



National Alliance of State Pharmacy Associations

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December 8, 2017

Maureen K. Ohlhausen
Acting Chairwoman
Federal Trade Commission
400 7th St., SW
Washington, DC 20024

Re: Federal Trade Commission Workshop, “Understanding Competition in Prescription Drug Markets: Entry and Supply Chain Dynamics”

Dear Acting Chairwoman Ohlhausen:

On behalf of the state pharmacy associations across the United States, the National Alliance of State Pharmacy Associations applauds the Federal Trade Commission’s dedication to examining factors that inhibit consumer access to appropriately priced medications. We appreciate the opportunity to share our comments on this important issue.

The National Alliance of State Pharmacy Associations (NASPA), founded in 1927 as the National Council of State Pharmacy Association Executives, is dedicated to enhancing the success of state pharmacy associations in their efforts to advance the profession of pharmacy. NASPA’s membership is comprised of state pharmacy associations and over 70 other stakeholder organizations. NASPA promotes leadership, sharing, learning, and policy exchange among its members and pharmacy leaders nationwide.

Our comments will largely focus on issues that arise due to pharmacy benefit managers’ (PBMs) business practices. But first, we would like to emphasize pharmacists’ role in and the importance of efficient medication selection and use.

Pharmacists contribute to efficient medication selection.

Pharmacoeconomics is the comparison of one medication to another, weighing the costs and benefits of medications.¹ Pharmacoeconomics is an entire subspecialty but also is a concept that permeates pharmacists’ work in a variety of settings. Pharmacists consider the costs (financial and the potential for side effects) and benefits (health outcomes) of a medication when assessing the appropriateness of a prescription, conducting a comprehensive medication review, or examining a coverage policy for a class of medications.

Pharmacists, in all practice settings, are often the primary member of the healthcare team who is able to add the financial layer of analysis to patient medication regimens. Hospital pharmacists lead efficient formulary development,² community pharmacists make recommendations for cost

¹ <https://www.ncbi.nlm.nih.gov/pubmed/16120204>

² <http://www.pharmacytimes.com/publications/health-system-edition/2017/september2017/hospital-formulary-management>



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effective therapeutic substitutions,³ and managed care pharmacists design coverage policies to guide effective medication use at the population level, but also allow for patients with unique needs to get the best medication for them.⁴

Pharmacists' medication management services ensure efficient medication use.

We start with this level-setting to broadly encourage FTC and other policy makers to recognize the value that pharmacists bring to the continuum of medication use. While efficient medication selection is important to controlling the growing costs of medications, it is also important to consider the value medications bring to healthcare. When taken correctly, medications provide the most effective way to manage chronic conditions, prevent future, and costly, complications, and even cure some diseases.

Unfortunately, medications are often not taken as directed—a problem that leads to costly complications and prevents medications from delivering on their promise for improved outcomes.^{5,6} If medications do not deliver on their potential for improved outcomes, their value significantly decreases.

Pharmacists' medication management services are critical to ensuring patients use their medications correctly.⁷ Investing in pharmacists' medication management services significantly decreases overall healthcare costs and must be discussed in parallel with drug pricing considerations.^{8,9}

Patient copayments should not be higher than the price without insurance.

There have been many reports in the media about so called “clawbacks,” when patients are charged (as a copayment) an amount higher than what the pharmacy would charge were the patient uninsured.¹⁰ Unfortunately, the pharmacist is often prohibited from disclosing this discrepancy due to “gag clauses” in their contracts with PBMs.¹¹ Because the consumer does not know about the opportunity for a lower cost without insurance, she ends up paying the higher copayment.¹² States are responding with laws that aim to prohibit contractual “gag clauses.”^{13,14}

³ <http://www.pharmacytimes.com/news/therapeutic-substitution-could-curb-skyrocketing-drug-costs>

⁴ <http://www.amcp.org/InformationForTertiary.aspx?id=9045>

⁵ www.nehi.net/writable/publication_files/file/pa_issue_brief_final.pdf

⁶ www.ncbi.nlm.nih.gov/pmc/articles/PMC3934668/

⁷ www.accp.com/docs/positions/misc/improving_patient_and_health_system_outcomes.pdf

⁸ www.aphafoundation.org/sites/default/files/ckeditor/files/Our%20Work/MP7-PSMP-Diabetes-JAPhA-Final%20Report.pdf

⁹ www.aphafoundation.org/sites/default/files/ckeditor/files/Our%20Work/201101_ImPACT_Depression_JAPhA.pdf

¹⁰ <http://www.ncpanet.org/advocacy/pbm-resources/lack-of-transparency-and-higher-costs>

¹¹ <https://www.bloomberg.com/news/articles/2017-02-24/sworn-to-secrecy-drugstores-stay-silent-as-customers-overpay>

¹² An odd twist on moral hazard – the consumer has incomplete information (does not know the cash price is lower because the pharmacist is prohibited from telling her) so the PBM can charge a higher copayment, knowing the consumer will pay it because she needs the medication and does not know there is a lower cost option available to her.

¹³ <http://www.legis.la.gov/legis/BillInfo.aspx?i=229167>

¹⁴ <https://www.thecppc.com/single-post/2017/07/12/Connecticut-Enacts-Law-to-Stop-PBM-Clawbacks>



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Consolidation leaves pharmacies without bargaining power and leads to decreased access.

With three large companies now making up nearly 80% of the market, pharmacies (especially those that are independently-owned, but also chains) are faced with “take-it-or-leave-it” contracting. The terms pharmacies are forced to accept sometimes include:

- Negative reimbursements (payments for products that are lower than the cost the pharmacy pays for the product)
- Vague fees (such as direct and indirect remuneration or DIR) that are assessed months after a particular prescription is filled – giving the pharmacy with little opportunity to predict their effect on the business
- Dispensing fees that are vastly lower than the true cost to dispense a prescription
- Administrative burdens such as harsh auditing procedures, “gag clauses” (discussed above), etc.

Private contracting is usually not the concern of policy makers—even if the party with less bargaining power cannot negotiate better terms, they can walk away from the deal. However, PBM consolidation creates a unique problem. If a pharmacy rejects a PBM’s contract because a particular term will not work for their business, it could result in nearly 30% of their patients being forced to find another pharmacy, undermining patient choice, and potentially limiting access.

Consider a small town where there is only one pharmacy—if that pharmacy stops taking one of the three big PBMs – up to 30% (or more if one of the PBMs has a larger share of the local market) will have no local pharmacy from which they can access covered medications. The pharmacy is then in the impossible position of deciding between their bottom line and harming the community they serve. As trusted healthcare advisors, pharmacists often choose to protect their patients and take the PBMs terms—to the detriment of their bottom line. Overtime, accepting negative reimbursements can result in the pharmacy closing altogether; consequently the entire community is left without access to a pharmacy.

Lack of transparency results in increased overall costs.

Problems resulting from a lack of transparency were discussed in detail at the FTC Workshop on November 8, 2017 so we will refrain from going into detail in these comments. We would like to emphasize, however, that greater transparency is needed in the following aspects of the PBM industry (among others):

- Manufacturer rebates¹⁵: how they affect PBM formularies, the amount the manufacturer pays vs. the amount passed through to PBM clients
- Maximum allowable cost (MAC) pricing¹⁶: how the prices are set, the “spread” between the price paid to the pharmacy and the price charged to the PBM client

¹⁵ <http://www.businessinsider.com/pharmacists-blame-pbms-for-high-cost-of-nexium-2016-10>

¹⁶ <http://katherineeban.com/2013/10/23/painful-prescription-fortune-com/>



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- DIR fees: transparent contract terms so pharmacies can make informed business decisions

We recognize that there are many other issues to discuss on these topics and encourage the FTC to revisit their earlier research on the impact of the PBM industry. Many factors in the market have dramatically changed in the last decade. Patients and pharmacies are experiencing significant challenges and states are struggling to find effective solutions. These issues are of utmost importance to the state pharmacy associations across the United States. We look forward to working with the FTC to identify solutions that promote competition and patient access to affordable and effective medications.

Sincerely,

Rebecca P. Snead, RPh
CEO & EVP
National Alliance of State Pharmacy Associations