

May 16, 2014

The Honorable Edith Ramirez  
Chairwoman  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

**RE: Health Care Workshop, Project No. P131207**

Dear Chairwoman Ramirez:

The National Community Pharmacists Association (“NCPA”) appreciates the opportunity to comment on some of the issues raised at the March 20-21, 2014 Healthcare Workshop. In particular, NCPA would like to address the issue of increased transparency in the provision of pharmacy benefits.

NCPA represents the interests of pharmacist owners, managers and employees of more than 23,000 independent community pharmacies across the United States. Together they employ over 300,000 full-time employees and dispense nearly half of the nation’s retail prescription medicines. Independent community pharmacists are proud to play a vital role in health care delivery, and have been on the front lines of providing medications, related counseling, and patient assistance.

**1. Increased Transparency Will Reduce Prescription Drug Costs**

NCPA has repeatedly advocated for legislation and regulations that would bring much-needed transparency to the pharmacy benefits industry to ensure that the purported cost savings that pharmacy benefits managers (“PBMs”) claim are, in fact, passed on to consumers. It is important to note that PBMs are not simply providing administration of the prescription benefit. PBMs simultaneously set the prices charged to health plan sponsors and reimbursement paid to pharmacy providers. At the same time, many PBMs compete directly with community pharmacies with their own proprietary mail order, retail and/or specialty pharmacies. PBMs dictate which pharmacies patients can access through plan designs which often restrict networks

and incentivize the use of their own pharmacy business through an arbitrary non-bid process that often does not allow community pharmacies the opportunity to even consider participation, thus further limiting competition. This inherent conflict of interest provides perverse incentives for the PBM to reduce competition and limit output for their own gain. Without transparency, the conflict of interest is likely to continue to increase costs to plan sponsors and beneficiaries.

In an era of increased availability of data that can be used to make informed cost-effective healthcare decisions by plan sponsors and the beneficiaries they cover, the lack of transparency in this critical part of the health care system is alarming. The PBM industry has continually fought efforts at regulation and oversight, allowing them to continue to utilize non-transparent practices that have raised costs. Indeed, healthcare consultant The Advisory Board Co. has found that non-transparent PBMs cost organizations 30%-50% more than their transparent counterparts. See <http://www.advisory.com/~media/Advisory-com/Technology/PBM-Compass/PBM-Diagnostic.pdf>.

## **2. CMS Supports Increased Transparency**

The Centers for Medicare and Medicaid Services (“CMS”), which pays for approximately 51% of all prescriptions dispensed in the United States, acknowledged that PBMs may not be saving the government as much as they claim, particularly in so called “preferred networks” which limit the number of providers. In its proposed Part D rule for 2015 (“Proposed Rule”), CMS would require increased disclosure of all price concessions to be reported in negotiated prices to ensure that purported cost savings are recognized.

The lack of transparency is all the more glaring given the expectation that preferred networks would save the federal government and patients more money. After close study, CMS found that the “...most significant driver of excess costs in the outlier preferred networks appeared in mail-order claims.” Given the fact that large PBM-owned mail order pharmacies exert greater market power than any individual pharmacy and are generally able to purchase drugs from the manufacturer at a lower price, one would assume that these price savings would be passed along to the federal government and the ultimate beneficiary. The fact that this “assumption” was soundly disproved demonstrates that more transparency is needed and the current “preferred pharmacy” system is flawed. PBMs that have the market power to extract savings on drug acquisition cost are not only **not** passing these savings along, but are manipulating the system to increase their own profits at the expense of the federal government and Part D beneficiaries. CMS noted “. . . that most PBMs own their mail order pharmacies, and we believe their business strategy is to move as much volume as possible to these related-party pharmacies to maximize profits. . . .”

In its comments to the Proposed Rule, the FTC conceded that there is a serious need to thoroughly examine whether prescription drug benefit designs as they currently exist in the Part D program are distorting incentives for consumers to make cost-effective choices and that the last time the FTC looked at this issue was in 2005—prior to the rollout of the Part D program. The Proposed Rule highlights the inadequacies in the current system with respect to PBM transparency and the lack of alignment between the interests of PBMs, plan sponsors and

beneficiaries. PBMs are effectively distorting incentives for plan sponsors -- and in turn consumers -- that are preventing them from making cost effective choices.

### **3. Release of Prescription Data Can Increase Quality and Decrease Costs**

In addition to requiring greater reporting of all payments by PBMs, CMS also proposed broadening the release of Part D prescription data. Releasing unencrypted prescriber, plan and pharmacy identifiers to external entities can provide needed detail and clarity about the overall quality of healthcare services being provided and enable legitimate researchers to bring greater transparency to the overall process. The increased availability of this type of data will enable CMS and other outside researchers to conduct in-depth comparisons of medications provided through different outlets, which could enable CMS to take proactive measures to impact cost savings and improve quality. Ultimately, these findings can be used and potentially implemented in the commercial market to enhance competition. The factors that CMS is proposing in order to mitigate any concerns regarding access to potentially sensitive data include minimum necessary, legitimate researcher and aggregation policies which would provide some common sense parameters for the release of this type of data.

### **Conclusion**

NCPA appreciates this opportunity to provide public comments on the FTC's Health Care Workshop. We believe that the best way to ensure competition in the pharmacy marketplace is to promote much needed transparency to ensure cost savings are passed on to health plan sponsors and beneficiaries. We welcome the opportunity to discuss this with the Commission as you continue to assess this critical issue.

Sincerely,

B. Douglas Hoey, RPh, MBA

Chief Executive Officer