

October 24, 2022

Lieutenant General Ronald J. Place
Director, Defense Health Agency
7700 Arlington Boulevard
Suite 5101
Falls Church, VA 22042-5101

Lieutenant General Place,

Thank you for speaking with me earlier this week. I write today regarding the Defense Health Agency's (DHA) recently updated Tricare Pharmacy Program contract, TPharm5, with Express Scripts Inc. (ESI). TPharm5, by means of a DHA waiver, is unprecedentedly able to begin today, October 24, 2022, though all Tricare pharmacy contracts traditionally begin at the start of each calendar year.

Based on evidence my office has provided you regarding a blatant lack of communication between ESI and hundreds of independent pharmacies about the ability to participate in the TPharm5 contract, I call on you to revoke the waiver that allows ESI to begin implementing TPharm5 early, beginning today. I also call on you to edit terms of DHA's contract with ESI to include additional and substantial oversight authority for DHA to more thoroughly ensure that ESI is in full compliance with the DHA contract.

As you know, several Oklahoma pharmacies were cut from the Tricare pharmacy network with no notice, communication, or ability to negotiate after decades of faithful service to Tricare beneficiaries. Independent pharmacies being largely removed from this federal contract only reinforces a bias toward urban communities and away from family-owned small business, particularly those in rural America.

While access certainly remains a concern of mine, I also want to ensure that the DHA has proper oversight measures in place to maintain accountability with DHA contractors. The way in which federal Tricare benefits are dispensed should represent the most efficient balance of access and fiscal responsibility. DHA should not relinquish all Tricare responsibilities to a contractor. In order to appropriately exercise full oversight authority, DHA must remain very engaged with Tricare beneficiaries, health care facilities treating Tricare beneficiaries, and Tricare pharmacies.

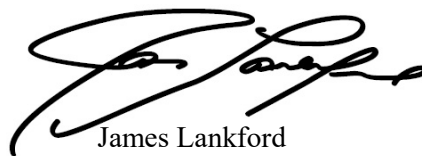
Further, I request that you please answer the below questions by October 31st, 2022.

1. Will you remove the October 24th date set by ESI and extend the current contract until the start of 2023?
2. Did DHA engage with any independent pharmacies in the drafting of the TPharm5 contract?
3. I understand that DHA has issued ESI a waiver to allow ESI to be deemed in compliance with the current (TPharm4) contract with Tricare even after the October 24th deadline, when ESI is removing thousands of pharmacies from the network between Oct. 24 and the end of 2022.
 - a. Is there precedent for a waiver such as this one?
 - b. What were all of the determining factors that lead to this decision?
4. ESI has data on several pharmacies that were part of the Tricare network, but have yet to fill a Tricare prescription. Are you aware if utilization was a factor in determining which pharmacies remained in-network? If so, how much of the decision to cut a pharmacy was based on previous utilization? What other factors determined which pharmacies were cut from the current network?

5. ESI has claimed that every currently in-network pharmacy received outreach from them, giving all pharmacies the opportunity to respond. However, I have heard from several pharmacies who did not receive any communication from ESI, even those who have a direct contract with ESI and do not rely on a pharmacy services administrative organization (PSAO) for their Tricare contract. Are there any terms of the Tricare pharmacy contract that require sufficient communication with pharmacies from ESI?
 - a. If so, what are those specific requirements? How is DHA ensuring that ESI is in compliance with those standards?
 - b. If not, why? Can such requirements be added?
 - c. Has DHA seen an example of an ESI fax sent to an independent pharmacy?
6. Are there significant discrepancies between dispensing fees ESI gives to pharmacies owned by ESI and independently owned pharmacies?
7. You have the authority to take directed contracting action to ensure adequate patient access is met. Will you use this authority?
 - a. If so, would you consider the below changes?
 - i. Change the “access” requirements to a 10 minute driving time to the nearest in-network pharmacy for 95% of beneficiaries.
 - ii. Only release pharmacies that have not dispensed a Tricare prescription in the past year.
 - iii. Require the coverage of pharmacies who are the sole contractor for facilities treating Tricare recipients, such as long-term care facilities.
 - iv. Require that independent pharmacies in the Tricare network receive both the same reimbursement rates and the same dispensing fee level of other pharmacies in the Tricare network.
8. How does the DHA define “network adequacy” regarding the term of the Tricare contract that requires 90% of Tricare beneficiaries to be within a 15-minute driving distance from the nearest in-network pharmacy. 90% of the entire country may look different than 90% of each region/state; 90% of the country could mean 100% of Californians, but 70% of Oklahomans.
9. Can you share the specifics of the savings that the new TPharm5 contract is creating for the DOD?
10. How is the DOD working to ensure that the Tricare Pharmacy Program contract is not being written so that ESI is the only company that would be able to fulfill the requirements of the contract and therefore root out competition?
11. Have you considered the impacts of decreased access to influenza and COVID vaccines after cutting valuable and capable community pharmacies from the Tricare network?

I strongly urge you to revoke the DHA waiver that allows ESI to begin implementing a new contract today and I implore you to make every effort to ensure proper contractual oversight. I appreciate your attention to this very important issue, and I look forward to hearing back from you soon.

In God We Trust,



James Lankford
United States Senator