



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

Office of Policy Planning
Bureau of Economics
Bureau of Competition

April 17, 2007

Nellie Pou
Assemblywoman, 35th District
Chair, Appropriations Committee
New Jersey General Assembly
100 Hamilton Plaza, Suite 1405
Patterson, NJ 07505

Dear Assemblywoman Pou:

The staffs of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, and Bureau of Economics¹ are pleased to respond to your request for comments on the likely competitive effects of the Assembly Committee Substitute for Assembly No. 320 ("A-320" or "the Bill"), which would regulate the contractual relationships between pharmacy benefit managers ("PBMs") and health benefit plans ("HBPs"). You asked the FTC to "examine A-320 to determine whether the proposed legislation is anti-competitive and will likely result in "increased costs of pharmaceutical care for employers, unions, and consumers."²

We believe that A-320, if enacted, will limit the ability of PBMs, HBPs, and pharmacies to enter into efficient, mutually advantageous contracts, and may increase pharmaceuticals prices in New Jersey. Ultimately, the restrictions may decrease the number of New Jersey consumers with insurance coverage for pharmaceuticals, without producing offsetting benefits. Although some lawsuits have challenged particular types of PBM conduct,³ empirical evidence suggests that the conflicts of interest that the

¹ This letter expresses the views of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, and Bureau of Economics. The letter does not necessarily represent the views of the Federal Trade Commission (Commission) or of any individual Commissioner. The Commission has, however, voted to authorize us to submit these comments.

² Letter from New Jersey Assemblywoman Nellie Pou to Maureen Ohlhausen, Director, Office of Policy Planning, Federal Trade Commission (Aug. 9, 2006).

³ See, e.g., *United States v. Merck-Medco Managed Care, L.L.C.*, Case No. 00-CV-737 (E.D. Penn. Dec. 9, 2003); *In re Pharmaceutical Industry Wholesale Price Litig.*, MDL No. 1456, Civ. Act. No. 01-cv-12257-PBS (D. Mass. 2002); *Ohio v. Medco Health Solutions, Inc.* (Dec. 22, 2003). Some complaints allege that failure to disclose or remit rebates either breached a contractual requirement or breached an asserted duty to disclose or remit rebates under some other existing law. See, e.g., *AFSCME v. AdvancePCS*, Case No. BC 29227 (Super. Ct. Cal. Mar. 18, 2003); *New York v. Express Scripts, Inc.* (N.Y. Sup. Ct. Aug. 4, 2002).

