PBM ACCOUNTABILITY PROJECT

May 23, 2022

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

Re: Solicitation for Public Comments on the Impact of Pharmacy Benefit Managers' Business Practices

The PBM Accountability Project brings together stakeholders across healthcare, labor, business, pharmacy, and consumer patient advocacy to help ensure that purchasers of medicines are not paying more than is absolutely necessary. We applaud the Federal Trade Commission for examining the prescription drug cost-increasing impact of pharmacy benefit managers (PBMs). The drug cost issue simply cannot be solved unless the perverse incentives PBMs have to drive prescription drug prices continuously higher are directly addressed.

Just three PBM companies, all in the Fortune 25, control almost 80% of drug purchasing for private health plans, employers and public health programs, which leads to a lack of competition and transparency. As arbitrageurs operating without transparency at the center of a highly uncompetitive prescription drug marketplace, PBMs have evolved an extraordinarily profitable business model based on initial negotiation of prescription drug discounts or rebates from drug manufacturer list prices. But PBMs don't pass savings through to taxpayer-funded public insurance plans like Medicare, Medicaid and S-Chip, employer and union-sponsored health plans in the private sector, and patients at the pharmacy counter. Instead, PBMs divert negotiated savings into their own, highly lucrative profit lines through extraction of various kinds of fees assessed at nearly every link of a complex prescription drug supply chain.

Further, all three of the largest PBMs are vertically integrated with major health insurers and affiliated pharmacies. Consider this: each of the largest PBMs has merged over the last several years with the three largest commercial health insurance carriers to create a highly concentrated, vertically integrated PBM and commercial insurance oligopoly. What's more, PBM-owned retail drug chains increasingly dominate the retail pharmacy marketplace – significantly reducing local competition from independent retail pharmacies.

As the industry grows increasingly consolidated and vertically integrated, regulation and monitoring will become even more difficult. Already, PBMs are taking steps to further consolidate. For example, between 2019 and 2021, all three of the largest PBMs formed their own rebate aggregators or group purchasing organizations (GPOs) as consolidated contracting entities to handle rebate negotiations on behalf of themselves and other PBMs. Two of these GPOs are located off-shore even though PBMs have virtually no off-shore customers. Industry experts believe the new GPO entities will introduce an additional non-transparent layer of complexity that may enable retention of a larger share of rebates and extraction of additional fees, and/or other price concessions. The new, PBM-created GPOs, like other aspects of PBM vertical consolidation, face little regulatory scrutiny. Ultimately, they increase PBM leverage, reduce transparency, distort market competition amongst PBMs, and further limit regulatory oversight capabilities, especially since two of the three GPOs are based outside of the U.S.

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This high degree of market concentration enables PBMs to escape price competition and exploit perverse incentives to raise, rather than lower, prescription drug prices. When drug list prices are higher, they reap greater revenues by placing those higher list priced drugs on their formularies and excluding less expensive generics for which there are substantially lower profit margins. Insulin is a relevant and timely example of this problem that affects the millions of people who need this life-saving medication. A Senate Finance Committee Report on insulin prices found that rebates to PBMs are ultimately not helping patients save on lifesaving medication. Typically, PBMs base patient cost share on the list price of medicines, rather than the net price after rebates have been discounted. One analysis found that the list price of one insulin product increased by 141% despite a 53% decline in net price. PBMs profit when list prices are higher. But patients do not.

For further evidence, the PBM Accountability Project recently released a new report, *Understanding the Evolving Business Models and Revenue of Pharmacy Benefit Managers*. The report findings reveal how remarkably creative PBMs have been in escaping public scrutiny of questionable business practices by creating alternative prescription drug revenue sources that enable PBMs to continue amassing gross profit increases at consumer and taxpayer expense. Consider this: during the period of 2017 to 2019, PBM gross profit increased by 12%, from $25 billion to $28 billion.

PBMs have created a marketplace defined by opaqueness, excess complexity and information asymmetry. Within this confusing, non-transparent “black box,” PBMs can buy products from one stakeholder and sell at higher prices without any entity in the system, besides the PBMs themselves, having a full overview of the total costs involved. This is a system with very little regulatory oversight, inadequate financial reporting requirements and a lack of meaningful industry standards. But it doesn’t have to be this way. Some states, including Colorado, Maryland, Minnesota, New Hampshire and New Jersey, have created a “reverse auction” competitive bidding process to select the state’s PBM. In New Jersey alone, the state has captured $2.5 billion in savings over five years without cutting pharmacy benefits for public employees.

Now is the time for the FTC to investigate PBMs in order to restore effective competition and to address costly dysfunctions in the PBM marketplace. By holding PBMs accountable we can ensure prescription drug savings from very high PBM profits can be redirected back to consumers.

Sincerely,

Doug H. Dority
Chairman
PBM Accountability Project