Billing, Drug Diversion, and Drug Shortage Activities Raise Serious Questions

Background

Recent Congressional hearings and government investigations have raised serious questions about opaque business practices and pricing strategies within the independent drugstore industry, which now generates $93 billion in annual sales from 23,000 stores nationwide and ranks among America’s most profitable small business sectors. At independent drugstores, the owner, cashier, and book keeper are often one and the same. However, recent reports note that independent drugstores are significantly more prone to improper behavior than other pharmacies.

Accordingly, policymakers are asking three basic questions:

- Why are independent drugstores eight times more likely than other pharmacies to submit questionable bills to Medicare?
- Are independent drugstores exploiting the drug shortage crisis?
- Why are independent drugstores fighting bipartisan efforts to reduce drug diversion?

Some suggest that independent drugstores may need more, not less, accountability. The question is whether policymakers will confront the problem or, take the opposite approach and pursue new policies that would make improper pharmacy practices even more difficult to detect.

The answer matters greatly to those who pay 2/3 the cost of prescription drugs: employers, unions, and the taxpayers who fund federal and state health programs.

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2 Based on net operating income for average independent pharmacy business in 2009 as reported by the National Community Pharmacists Association (NCPA).
4 Letter from Americans for Tax Reform (ATR) to the U.S. Representative Cathy McMorris Rodgers, April 24, 2012.
Why Independent Drugstores are More Susceptible to Problems

Recent reports have asserted that “independent pharmacies are more likely to engage in fraud and abuse than chain pharmacies.” Independent drugstores are primarily overseen by State Boards of Pharmacy (comprised of fellow pharmacists and pharmacy owners) and, unlike large chains, have few internal controls and little oversight. As with independent durable medical equipment (DME) suppliers, each sale at a local drugstore directly profits its owner, not a distant accounting office at national headquarters.

At independent drugstores, the owner, cashier, and book keeper are often one and the same. These factors make independent drugstores more susceptible to irregularities and make oversight more challenging.

Independent Drugstores: “Questionable Billing” in Medicare

A recent report by the Office of the Inspector General (OIG) of the Department of Health and Human Services finds that Medicare paid $5.6 billion to pharmacies with “questionable billing” practices. More than two-thousand were independent drugstores.

Specific findings directly from the OIG report include:

- Independent pharmacies were eight times more likely than other pharmacies to have questionable billing practices. “Although independent pharmacies made up 34 percent of all retail pharmacies that billed Part D, they accounted for 80 percent of the pharmacies with questionable billing. Of the 2,637 pharmacies with questionable billing, 2,120 were independent.”

- Almost 800 pharmacies billed extremely high dollar amounts per beneficiary; a smaller number billed for an extremely high number of prescriptions per beneficiary. “Although some of this billing may be legitimate, billing high dollar amounts per beneficiary or for a high number of prescriptions per beneficiary could mean that a pharmacy is billing for drugs that were not medically necessary or were never provided to the beneficiary.”

- Over 1,000 pharmacies billed for an extremely high percentage of Schedule II or III drugs, which have potential for addiction and abuse. “Schedule II and III drugs have a high risk for abuse. Although there may be valid reasons why some pharmacies bill for high percentages of Schedule II and III drugs, all of these pharmacies warrant further scrutiny. Billing for a high percentage of these drugs may indicate that a pharmacy is billing for medically unnecessary drugs, which may be used inappropriately or diverted and resold for a profit. Misuse of these drugs has serious human and financial costs.”

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5 Gebhart, op. cit.
7 Ibid.
8 Ibid.
9 Ibid.
• Over 400 pharmacies billed for an extremely high percentage of brand-name drugs, while a few pharmacies billed for an extremely high percentage of refills. “Billing for a high percentage of brand-name drugs may indicate that a pharmacy is billing for brand names but dispensing generics or is billing for prescriptions never dispensed.”

Independent Drugstores: Exploiting the Drug Shortage Crisis?

According to the Food and Drug Administration (FDA), drug shortages—particularly among drugs that treat cancer and other life-threatening diseases—have more than quadrupled between 2005 and 2011. Yet some independent drugstores purchase and hoard drugs in short supply in order to re-sell them later at a higher price. The drugs are sold to shadowy “gray market” buyers who in turn target desperate doctors, hospitals, and patients who will pay any price during shortages. Sixty-nine percent of the 300 drug distribution chains recently examined featured pharmacies “leaking” prescription drugs into this new “gray market.”

“Instead of dispensing the drugs in accordance with their professional duties, state laws, and the expectations of their trading partners, these pharmacies re-sold the drugs to gray market wholesalers. Some pharmacies sold their entire inventories into the gray market. The wholesalers in turn sold the drugs – usually at significant markups – to other gray market companies.”

According to a recent Congressional report, a growing number of hospitals and other providers are being forced to purchase medicines from “gray market” distributors at prices hundreds of times higher than those typically charged by primary wholesalers. Published reports have noted that “a lot of shortages are manufactured by dirty wholesalers who stockpile drugs to drive up prices… there’s no question there’s a lot of rapacious buying.”

Senator John D. Rockefeller (D-W.Va.), chairman of the Senate Commerce, Science and Transportation Committee, recently noted that, “some very unscrupulous people have figured out a way to make a quick buck at the expense of sick patients, hospitals and, in the end, our entire health care system.”

10 Department of Health and Human Services, op cit.
13 Ibid.
14 Ibid.
Recent examples show that the crisis is growing:

- A North Carolina pharmacy sold short-supply cancer drugs intended for those who live in long-term-care facilities into the “gray market.” It was later found that the pharmacy was not an acting pharmacy and had never dispensed drugs to the public since it opened.\textsuperscript{17}

- In Maryland, a pharmacy re-sold 100 percent of its inventory into the gray market through a distributor it also owned. This pharmacy is no longer operating.\textsuperscript{18}

- In California, more than 50 pharmacies were discovered to be acting as “purchasing agents for gray market companies.” These pharmacies were cited for “unlawfully selling short-supply prescription drugs.”\textsuperscript{19}

Highlighting the lack of oversight of independent drugstores, “fake pharmacies” have also been created to take advantage of the crisis. As noted in the Congressional report, “after obtaining these drugs, the ‘pharmacies’ typically did not dispense the drugs to patients pursuant to their pharmacy licenses, but instead sold them to wholesalers they also owned or in which they had interests.”\textsuperscript{20}

\section*{Independent Drugstores and Drug Diversion}

Both the U.S. House of Representatives and the U.S. Senate have held hearings on “drug diversion” in which narcotics are improperly dispensed, often at community drugstores, and re-sold in the black market for a higher price. Retail drugstores dispense more than 100 times more prescriptions with a high potential for abuse than do mail-service pharmacies, which dispense only 0.4\% of Schedule II drugs.\textsuperscript{21} According to Senator Joe Manchin (D-W.Va.) a bill that addressed this issue by putting new controls on hydrocodone was scuttled by “the financial interests of drugstores and related businesses.”\textsuperscript{22}

From 1997 to 2007, the use of prescription opioids more than quadrupled,\textsuperscript{23} while the Centers for Disease Control and Prevention (CDC) has declared prescription drug abuse a national epidemic, killing nearly as many people as car accidents. Drug diversion makes up a large part of the problem. Recently, more than 40 people were charged with reselling hundreds of millions of dollars’ worth of prescription drugs obtained by New York City Medicaid recipients to pharmacies nationwide.\textsuperscript{24}

\textsuperscript{17} Letter from Senator John D. Rockefeller IV, Chairman, Senate Committee on Commerce, Science, and Transportation; Senator Tom Harkin, Chairman, Senate Committee on Health, Education, Labor, and Pensions; Representative Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform to Ms. Jessica Hoppe, President and Owner, LTC Pharmacy, Inc., March 21, 2012.

\textsuperscript{18} Letter from Senator John D. Rockefeller IV, Chairman, Senate Committee on Commerce, Science, and Transportation; Senator Tom Harkin, Chairman, Senate Committee on Health, Education, Labor, and Pensions; Representative Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform to Ms. Marianna Pesti, Owner and President, Priority Healthcare LLC, Mr. Gabor Szilagyi, Manager, Priority Healthcare LLC and Owner, Tri-Med America LLC, March 21, 2012.

\textsuperscript{19} "Shining a Light on the ‘Gray Market’ An Examination of why Hospitals are Forced to Pay Exorbitant Prices for Prescription Drugs Facing Critical Shortages,” op. cit.

\textsuperscript{20} Ibid.

\textsuperscript{21} Visante, \textit{Pharmacy Distribution Channels for Narcotics and Other Controlled Substances}, March 2012.


\textsuperscript{24} Bray, Chad, “Widespread Drugs Fraud is Alleged,” \textit{The Wall Street Journal}, July 17, 2012.
In a recent large-scale fraud conviction of an independent pharmacy owner and four pharmacists he employed, the Drug Enforcement Agency said, “these individuals abused their positions of trust and endangered the lives of countless people by illegally distributing opiate painkillers.” The FBI added that “pharmacists and others who engage in criminal activity in order to enrich themselves financially will be held accountable for their illegal acts.”

The Victims: Employers, Unions, and Taxpayers

Financial irregularities at independent drugstores are of great concern to the employers, unions, and taxpayers who fund 2/3 the cost of prescription drugs. Unfortunately, many policymakers see “pharmacy issues” only through the lens of the seller—the drugstore—and not the purchaser.

This problem is compounded by the millions of dollars the independent drugstore lobby spends recruiting “protectors” from both parties on Capitol Hill and every state legislature in America. As they say, politics makes odd-bedfellows. For example, watchdog groups such as Citizens Against Government Waste and Americans for Tax Reform have highlighted certain conservative Republicans who routinely join forces with drugstore lobbyists and liberal Democrats on bills that raise health costs for employers and make it tougher to stop waste, fraud, and abuse. Though such proposals may benefit wealthy drugstore owners (often campaign donors), they hurt every other local business that pays more for prescription drug coverage.

Only time will tell if policymakers will resolve these problems, look the other way, or worse, promote new laws that make improper behavior at independent drugstores even harder to detect.

26 Ibid.
28 Letter from Americans for Tax Reform (ATR), op. cit.