

February 27, 2014

Dear FTC Health Care Workshop Organizers:

An important topic in the Professional Regulation of Health Care Providers is the appropriate group to exercise regulatory control over pharmacy benefit managers. Pharmacy benefit managers (PBMs) save Americans billions of dollars each year by lowering the prices that consumers pay for prescription drugs and health plans pay for drug coverage. However, new regulatory developments in some states threaten to undercut competition in the PBM industry and disrupt the cost-savings PBMs currently generate. The regulatory scheme that was adopted by Mississippi in 2011, and that is currently under legislative consideration in several other states, shifts regulatory control of PBMs from the neutral Insurance Commissions to the states' Boards of Pharmacy.

I attach my recent study, published in the *NORTHWESTERN JOURNAL OF LAW & SOCIAL POLICY*, that explains the fundamental problem with this regulatory structure. Boards of Pharmacy are made up of pharmacists, the direct market adversaries of PBMs. In several different areas of the prescription drug market, PBMs and pharmacists are in direct competition over profits. Thus, the pharmacist-controlled Boards of Pharmacy have both the incentive and the opportunity to exert their regulatory authority in ways that benefit pharmacies at the expense of PBMs; reductions in PBMs' profits generally lead to more profits for pharmacists. I use economic principles, empirical evidence, and determinations of the FTC to explain why the power to regulate a market adversary gives pharmacists unprecedented power and will undercut competition in the prescription drug market. As a result, both consumers and health plan sponsors will pay more for prescription drugs and prescription drug coverage.

Please consider including a discussion of the regulation of pharmacy benefit managers among the topics you discuss at the Health Care Workshop.

Sincerely,
Joanna Shepherd