



PHARMACEUTICAL CARE MANAGEMENT ASSOCIATION

April 30, 2014

Federal Trade Commission
Office of the Secretary,
Room H-113 (Annex X),
600 Pennsylvania Avenue, NW
Washington, DC 20580

Submit to: <https://ftcpublic.commentworks.com/ftc/healthcareworkshop>

Attention: Health Care Workshop, Project No. P131207

To the Federal Trade Commission:

The Pharmaceutical Care Management Association (PCMA) appreciates the opportunity to submit comments on the solicitation for comments related to the Public Workshop, “Examining Health Care Competition,” published in the Federal Register on February 24, 2014. PCMA is the national association representing America’s pharmacy benefit managers (PBMs) which administer prescription drug plans for more than 210 million Americans with health coverage through Fortune 500 companies, health insurers, labor unions, Medicare, and the Federal Employees Health Benefits Program (FEHBP) and will administer drug plans for many individuals who obtain health insurance through the Exchanges established by the Affordable Care Act (ACA).

The solicitation invites comments from interested parties on a large array of questions covering the regulation of health care providers, price transparency, and a number of other dimensions. PCMA offers its comments on the specific question of how price transparency might undermine the potential benefits of competition.

To respond, we draw on a recently proposed rule for the Medicare Part D prescription drug benefit (CMS-4159-P). A proposed rule provision titled “Any Willing Pharmacy Standard Terms & Conditions,” would require that Part D sponsors publicize standard terms and conditions for pharmacy network participation that list all combinations of cost sharing and negotiated prices possible for every type of pharmacy under the plan. Under the proposal, drug plan sponsors would be required to contract with any willing pharmacy able to meet the terms and conditions offered by the plan. This proposal would have effectively ended the ability of Part D sponsors to negotiate more favorable pricing with selected pharmacies, a common practice in the industry referred to as creating a preferred pharmacy network.

One of the primary justifications the Centers for Medicare and Medicaid Services put forward to justify the proposal is that it would increase price transparency, and therefore, as they saw it, reduce prices. However, that is not the case with respect to public disclosure of post-point-of-sale pharmacy pricing adjustments.



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While pricing transparency may appear, at first glance, to be a desired goal, it only enhances competition if consumers and other purchasers gain access to information that allows them to make more educated purchasing decisions. Transparency works against market efficiency when mandatory disclosure diminishes price competition, as it would here and in any proposal in which contractually agreed-upon prices are publicly disclosed.

The Federal Trade Commission (FTC) itself has weighed in on the recent any willing pharmacy proposal for Part D, stating that,

“any willing pharmacy provisions in the Proposed Rule may impair, rather than enhance, the ability of plan sponsors to negotiate lower prices. Based on FTC staff’s experience in this area, as well as our review of empirical studies of preferred provider contracting and any willing provider and FOC laws, there are two clear and consistent conclusions in the literature: Selective contracting with pharmacies and other health care providers can lower prices paid by plans and their beneficiaries; and any willing provider and FOC laws tend to raise prices or spending because they impair the ability of Part D plan providers to engage in selective contracting.”ⁱ

Additionally, in a number of letters to state lawmakers, FTC has warned that mandating PBMs to disclose contract terms detailing how much they reimburse their network pharmacies is likely to result in “the suppression of efficient service networks, not the expansion of real consumer choice,” with higher prices likely for the ultimate consumers.ⁱⁱ

Further, actuaries at Milliman estimate that over the 2014-2023 period, the use of such preferred pharmacy networks by Part D plans is estimated to reduce federal Medicare spending by \$7.9 to \$9.3 billion.ⁱⁱⁱ

There can be no real competition when public posting makes it easy for competitors to observe the prices charged by rivals, as the CBO has noted.^{iv} As soon as such pricing becomes public, there is little incentive to bargain for lower prices. Simply put, a posted pricing system is antithetical to the market-based system established by Part D’s enacting legislation in the Medicare Modernization Act. Imposition of such a requirement would increase costs both for the program and its beneficiaries.

We thank you for the opportunity to weigh in on this important topic. If there are any questions, please contact me at (202) 756-7211.

Sincerely,

Andy Cosgrove, VP, Policy

ⁱ FTC, Comment Letter to CMS on “Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs” March 7, 2014.

ⁱⁱ FTC Letter to Terry G. Kilgore, Va., Oct. 2, 2006 at 11.



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ⁱⁱⁱ Milliman, “The Impact of Preferred Pharmacy Networks on Federal Medicare Part D Costs, 2014-2023,” Prepared for: Pharmaceutical Care Management Association, October 2013

^{iv} Congressional Budget Office, letter of Peter Orszag to House Of Representatives, March 12, 2007