



Office of the Chair

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Federal Trade Commission
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**Remarks of Chair Lina M. Khan
American Economic Liberties Project and the
National Community Pharmacists Association
How Pharmacy Benefit Managers Impact Drug Prices,
Communities, and Patients**

June 22, 2022

Thank you to the American Economic Liberties Project and the National Community Pharmacists Association for organizing this important event. Thank you to Senator Brown and Representative Carter for your unrelenting efforts to shed light on the problems in these markets, and thank you to all the patient advocates and medical professionals for sharing your thoughts and expertise to help me and the FTC fully grasp the business practices we're seeing and their effects.

Pharmacy benefit managers ("PBMs") and other intermediaries now play a critical role that have enormous consequences on people's day-to-day lives. Their decisions help to determine which medicines are prescribed, which pharmacies patients can use, and the prices that patients ultimately pay at the pharmacy counter. They also can determine whether independent pharmacies can compete and thrive, which—given the key role that community pharmacies play in providing efficient and affordable access—is critical.

Not only does the PBM industry play a central role in determining which medicines and pharmacies we can access and at what price, the market in which they operate is also extremely opaque and complex. This combination—of, on the one hand wielding extraordinary influence that can have life-and-death consequences, and, on the other, of being extraordinarily opaque and complex, is a combination that's always worth scrutinizing.

As the FTC has sought to update its understanding of this important market, we've been aided by many people in the patient advocacy community and the pharmacy and medical community. In February, we put out a call for comments on PBMs' practices and their impact, and we received more than 1,200 individual comments from more than 24,000 parties, which is one of the largest number of comments the FTC has received on a single issue.¹ We've also had many patient advocates, pharmacists and health care professionals come speak at our open

¹ Regulations.gov, Solicitation for Public Comments on the Impact of Prescription Benefit Managers' Business Practices, FTC-2022-0015, <https://www.regulations.gov/docket/FTC-2022-0015> (comment period closed on Apr. 25, 2022).

meetings. The participation and engagement has been remarkable, and I'm extremely grateful.² I always find that hearing directly from market participants—the people on-the ground level that are actually producing and consuming goods and services and operating directly in these markets—is vital for understanding how markets are functioning.

As you know, partially in response to this striking number of comments, the Federal Trade Commission recently voted to conduct a market inquiry of pharmacy benefit managers.³ In practice this means that we sent out orders requesting information from PBMS that will shed light on a variety of issues. We're looking at a number of issues—many of the issues that we heard recurring concerns about. This includes unfair fees and clawbacks, reimbursement terms that may pay pharmacies below their costs of acquisition, methods that steer patients to PBM-owned specialty and mail-order pharmacies, pharmacy audits, the impact of PBM rebates on generic and biosimilar competition and ultimately patient's costs, as well as the increasing use of prior authorization and related requirements and their impacts on physicians.

The FTC also recently voted in favor of an enforcement policy statement, which lays out how our existing legal tools and authorities apply to PBMs' rebating practices.⁴ Specifically, we noted our intention to examine the effects of the rebates that drug manufacturers pay to PBMs.⁵ We've heard concerns that these rebates might function as “kickbacks,” and that drug manufacturers may effectively be paying PBMs to exclude cheaper drugs—like generics and biosimilars—from their formularies, which in practice means that fewer patients have access to more affordable medicines, and they're instead left paying more money, or not being able to afford medicine at all.

At our commission meetings, we've heard devastating accounts of how people have lost family members who've had to forego or ration essential medicines because of the high cost.⁶ We've heard a striking number of these stories in the context of insulin, where the wholesale price nearly tripled between 2009 and 2017.

² See e.g., Fed. Trade Comm'n, Tr. of Open Comm'n Meeting, at 14-15, 19-20 (Oct. 21, 2021), www.ftc.gov/openmeetingtranscript.pdf.

³ Press Release, Fed. Trade Comm'n, FTC Launches Inquiry Into Prescription Drug Middlemen Industry (June 7, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-launches-inquiry-prescription-drug-middlemen-industry>.

⁴ See Press Release, Fed. Trade Comm'n, FTC to Ramp Up Enforcement Against Any Illegal Rebate Schemes, Bribes to Prescription Drug Middleman That Block Cheaper Drugs (June 16, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-ramp-up-enforcement-against-illegal-rebate-schemes>; see also Fed. Trade Comm'n, Policy Statement of the Federal Trade Commission on Rebates and Fees in Exchange for Excluding Lower Cost Drug Products, FTC File No. P221201 (June 16, 2022), <https://www.ftc.gov/legal-library/browse/policy-statement-federal-trade-commission-rebates-fees-exchange-excluding-lower-cost-drug-products>.

⁵ See Policy Statement of the Federal Trade Commission on Rebates and Fees in Exchange for Excluding Lower Cost Drug Products, at 5-6.

⁶ See FTC Open Meeting Tr., *supra* note 2, at 14 -15, 18-19 (public commenters Matthew Dinger, Anna Squires, and Nicole Smith Holt).

I am so thrilled that the FTC was able to make headway on getting these two important actions started. These actions are just the first steps, and we still have a long road ahead. As we noted last week, if we find any illegal practices in these markets—be it unfair methods of competition, or commercial bribery practices, or unfair or deceptive practices—we’ll be sure to bring our full authorities to bear and enforce the law.

I want to close with two broader observations.

First, it’s so critical to remember that the current structure of the market, the current structure of the industry, and the types of business practices that occur are not inevitable or some inexorable force of nature. These features of our current system are the result of policy choices and legal decisions that were made by people, including officials at the FTC and Antitrust Division, but also public officials who are elected and directly accountable to you.

It was policy choices that permitted PBMs to merge with one another, creating a more concentrated market. It was policy choices that permitted PBMs to vertically merge with health insurance companies on one side and specialty and retail pharmacies on the other side, which many have noted can create a sharp conflict of interest. It was policy choices that allowed the largest insurance companies and hospitals and private equity companies to buy up thousands of physician practices, which many have claimed has degraded patient care. And it was policy choices that have created a situation where Americans pay tens of billions of dollars for prescription drugs that were originally researched and developed with taxpayer funding, sometimes many decades ago.

There is nothing inevitable about the current structure of the market or the current business practices that occur and are permitted—these are all the result of policy and legal choices, that were made by public officials, and that can also be remade by public officials through the democratic process.

Second, while the FTC has a critical role to play here, we are just one of many public entities whose work can make a difference here. The responsibility for crafting how our healthcare markets work is divided among dozens of state and federal authorities who are ultimately accountable to elected members of local, state, and federal legislative bodies. It’s vitally important that this remarkable advocacy community remains engaged with this broader group of decisionmakers to educate them about which policies will make our markets work so that we can access affordable medicines and high-quality healthcare, including at pharmacies.

I say this to encourage everybody to view these questions of commerce as key democratic choices for all of us. These decisions and choices will be made regardless—it’s just a question of who is making them and with what goals and what accountability.

I hope everybody here—the patient advocates, the pharmacists, the other healthcare providers, and the concerned citizens—will remain fully engaged to ensure your voices are heard

at all levels of government. We've certainly benefited from your active engagement at the FTC, for which I'm very grateful, and I'm hopeful that together we'll be able to make real progress.
