United States of America
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

Office of Commissioner
Rebecca Kelly Slaughter

STATEMENT OF COMMISSIONER REBECCA KELLY SLAUGHTER
Regarding FTC Staff Interim Report: Pharmacy Benefit Managers
As prepared for delivery at the FTC Open Commission Meeting

August 1, 2024

Two years ago, the Commission used its authority under Section 6(b) of the FTC Act and voted unanimously to authorize a study of the concerning contracting practices of Pharmacy Benefit Mangers ("PBMs").[1] Following FTC staff's review of initial documents and data from PBMs, their affiliates and public sources; interviews with a variety of industry experts and participants; and review of over 1,200 public comments; the Commission released an interim report of staff's findings on July 9, 2024.[2] This 6(b) study is not yet final, but I believe there is substantial value in releasing the information we know so far. The alternative to doing so would be to reward recalcitrant 6(b) order recipients for delays in production. And the information we have so far is compelling: it reveals critical insights into the profound impact PBMs have on prescription drug prices and access for millions of Americans.

First, the report findings reveal a trend of increased concentration and vertical integration within the PBM industry, especially in the last decade.[3] For example, in 2004, the top three PBMs managed 52% of prescription drug claims.[4] The top three PBMs now manage nearly 80 percent of all prescriptions filled in the United States.[5] Having evolved from their roots of providing administrative services to insurance plans, today, large PBMs have vertically integrated upstream with health care provider groups; midstream with distributors including retail, mail order and specialty pharmacies; and downstream with large health insurers.[6] This market dominance allows these entities to wield substantial power over drug pricing and availability. Exercise of this power by this small number of PBMs raises acute concerns for patients because PBMs have become

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[1] Press Release, Federal Trade Commission, FTC Launches Inquiry Into Prescription Drug Middlemen (June 7, 2022), *available at* FTC Launches Inquiry Into Prescription Drug Middlemen Industry: Agency to Scrutinize the Impact of Vertically Integrated Pharmacy Benefit Managers on the Access and Affordability of Medicine.
[2] Press Release, Federal Trade Commission, FTC Releases Interim Staff Report on Prescription Drug Middlemen (July 9, 2024) *available at* FTC Releases Interim Staff Report on Prescription Drug Middlemen.
[3] U.S. FEDERAL TRADE COMMISSION, PHARMACY BENEFIT MANAGERS: THE POWERFUL MIDDLEMEN INFLATING DRUG COSTS AND SQUEEZING MAIN STREET PHARMACIES, at 5-9, (July 2024), *available at* Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies (ftc.gov).
[4] *Id*. at 5.
[5] *Id*. at 2.
[6] *Id*. at 9, 24-29

inescapable intermediaries between prescription drug manufacturers and patients who simply need access to their medicines. Moreover, the report finds that PBMs' integration with health insurers and pharmacies can create conflicts of interest, enabling practices that may harm independent pharmacies and limit patient choice.

Second, the report shows that the contracts some PBMs have with drug manufacturers may exclude lower-cost options from coverage, potentially forcing patients to pay for higher-priced branded drugs although cheaper substitutes are available. This contracting practice potentially raises costs for patients and limits their access to essential, in some cases lifesaving, medications.[7]

Finally, the report indicates that closures of independent pharmacies, especially in rural and underserved areas, are a serious logical consequence of current PBM practices, which include unfavorable, and potentially untenable, reimbursement rates. Between 2013 and 2022, about ten percent of independent retail pharmacies in rural America closed.[8] These closures can leave vulnerable populations without essential healthcare services, exacerbating health disparities and limiting access to necessary medications. This leaves lower income communities in a tight spot, potentially having to decide between their medications and other necessities such as groceries or childcare.

Once staff has finished collecting and analyzing the requested data and information, I look forward to publication of the final report. Meanwhile, staff's findings in the interim report underscore the need for continued vigilance and action. It is crucial that the Commission continue to monitor the evolving pharmaceutical market, including PBM industry practices, to ensure our regulatory framework keeps pace with industry changes. In addition to informing the public and putting participants in these markets on notice of anticompetitive practices, the release of this interim report is a milestone in our effort to bring accountability and fairness to the PBM industry and larger health care sector, and a call to action for fellow stewards of the public trust in the United States Congress, state legislatures, as well as key sister agencies at the federal and state level. Together, we can build more transparent, competitive, and fair health care markets that serve the best interests of all Americans.

I extend my deepest gratitude to the dedicated staff of the Office of Policy Planning, Bureau of Economics, and Bureau of Competition for their continued tireless work on this study. Their efforts are instrumental in uncovering the complexities of PBM practices and their impact on patients.

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[7] Not all PBMs exclude more affordable alternatives to brand medications, but such occurrences can be rare. *See, e.g.*, Paige Minemyer, *Express Scripts Puts Insulin Biosimilar Semglee on Preferred Formulary*, Fierce Healthcare (Oct. 20, 2021).

[8] PHARMACY BENEFIT MANAGERS, *supra* note 1.