UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of Commissioner
Alvaro Martin Bedoya

STATEMENT OF COMMISSIONER ALVARO M. BEDOYA

Regarding 6(b) Orders to Study Contracting Practices of Pharmacy Benefit Managers

June 7, 2022

A family walks into a pharmacy in West Virginia. Their young child has cancer. The pharmacist has the child's medicine behind the counter, ready to dispense. But when that pharmacist calls the pharmacy benefit manager, or "PBM," for the family's insurance company, they are denied authorization to dispense that medicine. Instead, they are told that the medication can only be dispensed by the PBM's mail order specialty pharmacy. The family was to go home and wait two weeks to receive the medicine for their child in the mail.

Thanks to the family's pharmacist, who spent almost an hour on the phone with the PBM and then contacted the state's Insurance Commissioner, that family was able to get the cancer medication within hours of first being denied.[1]

Not everyone is so lucky – and nearly everyone is affected by PBM business practices. For most Americans, pharmacy middlemen control what medicine you get, how you get it, when you get it, and how much you pay for it. Yet PBM practices are cloaked in secrecy, opacity, and almost impenetrable complexity. "PBM," "WAC," "MAC," "NADAC," "DIR" – this acronym soup hides what's at stake here, particularly for rural and urban America. This is why the 6(b) study issued today is so critical.

People say independent pharmacies are a "critical part" of the healthcare infrastructure. In many parts of rural and urban America, independent pharmacies are *the* healthcare infrastructure, full stop. They are the one place where you can visit in person with a medical professional who can answer your questions, get you your meds, give you a flu shot or a COVID vaccine, and provide a whole variety of other clinical services.

And yet, independent pharmacies are shutting down one after another, after another. From 2003 to 2018, over 1,230 independent, rural pharmacies reportedly closed their doors.[2] *In that same time, 630 rural ZIP codes lost their only pharmacy*.[3] That included 28 ZIP codes in

[1] After the pharmacist contacted the Office of the West Virginia Insurance Commissioner, the matter was escalated to the insurer's management team and within a few hours the local pharmacist was authorized to dispense the prescription. Press Release, West Virginia Offices of the Insurance Commissioner, Insured Receives Urgently Needed Medication (Aug. 9, 2021), https://www.wvinsurance.gov/Portals/0/pdf/pressrelease/Drug%20Complaint%20Press%20Release%20Draft%208.8.2021-FINAL%20(1).pdf?ver=2021-08-10-092804-300.

[2] Abiodun Salako, Fred Ullrich, Keith Mueller, *Update: Independently Owned Pharmacy Closures in Rural America, 2003-2018*, at 1 (July 2018), RUPRI Center for Rural Health Policy Analysis, University of Iowa College of Public Health, https://rupri.public-health.uiowa.edu/publications/policybriefs/2018/2018%20Pharmacy%20Closures.pdf.

[3] *Id.* at 5.

Oklahoma, 32 ZIP codes in Minnesota, and 46 ZIP codes in Texas, that did not have a single pharmacy as of 2018.[4]

These closures are also happening in cities, creating pharmacy deserts where low-income people, who rely on walking and public transportation, have nowhere to go to get their medicine. A recent study of the 30 biggest cities in the country found that Black and Latino neighborhoods were consistently less likely to have a pharmacy – and that study tied those closures to the rise of PBMs.[5]

If the PBMs are contributing to the closure of independent pharmacies that so many Americans rely on for healthcare, and if they are hurting families like the one in West Virginia, we need to figure out what's happening with PBMs. I support this study and will do everything in my power to ensure that it is executed as quickly and rigorously as possible.

Chair Khan has rightly called for the Commission to apply an integrated approach to enforcement that crosses the siloes of the Bureau of Competition and the Bureau of Consumer Protection.[6] In that spirit, while I fully support the 6(b) study issued today, I also urge the Commission to continue closely scrutinizing PBMs and to use its authority in the future to examine unfair or deceptive trade practices in the PBM industry.

Similar investigations have revealed eye-opening conduct, as well as overt fraud. In Delaware, State Auditor Kathleen McGuinness found that the state's PBM had repeatedly audited independent pharmacies, yet the state's plan managers "could not trace back a single plan reimbursement from pharmacy audits conducted by [the PBM]."[7] In Ohio, State Attorney General David A. Yost charged that the state's PBM "participated in a conspiracy to wrongfully and unlawfully obtain monies from [the Ohio Department of Medicaid] to which they were not entitled in violation of the laws of the State of Ohio."[8]

Lastly, I want to congratulate and thank the staff that drafted this critically important study. It is absolutely terrific work.

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[4] *Id.*

[5] Jenny S. Guadamuz et al., *Fewer Pharmacies in Black and Hispanic/Latino Neighborhoods Compared with White or Diverse Neighborhoods, 2007-15*, 40:5 Health Aff. 802 (May 2021), https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2020.01699

[6] Memorandum from Chair Lina M. Khan on Vision and Priorities for the FTC (Sept. 22, 2021) at 3, https://www.ftc.gov/system/files/documents/public_statements/1596664/agency_priorities_memo_from_chair_lina_m_khan_9-22-21.pdf.

[7] STATE OF DEL. OFF. OF AUDITOR OF ACCOUNTS, LACK OF TRANSPARENCY & ACCOUNTABILITY IN DRUG PRICING COULD BE COSTING TAXPAYERS MILLIONS, at 9, https://auditor.delaware.gov/wp-content/uploads/sites/40/2021/06/RPT_PBM_061721_FINAL.pdf

[8] The state of Ohio filed suit alleging that Centene, the state's PBM, overbilled the Ohio Department of Medicaid for the services it provided. Complaint at 2, Ohio v. Centene Corp, et al., 2:21-cv-01502 (Franklin County Ct. Com. Pl. Mar 11, 2021), https://ia903404.us.archive.org/4/items/gov.uscourts.ohsd.253625/gov.uscourts.ohsd.253625.7.0.pdf (last visited May 26, 2022). Ultimately, Centene Corp. agreed to pay Ohio $88.3 million to settle the lawsuit. Press Release, Centene Agrees to Pay a Record $88.3 Million to Settle Ohio PBM Case Brought by AG Yost (June 4, 2021), https://www.ohioattorneygeneral.gov/Media/News-Releases/June-2021/Centene-Agrees-to-Pay-a-Record-$88-3-Million-to-Se.