



Before the Federal Trade Commission

**Response to Request for Comment
Express Scripts; Docket No. 9437**

**Written Comment from the American Economic Liberties Project and T1International Re:
Express Scripts, Inc., et al.; Analysis of Agreement Containing Consent Order To Aid
Public Comment**

March 16, 2026

Introduction & Summary

The American Economic Liberties Project (AELP)¹ and T1International² submits this comment regarding the proposed 10-year consent agreement between the Federal Trade Commission (FTC) and Express Scripts³ to settle alleged violations of federal law prohibiting unfair methods of competition.⁴ Although the proposed agreement includes positive terms that build upon aspects of the relief requested in the original complaint⁵ and the pharmacy benefit manager (PBM) reforms recently enacted by Congress,⁶ it has limitations regarding prescription drug affordability and raises questions about enforceability. This comment addresses these concerns.

¹ AELP is a nonpartisan, nonprofit research and advocacy organization dedicated to understanding and addressing the problem of concentrated economic power in the United States.

² T1International is a nonprofit led by people with and impacted by diabetes for people with diabetes fighting for global healthcare equity.

³ “Express Scripts, Inc., et al.; Analysis of Agreement Containing Consent Order To Aid Public Comment,” Federal Trade Commission, Feb. 12, 2026, <https://www.federalregister.gov/documents/2026/02/12/2026-02844/express-scripts-inc-et-al-analysis-of-agreement-containing-consent-order-to-aid-public-comment>.

⁴ “FTC Sues Prescription Drug Middlemen for Artificially Inflating Insulin Drug Prices,” Federal Trade Commission, Sept. 20, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-sues-prescription-drug-middlemen-artificially-inflating-insulin-drug-prices>.

⁵ Complaint, *In the Matter of Caremark Rx, LLC, et al.*, Docket No. 9437, Federal Trade Commission, Nov. 26, 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/612314.2024.11.26_part_3_administrative_complaint_-_revised_public_redacted_version.pdf.

⁶ “H.R.7148 - Consolidated Appropriations Act, 2026,” Library of Congress, accessed Feb. 23, 2026, <https://www.congress.gov/bill/119th-congress/house-bill/7148>.

It also urges the FTC to strengthen the agreement before finalization and to continue investigating Express Scripts' conduct beyond insulin.

The Proposed Agreement's Benefits, Limitations, and Open Questions

Under the proposed agreement, Express Scripts has agreed to:

- *Stop favoring higher list-price drugs over identical lower-cost alternatives on its standard formulary.* This term would expand coverage of lower-cost alternatives across drug types (not just insulin, which was the focus of the original complaint) and markets, including commercial plans. It may also induce manufacturers to offer lower-cost alternatives where none exist. However, it would not apply to all formularies, many of which are customized by plan sponsors,⁷ limiting its impact.
- *Extend a monthly out-of-pocket insulin co-pay cap to all plan members when a sponsor adopts a formulary that includes an eligible insulin product.* This term would lower certain members' insulin costs if they do not use other existing insulin manufacturer-sponsored co-pay programs. However, it would not apply to all insulin products, allows sponsors to opt out of this benefit, and does not mandate the \$25 price for the co-pay cap, which could be changed at any time.
- *Provide and promote a standard offering that bases members' out-of-pocket costs on net drug prices rather than list prices, transitions away from rebates and spread pricing, requires disclosure of certain information to sponsors, fairly reimburses retail community pharmacies, and doesn't exclude willing retail community pharmacies from its network.* These terms require Express Scripts to pass through savings to plan members at the point of sale, which the FTC claims will contribute to \$7 billion in patient out-of-pocket cost savings over 10 years;⁸ bolster small, independent pharmacies by ensuring they are reimbursed in line with their costs and not excluded from networks, both of which are essential to their financial viability; and apply to all markets. However, the FTC's savings claims are unsubstantiated, and the stock price for Express Scripts' parent company, Cigna Group, increased immediately after the FTC announced the proposed agreement, signaling that Wall Street does not see it as meaningfully affecting Express Scripts' business model, which is a prerequisite for lowering Americans' drug costs.⁹ These terms also exclude non-standard offerings and medium- to large pharmacy chains, which are likewise harmed by Express Scripts.¹⁰ The vague language raises questions

⁷ "White Paper: Formulary Development at Express Scripts," Express Scripts, accessed Feb. 23, 2026, <https://www.express-scripts.com/aboutus/formularyinformation/development/formularyDevelopment.pdf>.

⁸ "FTC Secures Landmark Settlement with Express Scripts to Lower Drug Costs for American Patients," Federal Trade Commission, Feb. 4, 2026, <https://www.ftc.gov/news-events/news/press-releases/2026/02/ftc-secures-landmark-settlement-express-scripts-lower-drug-costs-american-patients>.

⁹ "The Cigna Group (CI)," *Yahoo! Finance*, accessed Feb. 23, 2025, <https://finance.yahoo.com/quote/CI/>.

¹⁰ Complaint, *The People of the State of Michigan v. Express Scripts, Inc., et al*, Case 2:25-cv-11215-JJCG-KGA, U.S. District Court Eastern District of Michigan Southern Division, April 28, 2025, <https://www.naag.org/wp-content/uploads/2025/05/Express-Scripts-Complaint.pdf>; Matt Stoller, "The Real Reason Walgreens Collapsed," *BIG*, March 13, 2025, <https://www.thebignewsletter.com/p/the-real-reason-walgreens-collapsed>.

about whether the reimbursement requirements – based on acquisition cost plus an unspecified dispensing fee – will be sufficient.

- *Include direct-to-consumer pricing through TrumpRx as a covered benefit.* This term needlessly loops in TrumpRx, a constellation of unenforceable deals between the current administration and Big Pharma manufacturers that hinge on promised relief from tariffs that the Supreme Court has since invalidated.¹¹ These deals also circumvent meaningful PBM reform and stand to enrich Donald Trump Jr.¹² Beyond this settlement, direct-to-consumer pricing through TrumpRx is only available to cash-pay patients who are either uninsured or choosing not to use their insurance benefits.¹³ Such purchases also do not count toward insured patients’ cost-sharing requirements.¹⁴ Patients who use TrumpRx could needlessly pay more than they would using their insurance or other discount cards and websites.
- *Reshore Express Scripts’ middleman, Ascent, from Switzerland to the United States.* This term relocates Ascent, a PBM group purchasing organization (GPO), and may facilitate federal oversight, including the FTC’s and Congress’s ongoing investigations into the company.¹⁵

Recommendations

AELP urges the FTC to strengthen these terms before finalizing the agreement. Specifically, the FTC should ensure the terms:

- Apply to all formularies, offerings, insulin products (in the case of the monthly out-of-pocket co-pay cap), and pharmacies (in the case of reimbursement requirements), without the option for health plan sponsors to opt out. The prayer for relief in the FTC’s original complaint included blanket prohibitions against misconduct, including favoring higher list-price drugs and basing out-of-pocket costs on list prices. So, the settlement should at

¹¹ Amanda Chu, “RFK Jr.’s days of going wild on health may be over,” *Politico*, updated Feb. 22, 2026, <https://www.politico.com/news/2026/02/21/rfk-midterms-maha-pesticides-vaccines-food-00792018>; Slip Opinion, *Learning Resources, Inc., et al., v. Trump, President of the United States, et al.*, No. 24-1287, Supreme Court of the United States, Feb. 20, 2026, https://www.supremecourt.gov/opinions/25pdf/24-1287_4gcj.pdf.

¹² Annie Linskey and Josh Dawsey, “Trump Wants to Overhaul Drug Sales. A Company Tied to His Son Stands to Benefit.” *The Wall Street Journal*, Oct. 7, 2025, <https://www.wsj.com/health/pharma/trumprx-drug-companies-blinkrx-2b6e1761?>

¹³ John Wilkerson et al., “TrumpRx claims to offer the lowest prices. But many drugs have cheaper generics,” *Stat*, Feb. 6, 2026, <https://www.statnews.com/2026/02/06/trumprx-discount-drug-website-undercut-by-cheaper-generics/>; Rebecca Robbins, “How to Tell if You Will Save Money Using TrumpRx,” *The New York Times*, Feb. 6, 2026, <https://www.nytimes.com/2026/02/06/health/trumprx-prescription-drug-prices-consumers.html>.

¹⁴ See above.

¹⁵ “FTC Deepens Inquiry into Prescription Drug Middlemen,” Federal Trade Commission, May 17, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-deepens-inquiry-prescription-drug-middlemen>; “Chairman Comers Expands PBM Investigation, Seeks Information About Foreign Headquartered Group Purchasing Organizations,” U.S. House Committee on Oversight and Government Reform, Aug. 28, 2025, <https://oversight.house.gov/wp-content/uploads/2025/08/Ascent-Health-Services-Letter.pdf>.

least match that scope. The monthly out-of-pocket copay should also have a named dollar amount so that ESI cannot raise the price from the promised \$25.

- Require disclosures (including those on costs, broker fees, and manufacturer rebates) to be reported to the FTC or a state regulator in addition to plan sponsors.
- Ensure pharmacy reimbursement requirements are in line with pharmacies' actual costs, including the \$10 to \$15 dispensing fee per prescription recommended by publicly audited cost-of-dispensing surveys, and clarify related enforcement methods.¹⁶ Otherwise, Express Scripts may establish a dispensing fee that results in an overall cut to pharmacies' reimbursement.
- Exclude TrumpRx. If TrumpRx is included, other discount cards and websites should also be included.
- Apply to all subsidiaries, including Ascent, particularly in the case of pass-through and disclosure requirements. More aggressively, the FTC should update the settlement to dissolve Ascent, which reportedly accounts for only 88 jobs and exists solely to circumvent PBM legislative and regulatory reform efforts.¹⁷

The FTC should also continue investigating Express Scripts, given evidence that the PBM's allegedly illegal rebating scheme extends beyond insulin, including to treatments of autoimmune diseases and other inflammatory conditions, as laid out in the FTC's original complaint.¹⁸ Other focus areas include Express Scripts' pharmacy reimbursement and patient steering practices, both of which have potentially negative implications for unaffiliated pharmacies and consumers, and its various subsidiaries, including Ascent, the offshore private drug labeler Quallent Pharmaceuticals, and the recently acquired specialty pharmacy services provider CarepathRx, all of which provide alternative revenue streams to manufacturer rebates, which face increasing scrutiny from policymakers.¹⁹

Finally, the FTC should use its authority to make legislative recommendations to Congress by supporting the structural separation of PBMs from pharmacies and prohibiting PBMs' anticompetitive business practices.

Conclusion

¹⁶ "Cost of Dispensing Survey," North Carolina Division of Health Benefits, Oct. 14, 2025, <https://medicaid.ncdhhs.gov/blog/2025/10/14/cost-dispensing-survey>.

¹⁷ Laura Wadsten and Nathaniel Horwitz, "'Bullshit' – The New Way Health Giants Hide Billions," Hunterbrook, Jan. 6, 2026 <https://hntbrk.com/pbmgpo/>; "Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies," Federal Trade Commission, July 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/pharmacy-benefit-managers-staff-report.pdf.

¹⁸ See 5.

¹⁹ See "Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies" at 16; Bob Herman, "Cigna, extending reach into prescription drugs, acquires major pharmacy used by hospitals," *Stat*, Feb. 26, 2026, <https://www.statnews.com/2026/02/26/cigna-carepathrx-acquisition-vertical-integration/>.

Despite its positive terms, the proposed agreement ultimately spares Express Scripts a costly trial that would have exposed its business practices more broadly and could have provided more lasting accountability. Given these limitations and the scope of the original complaint, the FTC should heed these recommendations in this – and any other settlements with CVS Caremark and Optum Rx – related to the original complaint, which, in concert with vigorous investigation and additional legislative reforms,²⁰ will achieve the agency’s stated goal: “fundamental changes” to Express Scripts’ business model that will lower patients’ costs and ensure the financial viability of community pharmacies.²¹

²⁰ “FTC Settlement with Express Scripts Is a Mixed Bag, Congress Still Must Act,” American Economic Liberties Project, Feb. 5, 2026, <https://www.economicliberties.us/press-release/ftc-settlement-with-express-scripts-is-a-mixed-bag-congress-still-must-act/>.

²¹ See 8.