



March 16, 2026

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

VIA ELECTRONIC COMMUNICATION

Re: Express Scripts: Docket No. 9437

Dear FTC Commissioners:

Aimed Alliance is a non-profit health policy organization that seeks to protect and enhance the rights of health care consumers and providers. Aimed Alliance is a unique advocacy organization that is staffed by a team of attorneys who use our understanding of the law to support patients, providers, and caregivers' access to care.

Aimed Alliance is writing to comment on the proposed settlement between the Federal Trade Commission and Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc., and Ascent Health Services LLC (hereinafter ESI et al.).

I. ESI Standard Offering

Aimed Alliance applauds the FTC for using its enforcement authority to regulate pharmacy benefit manager (PBM) practices that are harmful to consumers, caregivers, and providers, and that increase costs to the overall health care system.

Aimed Alliance specifically applauds the settlement provisions that require a standard plan offering that includes limiting member out-of-pocket costs to be no higher than the drug's net costs; prohibiting member out-of-pocket costs from being tied to the list price or any other benchmark higher than a drug's net cost; and providing full access to "ESI's programs that reduce out-of-pocket costs for members." Aimed Alliance supports these provisions because they ensure that consumers, who PBM practices have directly harmed, are direct beneficiaries of the settlement.

A. Clarify the FTC's Definition of "ESI Programs That Reduce Out-of-Pocket Costs for Members"

Aimed Alliance urges the FTC to clarify the "ESI programs that reduce out-of-pocket costs for members" that the settlement refers to.

For example, when patients cannot afford their medications, they may rely on financial assistance from pharmaceutical manufacturers and other third parties to meet their health plan's cost-sharing responsibilities and fill their prescriptions. The value of this financial assistance

typically counts toward the health plan’s deductible or maximum out-of-pocket limit, unless the health plan has implemented a copay accumulator program or copay maximizer. Under these programs, the value of financial assistance distributed by third parties is prohibited from counting toward the health plan’s deductible or maximum out-of-pocket limit.

These programs may force patients to switch or stop taking their treatment because they cannot afford their out-of-pocket costs once their financial assistance has been exhausted. In some cases, health plans implement copay accumulator and copay maximizer programs under the justification that these programs reduce out-of-pocket costs for consumers at the pharmacy counter. However, in actuality, as demonstrated by the graphic below from the *AIDS Institute 2023 Report*, these programs increase consumer annual out-of-pocket costs.

Scenario 1: Plan Without a Copay Accumulator Program

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Insurer collects
Copay Assistance	\$1,680	\$1,680	\$1,240	\$840	\$840	\$840	\$80	\$0	\$0	\$0	\$0	\$0	\$7,200	
Remaining Deductible	\$2,920	\$1,240	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$8,550
Patient Pays	\$0	\$0	\$0	\$0	\$0	\$0	\$760	\$590	\$0	\$0	\$0	\$0	\$1,350	

Scenario 2: Plan With a Copay Accumulator Program

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Insurer collects
Copay Assistance	\$1,680	\$1,680	\$1,680	\$1,680	\$480	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$7,200	
Remaining Deductible	\$4,600	\$4,600	\$4,600	\$4,600	\$3,400	\$1,720	\$40	\$0	\$0	\$0	\$0	\$0		\$15,160
Patient Pays	\$0	\$0	\$0	\$0	\$1,200	\$1,680	\$1,680	\$40	\$840	\$840	\$840	\$840	\$7,960	

Deductible is met
 Copay assistance limit is met
 Out-of-Pocket maximum is met

* The AIDS Institute, *Discriminatory Copay Policies Undermine Coverage for People with Chronic Illness, Copay Accumulator Adjustment Policies in 2023*, <https://theaidsinstitute.org/media/documents/TAI-Report-Copay-Accumulator-Adjustment-Programs-2023.pdf>.

Similarly, some health plans have partnered with third-party programs to steer patients to international pharmacies and patient assistance programs that provide prescription drugs to underinsured and uninsured consumers.¹ These third-party companies can be aggressive and require consumers to sign a power of attorney, and provide inaccurate information to patient assistance programs so the consumer appears uninsured or underinsured for program eligibility purposes.² While these programs may not appear harmful to consumers, one study has found that being required to work with third-party programs can delay access to care by nearly 70 days.³ Delays in accessing the appropriate treatment can result in disease regression, progression, and in some cases, irreparable harm to the consumer’s health.

As such, Aamed Alliance urges the FTC to ensure that ESI et al. cannot implement these programs that are detrimental to consumers as a means of “reducing out-of-pocket costs for members.” To ensure ESI et al. does not implement policies like these, Aamed Alliance urges the FTC to require the annual appointed monitor to provide opportunities for the public, including patients, providers, and caregivers, to report problems with ESI, et al. practices that increase consumer out-of-pocket costs and are inconsistent with the requirements and intent of this settlement.

B. Ensure Employers Are Aware of the Benefits of the “Standard Offering”

For many employers, identifying health insurance coverage arrangements that benefit employees while remaining affordable is challenging. Aamed Alliance applauds the proposed settlement requirements for a “standard offering” that prohibits spread pricing and rebate guarantees, as this can help ensure ESI et al. will provide employers with benefit options that are more affordable and not tied to prescription drug rebates, which can increase plan costs.

Far too often, employers have relied on rebate guarantees as a means of determining if a PBM offering was favorable. Importantly, a 2024 survey of employers found that two-thirds of employers had rebate guarantees, with these employers noting that rebate guarantees were a significant consideration when selecting a PBM.⁴ As such, this measure has historically been a significant marker for employers when making benefit decisions. However, under the proposed “standard offering,” rebate guarantees would be nonexistent; therefore, employers will need to identify a new marker to gauge plan savings, benefits, and costs. Aamed Alliance is concerned

¹ Aamed Alliance, *Alternative Funding Programs*, <https://aimedalliance.org/alternative-funding-programs/>.

² Cystic Fibrosis Foundation, *Coalition Concerns Alternative Funding Plans*, <https://www.cff.org/statements/2023-09/coalition-concerns-alternative-funding-plans>.

³ William B. Wong, et al., *A descriptive survey of patient experiences and access to specialty medicines with alternative funding programs*, 30 JOURNAL OF MANAGED CARE & SPECIALTY PHARMACY (Oct. 29, 2024), <https://www.jmcp.org/doi/full/10.18553/jmcp.2024.30.11.1308>.

⁴ Rochelle Henderson, et al., *Prescription Rebate Guarantees: Employer Insights*, <https://www.ajmc.com/view/prescription-rebate-guarantees-employer-insights>.

that without proper education on the benefits, savings, and costs of the “standard offering,” employers may not see the standard offering as beneficial and opt for more typical PBM plans that guarantee rebates.

Therefore, to address this educational gap, Aired Alliance urges the FTC to require ESI et al. to develop educational materials for the public that explain the benefits of the “standard offering” plan in plain language. Educational materials that distinguish the benefits of the “standard offering” plan will ensure employers have a clearer understanding of how to measure the affordability of the “standard offering” in comparison to more traditional PBM offers. Ultimately, Aired Alliance believes this will allow employers to make more informed decisions when selecting a PBM.

II. Onshore PBM Rebate Aggregators

Under the proposed settlement, ESI et al. would be required to reshore its group purchasing organization from Switzerland to the United States. Aired Alliance applauds this requirement as PBMs often use international affiliate companies to filter rebates, ultimately reducing the total pass-through amount received by employers.⁵ As such, confirming all affiliate companies working with ESI et al. are within the U.S. legal jurisdiction is important to ensure that the rebate pass-through requirements proposed in this settlement are enforceable and unavoidable.

III. Conclusion

In conclusion, Aired Alliance applauds the FTC’s work to regulate PBM practices that are harmful to consumers, caregivers, and providers, and urges the FTC to swiftly finalize this proposed settlement.

Sincerely,

Ashira Vantrees, Esq.
Director of Legal Strategy & Advocacy

⁵ Aired Alliance, *International Reference Pricing: Lessons Learned from Abroad*, <https://aimedalliance.org/wp-content/uploads/2026/02/Aimed-Alliance-MFN-WhitePaper-Feb2026.pdf>.