



PREDATORY PRACTICES

Survey Says Middlemen Destroying
Delaware's Independent Pharmacies

A Special Report By
State Auditor Kathleen McGuiness



August 2021



State of Delaware
Office of Auditor of Accounts
Kathleen K. McGuiness, RPh, CFE
Delaware State Auditor



Dear fellow Delawareans,

In June, prior to the release of my report of how the Lack of Transparency & Accountability in Drug Pricing Could be Costing Taxpayers Millions, I surveyed several of Delaware's independent community pharmacy owners to provide anonymous feedback about the impact that pharmacy benefit managers, or PBMs, are having on the financial well-being of their businesses.

The survey used some questions from the 2019 National Community Pharmacists Association survey on the national Health of the Independent Pharmacy, and additional questions were developed to get a more focused view on issues directly affecting Delaware's independent pharmacies.

To help address the controversy that surrounds the ways PBMs generate revenue, my survey was designed to give a voice to the owners of small independent Delaware pharmacies on issues about the transparency and accountability of PBMs operating in the First State. My published report used only a small portion of the survey results, and I felt that not releasing the full survey results would be a disservice to the knowledge and experience of the owners who took the time to provide responses.

The results revealed the pressures being placed on Delaware's independent pharmacies to close shop and place Delawareans' healthcare in the hands of large retail establishments. The core competency of the independent pharmacy is the personalized services and products built around patients' individual needs, and the closure of many of Delaware's independent pharmacies is a real possibility, according to survey respondents. Such closure could complicate medication administration, as patients' ability to inquire about taking medications safely diminishes, and may also increase the requirements for patients to travel longer distances to fill prescriptions or convert to using mail-order services.

It is my hope that legislators will take the time to listen to the concerns of the independent pharmacy owners and act where appropriate to ensure an equal chance to succeed is not subverted by the practices of these PBMs.

Thank you for the opportunity to serve you.

Sincerely,

Kathy McGuiness, RPh, CFE
Delaware State Auditor

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GLOSSARY

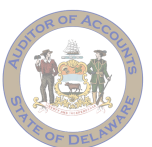
Claims Audit: A process that assesses all available claims and eligibility data using electronic testing techniques for transactions processed by the pharmacy with claimed reimbursement from an insurance plan that is managed by the PBM. Individual claims are pinpointed for further investigation according to patterns identified through electronic testing.

Direct and Indirect Remuneration (DIR) Fees: A broad term encompassing various charges made by a pharmacy benefit manager to the pharmacy outside administrative fees at the point of sale.

National Community Pharmacists Association (NCPA): The National Community Pharmacists Association was founded in 1898 as a recognized body representing pharmacies nationwide.

Pharmacy Benefit Manager (PBM): A pharmacy benefit manager is a third-party administrator of prescription drug programs and otherwise known as the “middleman.”

Wholesaler: A company that typically sells goods to retailers in bulk at low prices.



SURVEY LESSONS LEARNED:

Direct and Indirect Remuneration (DIR) fees are increasing at an exponential rate and are imposed on community pharmacies after the point of sale. These fees, which reduce or eliminate the pharmacy's profit on a prescription transaction, are financially ravaging Delaware's independent pharmacies.

Delaware's independent pharmacies report being squeezed by pharmacy benefit managers by means of being forced to accept lower reimbursements, exclusionary formularies, and preferred pharmacies. By restricting more and more patients to mail order only pharmacies, PBMs are limiting access to medications for members.

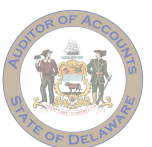
Delaware's independent pharmacies suffer from similar problems noted in the 2019 National Community Pharmacists Association (NCPA) survey, which observed that greater oversight is needed "over the PBM corporations that contract with the state to manage prescription drug benefits for its Medicaid program and state employees."¹

BACKGROUND:

Prior to the release of the Delaware State Auditor's report on how the Lack of Transparency & Accountability in Drug Pricing Could be Costing Taxpayers Millions, our office conducted a survey of Delaware's independent pharmacies. The responses we received were overwhelming with the condemnation of predatory pharmacy benefit manager (PBM) practices, and how these practices are destroying the small businesses. Ten of our survey respondents were owners of independent pharmacies.

For this report, we include only the information provided by the survey target population (owners of independent pharmacies). This survey was developed, with a few modifications, from questions contained in a survey that was conducted between October 4-14, 2019, by NCPA. Where applicable, the NCPA survey results are found alongside Delaware's. Our 14-question survey provided in this report includes visualizations along with our analyses of the response data.

[1] National Community Pharmacists Association. (2019). NCPA SURVEY: Health of Independent Pharmacy. Accessed on: 7/6/2021. <http://www.ncpa.co/pdf/survey-health-cp.pdf>



1. WHAT IS YOUR AFFILIATION WITH AN INDEPENDENT PHARMACY IN THE STATE OF DELAWARE?

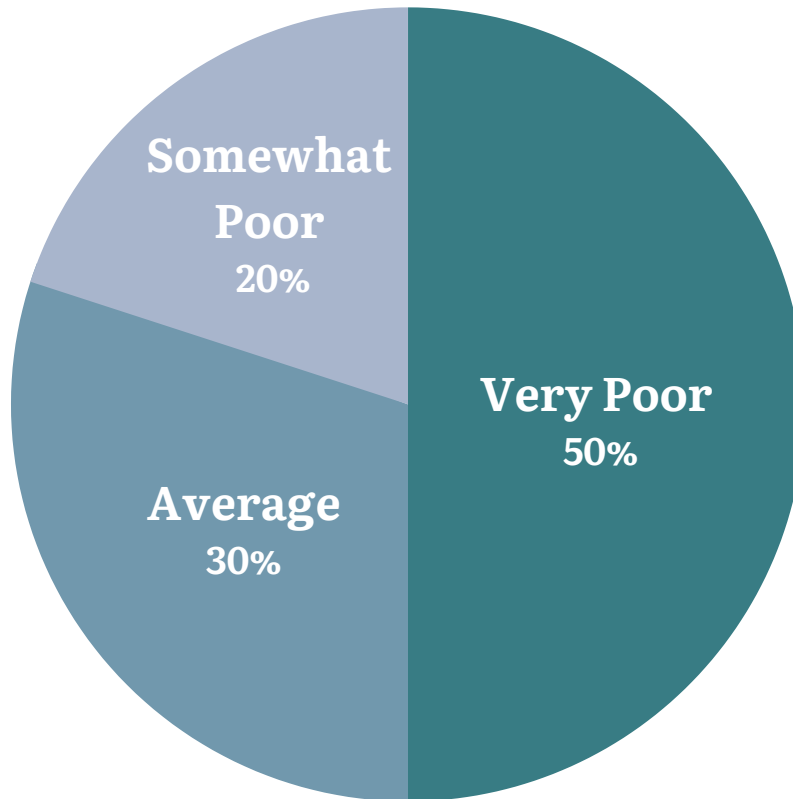


Value	Percent	Count
Owner	84%	10
Operator	0%	0
Manager	0%	0
Supervisor	0%	0
Employee	8%	1
Non- Affiliated	8%	1
Other	0%	0
Totals		12

Responses: Ten respondents were part of our target population of independent pharmacy owners. We included only the responses from our target population in the remaining poll questions. In no way does this choice reflect on the knowledge and experience of the two respondents who are not part of the population targeted in this survey.



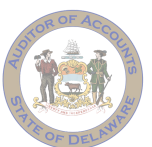
2. HOW WOULD YOU RATE THE OVERALL FINANCIAL HEALTH OF YOUR BUSINESS?



Value	Delaware		NCPA Survey ²	
	Percent	Count	Percent	Count
Very Good	0%	0	2.3%	15
Somewhat Good	0%	0	11.2%	72
Average	30%	3	28.0%	180
Somewhat Poor	20%	2	41.7%	268
Very Poor	50%	5	16.8%	108
Totals		10		643

Takeaway: 70% of respondents perceive that the overall financial health of their independent pharmacy is poor. Delaware's results are worse than the NCPA survey in that the independent pharmacist is more likely to rate the overall health of the business as somewhat or very poor. The closure of independent pharmacies could complicate medication administration as patients lose the ability to inquire about taking medications safely and may require patients to travel long distances to fill prescriptions or use mail-order services, which would eliminate the core benefit of independent pharmacies' personal counseling service.

[2] National Community Pharmacists Association. (2019). NCPA SURVEY: Health of Independent Pharmacy. Accessed on: 7/6/2021. <http://www.ncpa.co/pdf/survey-health-cp.pdf>.



3. TELL US HOW MUCH THE FOLLOWING ISSUES IMPACT YOUR BUSINESS BY RATING EACH FROM LOWEST TO HIGHEST?

Top 3 Impacts to Independent Pharmacies



DIR Fees



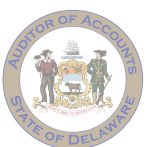
Lack of transparency & accountability



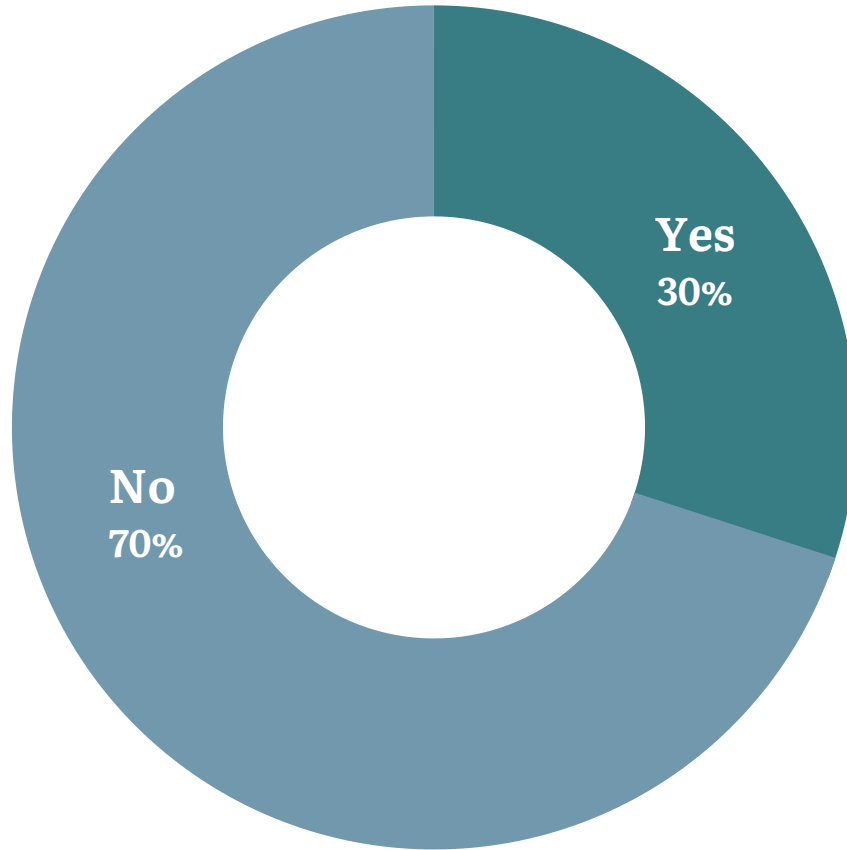
Decreasing reimbursement

	SCALE										
	0-No Impact	1	2	3	4	5	6	7	8	9	10-Very High Impact
DIR Fees	0	0	0	0	0	0	0	0	0	0	10
Decreasing reimbursement not related to DIR Fees	0	0	0	0	0	0	0	1	0	1	8
Growing competition	0	0	0	2	1	1	0	3	0	1	2
Coordination of services in integrated healthcare	0	0	0	1	1	3	0	2	1	2	0
Changing PBM rules	0	0	0	0	0	0	0	1	1	0	8
Lack of state regulation requiring transparency and accountability for PBMs	0	0	0	0	0	0	0	0	1	0	9

Takeaway: Our results revealed that growing competition and coordination of services had the least impact on independent pharmacies. Conversely, Direct and Indirect Remuneration (DIR) fees, decreasing reimbursements, and a lack of state regulated transparency and accountability have a very high impact on Delaware’s independent pharmacies.



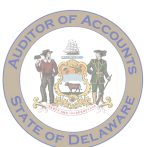
4. HAVE YOU RECENTLY BEEN OUTSIDE OF TERMS WITH YOUR WHOLESALER (BEHIND ON YOUR WHOLESALER PAYMENT) THIS YEAR?



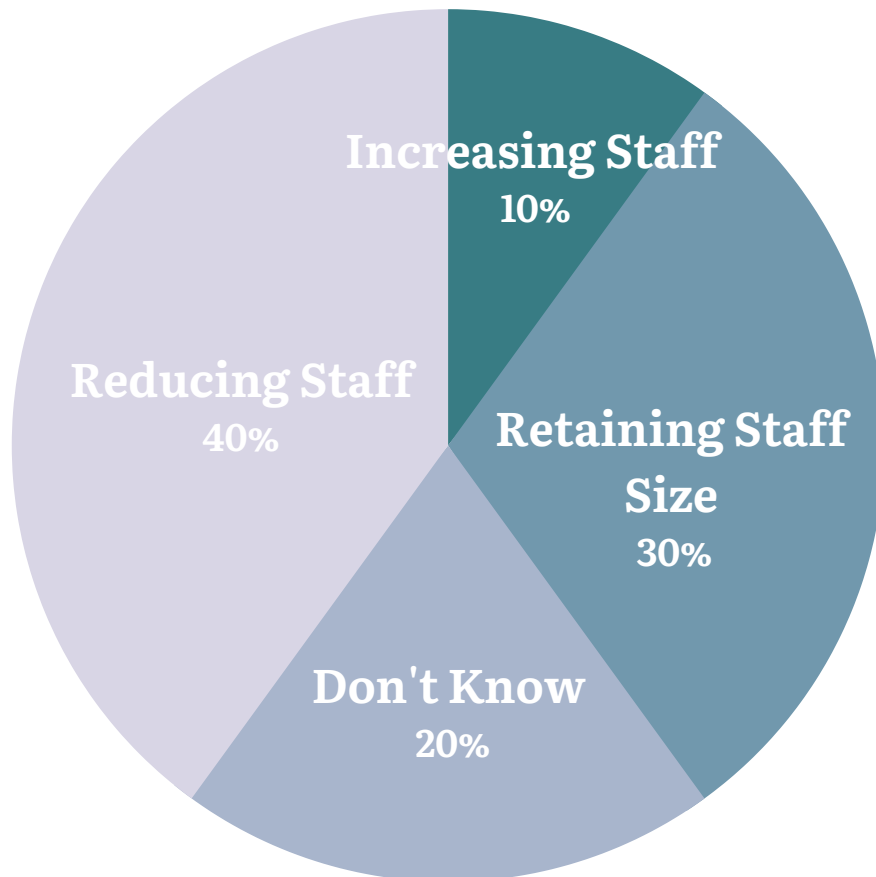
Value	Delaware		NCPA Survey ³	
	Percent	Count	Percent	Count
Yes	30%	3	31.8%	204
No	70%	7	68.2%	437
Totals		10		641

Takeaway: 30% of Delaware’s respondents have recently fallen out of terms with their wholesaler. Falling out of terms can lead to late fees charged to the business and elevated cost of goods. It also increases the business' credit risk, which in turn can be penalized with a higher cost of borrowing.

[3] National Community Pharmacists Association. (2019). NCPA SURVEY: Health of Independent Pharmacy. Accessed on: 7/6/2021. <http://www.ncpa.co/pdf/survey-health-cp.pdf>.



5. IN THE NEXT YEAR, DO YOU ANTICIPATE.....?

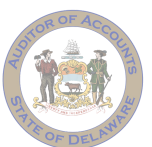


Value	Delaware		NCPA Survey ⁴	
	Percent	Count	Percent	Count
Increasing Staff	10%	1	5.4%	35
Retaining Staff Size	30%	3	30.6%	197
Reducing Staff	40%	4	47.7%	307
Don't Know	20%	2	16.2%	104
	Totals	10		643

Takeaway: Forty percent of respondents intend on reducing staff levels over the next year. According to the NCPA, “Independent pharmacies provide a variety of niche services, often unavailable otherwise, to meet specific health needs.”⁵ Staff reductions may affect these niche service offered by community independent pharmacies with the detrimental impact on health and performance outcomes.

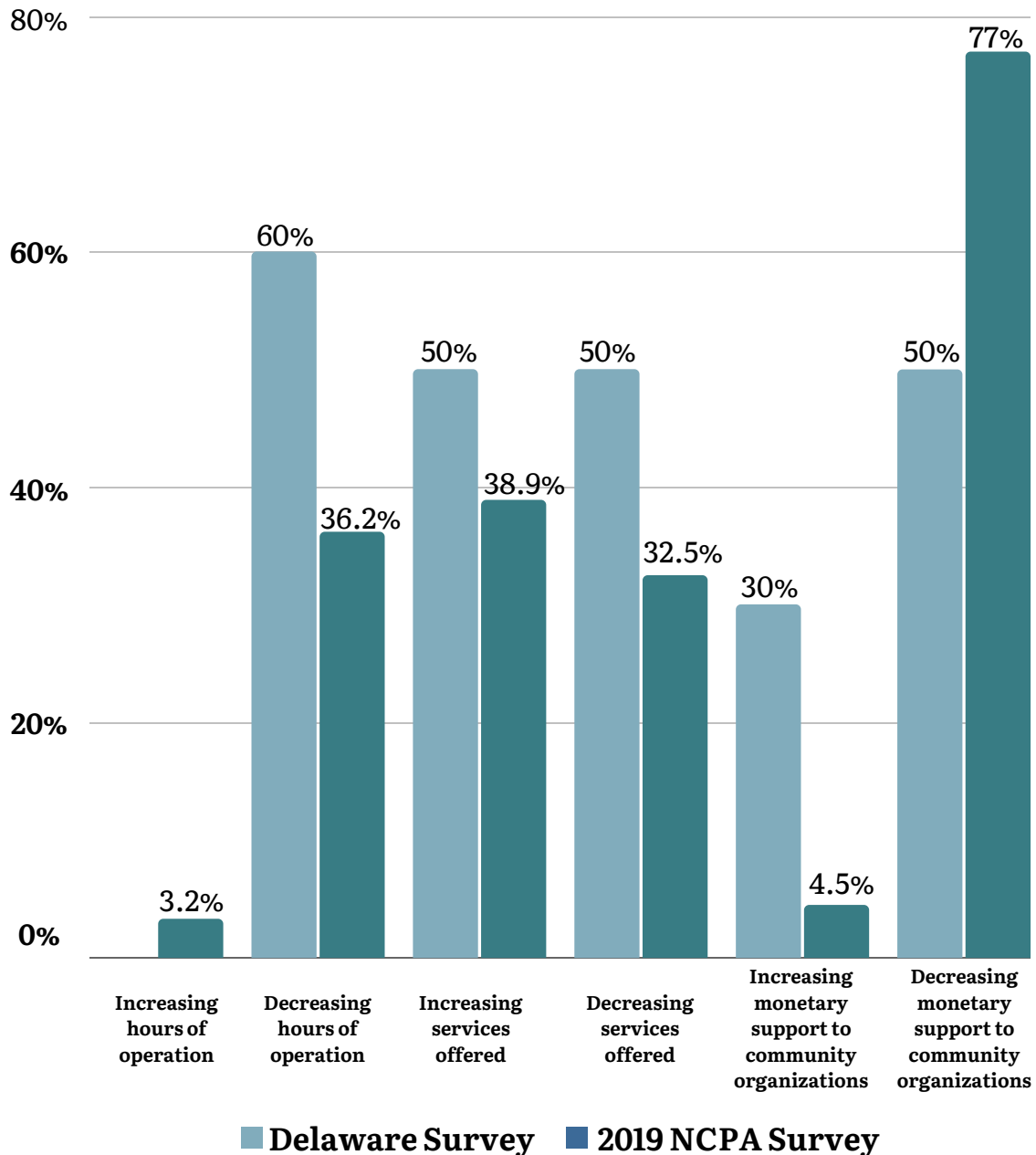
[4] National Community Pharmacists Association. (2019). NCPA SURVEY: Health of Independent Pharmacy. Accessed on: 7/6/2021. <http://www.ncpa.co/pdf/survey-health-cp.pdf>.

[5] National Community Pharmacists Association. (2021). Independent Pharmacy Today. Accessed on: 7/7/2021. <https://ncpa.org/independent-pharmacy-today>



6. IN THE NEXT YEAR, DO YOU ANTICIPATE.....? (PICK ALL THAT APPLY)

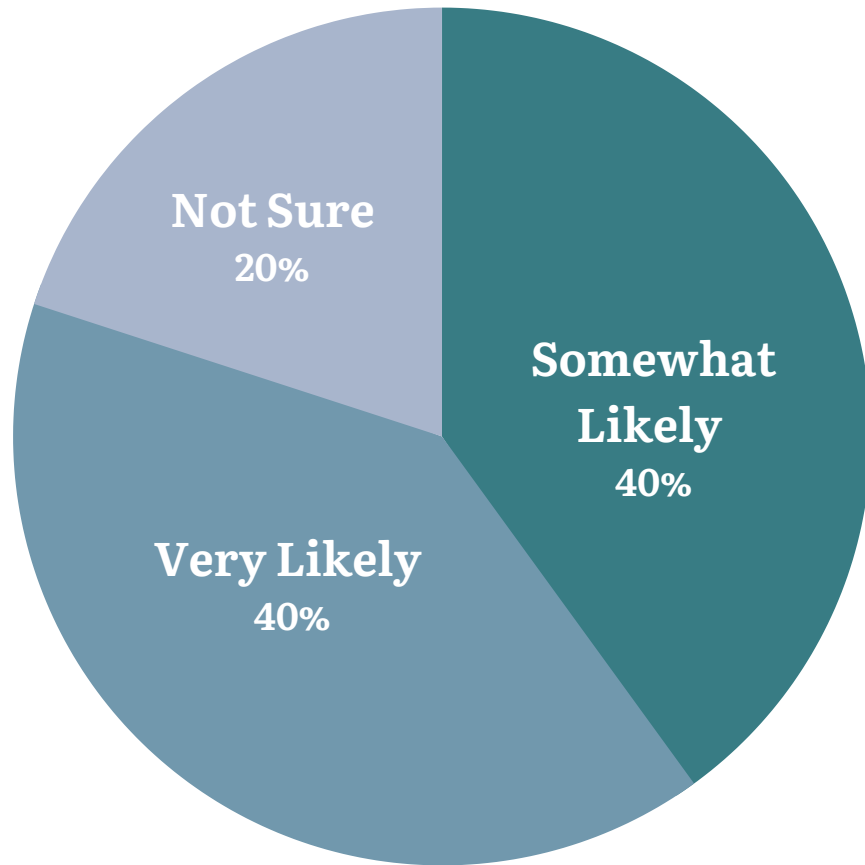
Delaware Survey vs. 2019 NCPA Survey



Takeaway: 60% of Delaware’s independent pharmacies are considering decreasing operating hours and 50% are considering decreasing offered services, which is a concerning departure from the data contained in the 2019 NCPA survey. On a positive note, Delaware’s independent pharmacies are also more likely to increase offered services and monetary support for community organizations.



7. BASED ON THE IMPACT OF PHARMACY DIR FEES ON RX REIMBURSEMENT, HOW LIKELY ARE YOU TO CLOSE YOUR BUSINESS WITHIN THE NEXT TWO YEARS?

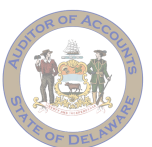


	Delaware		NCPA Survey ⁶	
Value	Percent	Count	Percent	Count
Very Likely	40%	4	18.8%	121
Somewhat Likely	40%	4	39.5%	254
Not Sure	20%	2	18.8%	121
Somewhat Unlikely	0%	0	22.9%	147
Very Unlikely	0%	0		
Totals		10		643

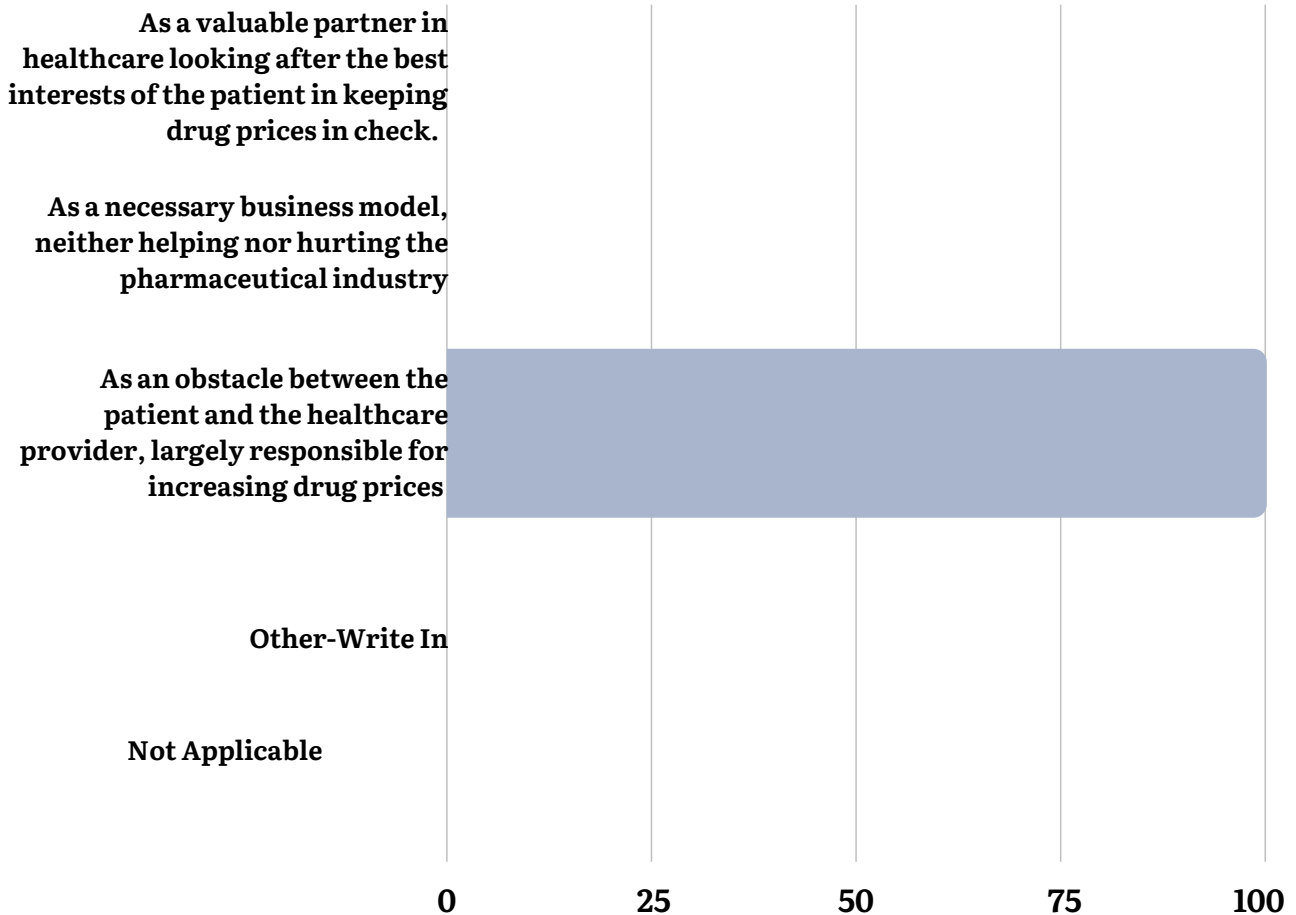
Takeaway: 80% considered it more likely than not that PBM fees and reimbursements would force the business to shut its doors. That's not surprising if one considers the rapidly increasing use of DIR fees imposed on pharmacies. The Centers for Medicare & Medicaid Services report is astonishing: "The data show that pharmacy price concessions, net of all pharmacy incentive payments, grew more than 91,500 percent between 2010 and 2019."⁷

[6] National Community Pharmacists Association. (2019). NCPA SURVEY: Health of Independent Pharmacy. Accessed on: 7/6/2021. <http://www.ncpa.co/pdf/survey-health-cp.pdf>.

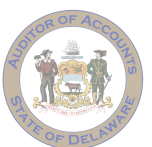
[7] Centers for Medicare & Medicaid Services. (2021). Justification of Estimates for Appropriations Committees. Accessed on 7/8/2021. <https://www.cms.gov/files/document/fy2022-cms-congressional-justification-estimates-appropriations-committees.pdf>.



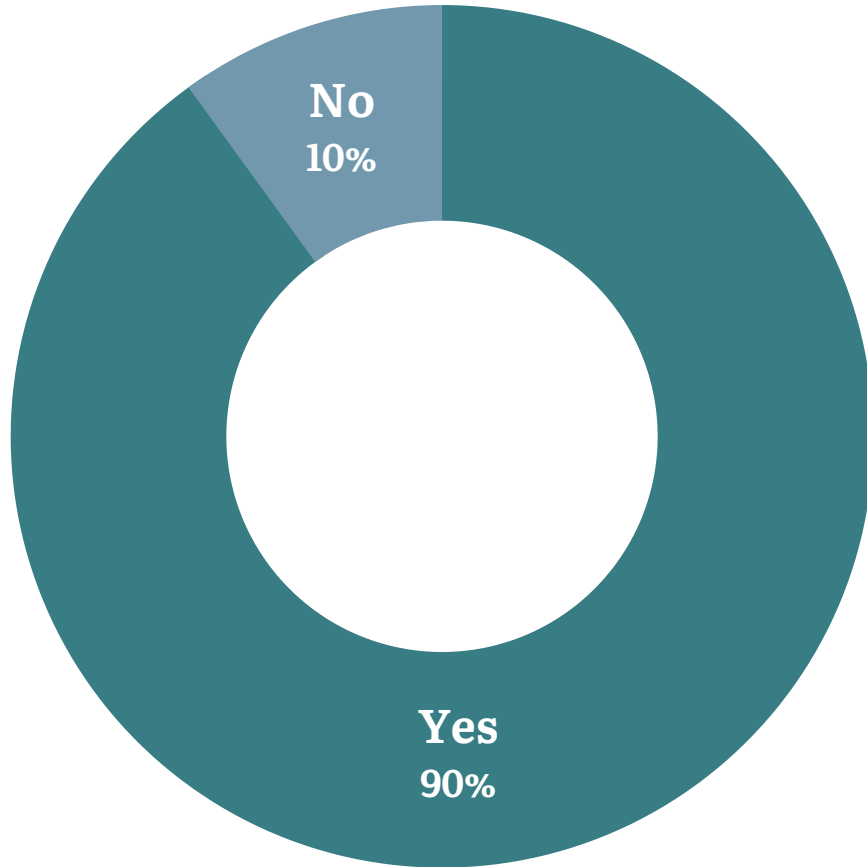
8. WHEN DEALING WITH A PBM, HOW WOULD YOU DESCRIBE THE RELATIONSHIP?



Takeaway: Owners of Delaware’s independent pharmacies unanimously felt that PBMs were an obstacle between the patient and the healthcare provider and that they were largely responsible for increasing drug prices. As revealed in our report “Lack of Transparency & Accountability in Drug Pricing Could be Costing Taxpayers Millions,” PBMs masquerade as cost reducers, but in reality, are cost multipliers. PBMs squeeze a profit at practically every stage of the supply chain from the manufacturer to the patient transaction. Pharmacies are presented with a “take it or leave it” contract because they need patients and PBMs have contracted with the insurance providers, which patients rely on for their healthcare needs.



9. HAVE YOU EXPERIENCED A PBM CLAIMS AUDIT WHERE THE PBM ASSESSED FEES OR REIMBURSEMENTS FOR RELATIVELY MINOR ERRORS THAT WERE INSIGNIFICANT TO THE CLAIM?



Value	Percent	Count
Yes	90%	9
No	10%	1
	Totals	10

Takeaway: 90% of our survey respondents were penalized by a PBM for minor errors that were insignificant to the prescription claim.



10. IF YES TO QUESTION 9, PLEASE PROVIDE SOME EXAMPLES OF THE TYPES OF MINOR ERRORS FOR WHICH THE PBM ASSESSED FEES.

PBMs WRITE THE RULE BOOK AND ENFORCE THE SLIGHTEST VIOLATION

“Prescriber indicated on prescription dispense 1 box of insulin. Insurance company audited stating that 1 box can be anything and a correct prescription should have said 15mLs. The insulin box in question only came as 15mL boxes.”

“Typing error”

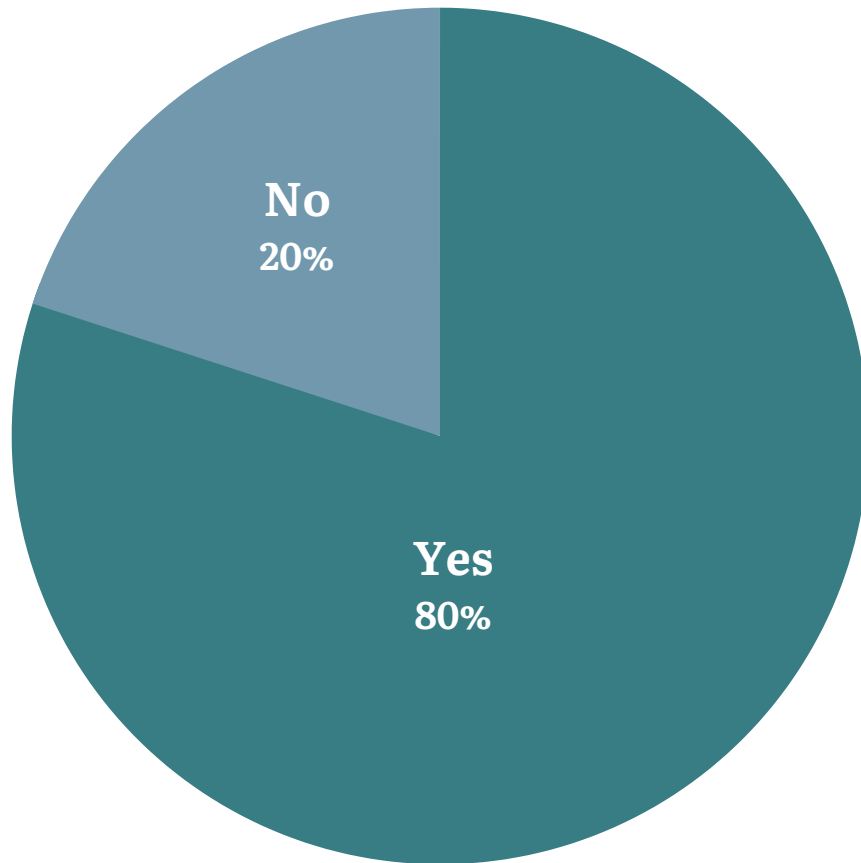
“Suboxone tab instead of 'under the tongue' written 'on the tongue.' Took away almost \$8000.”

“Patient asked us to hold a medication while taking a trip out of town. The patient picked the meds 3 weeks after it was filled. The reimbursement was taken back because the medication was not picked up within 14 days.”

“I had to pay back \$900 for an insulin claim where the PBM did not cover the generic but I did not document it on the prescription...the PBM didn't even pay for cost of med and they requested that I pay back more money.”

Takeaway: Claims audits are an important tool used by PBMs to find discrepancies in billing. It is likely that every plan will have claims paid in error, and the more complex the plan, the greater the chance of billing errors. No one would argue that quality control should not be a priority when dealing with an individual's healthcare. Remedying duplicate billing, incorrect discounts, mistakes in member eligibility or other significant problems should be a priority when dealing with individual healthcare. 90% of our surveyed pharmacists shared how recoveries were based on a minor error that is insignificant to the billed claim, highlighting the predatory nature of the PBM business model.

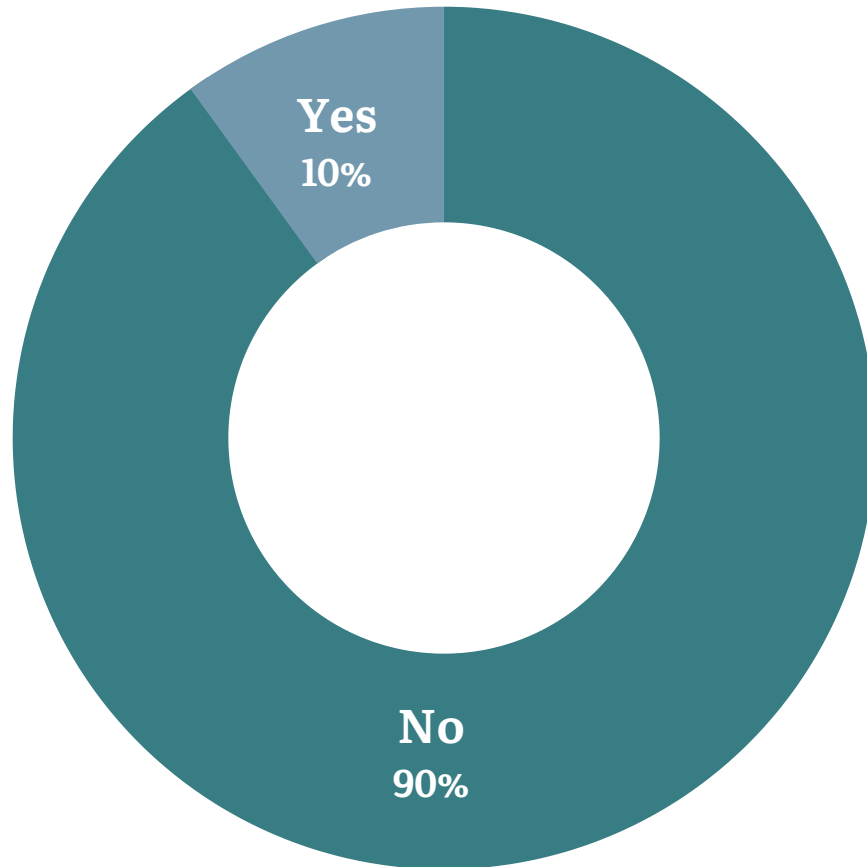
11. HAVE YOU EXPERIENCED AN INCREASING NUMBER OF PBM CLAIM AUDITS IN THE LAST 3 YEARS?



Value	Percent	Count
Yes	80%	8
No	20%	2
	Totals	10

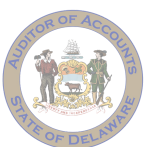


12. HAVE YOU HAD TO HIRE LEGAL COUNSEL TO DEFEND YOUR BUSINESS FROM PBM CONTRACTED AUDITS?



Value	Percent	Count
Yes	10%	1
No	90%	9
	Totals	10

Takeaway: While 80% of survey respondents have incurred an increasing number of PBM claim audits in the last 3 years, only 10% have had to hire legal counsel to defend the business from PBM contracted audits. Considering that Delaware’s independent pharmacies are in poor financial health and the fact that hiring legal counsel can be an expensive proposition, it’s likely that the amounts that could be recovered to contest a claims audit may not be worth the added expense. PBMs are positioned to profit with little risk of litigation.

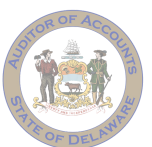


13. WHICH OF THE FOLLOWING WOULD BE THE MOST BENEFICIAL CHANGE TO HOW PBMS OPERATE?

	Percent	Count
Supporting physicians and providers at the point of care	10%	1
Assuming more responsibility for total cost of care	60%	6
Providing increased cost control and transparency in pharmacy benefit design	10%	1
Responding to criticism about PBM contracting strategies	0%	0
Not Applicable	0%	0
Other-Write In	20%	2
Totals		10

Write In responses:

- "Providing more transparency to the DIR fees assessment. Not reimbursing below our buying cost. If a drug is available at a cheaper rate, disclosing the source of mac prices and also disclosing the place or wholesaler to get the drug at the PBM assessment rate."
- "Transparency of transactions and unbelievably low reimbursement below buying cost in health care is very shameful."



14. PLEASE PROVIDE A FEW SHORT SENTENCES ON HOW PBM TACTICS HAVE AFFECTED YOUR BUSINESS AND MAKE RECOMMENDATIONS ON WAYS TO IMPROVE THE SYSTEM.

INAPPROPRIATE PBM BUSINESS PRACTICES ARE SQUEEZING COMMUNITY PHARMACIES TO THE POINT OF CLOSURE

"I am relatively new, so I did not know lot of things about PBM but most claims specially for brand name is negative \$50 to \$75. DIR fees are on top of negative reimbursement."

"If the tactics that PBMs have been using coupled with the lack of transparency and uncertainty of fees being given continue, I do not know if I will be in business in the next 3 years."

"Different reimbursement rates to chain and independent pharmacies."

"PBM is trying to get us out of business to fulfill their own pharmacy agenda. It is the most unfair thing ever happened to allow PBM to have their own pharmacy."

"They are limiting access of medications to the members, so mandatory mail order should be removed, and patients should have the choice to use the pharmacy they want."

"They are promoting 3-month supply to the patients, leading them to use their mail order pharmacies or their own chains."

"PBM's owned pharmacies directing the patients to their own pharmacies."

Takeaway: A common theme among survey respondents criticizes the ability of the PBMs to redirect patients away from the community pharmacy to the PBM's connected online and chain pharmacies. Community pharmacy owners ask for a level playing field where all competitors play the same game with roughly the same rules. Survey participants relayed the need for transparency and accountability through oversight.

