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Federal Trade Commission
Office of the Secretary
Constitution Center
400 Seventh Street, SW
Room 5610
Washington, DC 20024

Subject: Pharma Workshop Comment

Workshop Title and Date: Understanding Competition in U.S. Prescription Drug Markets: Entry and Supply Chain Dynamics Workshop, November 8, 2017

The Federal Trade Commission must unequivocally advocate for repeal of the Medicare anti-kickback provision safe harbor enacted by Congress in 1987. The safe harbor has resulted in rampant anti-competitive behaviors by Group Purchasing Organizations (GPOs) and Pharmacy Benefit Managers (PBMs) that have caused severe shortages of critical life-saving drugs. The safe harbor has allowed GPOs and PBMs to engage in anti-competitive behaviors such as accepting and paying kickbacks, negotiating exclusive contracts, and other practices that are illegal virtually everywhere else in the economy without fear of prosecution. The misguided safe harbor statute allows the GPOs and PBMs to demand “administrative fees” that are essentially kickbacks from generic drug manufacturers and other medical suppliers in exchange for access to hospitals and other institutional buyers with whom they have negotiated exclusive contracts and share a portion of the kickback revenue as finders fees.

These policies and practices have destroyed competition in critical channels of the medical supply chain that have driven multiple manufacturers out of the marketplace and caused severe shortages that are jeopardizing the lives, health, and safety of American consumers. Demands for kickbacks from GPOs have crimped the profit margins of generic drug manufacturers, undermined their ability to invest adequately in plant maintenance and quality control, and reduced the number of suppliers of some key drugs to just one or two. The abandonment of production of [propofol](#), the preferred surgical anesthetic, by Teva Pharmaceuticals in 2010 is a salient and prototypical case.

It is time for the United States to decisively address this unacceptable situation. For far too long, the illegitimate prerogatives of special interest groups in the healthcare supply chain

have been favored at the expense of the welfare of citizens. Government officials have been too anxious to accommodate these interests rather than promote competition aggressively to advance the public interest. There has been a tendency to invent multiple, complex explanations of the cause of the problem that are used to obscure the simple truth that inadequate competition facilitated by unsound government policies manipulated by special interests is the heart of the matter.

The solution is to restore competition to medical markets by repealing the 1987 Medicare anti-kickback safe harbor. The FTC must advocate zealously for such reform and ardently promote competition and transparency so that shortages will be cleared and justice will prevail.

Sincerely,

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