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Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
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Re: Re: Comments to the Federal Trade Commission (FTC)'s Competition and Consumer Protection in the 21st Century Hearings, Project Number P181201; the state of antitrust and consumer protection law and enforcement, and their development, since the Pitofsky hearings (Docket No. FTC-2018-0048)

Dear Sir or Madam:

Before being elected to Congress I practiced community and consulting pharmacy for over 30 years. In that time, I've witnessed some of the greatest medical innovations of mankind in health care delivery. What once required hospital admittance or complex drug regimens can now be accomplished through a single prescription or pill. Pharmacists serve on the front lines of delivering these modern miracles and helping patients navigate their health care choices.

Unfortunately, I have also witnessed a dramatic shift in the delivery of pharmacy care inserting big business between patients and their doctors. The creation and development of pharmacy benefit managers (PBMs) in prescription drug plans is increasingly putting profits for big businesses over what is best for patients. When PBMs were first introduced into the drug supply chain in the 1980s, they were fiscal intermediaries that served to adjudicate prescription drug claims for insurers that offered pharmacy benefits. However, with the Medicare Modernization Act of 2003, and the creation of Medicare Part D, PBMs morphed into a multi-billion dollar industry that created a system of rebates, formularies with no basis in health outcomes, and preferred provider networks. As a result, patients have fewer choices surrounding what types of treatment they receive and where they receive care. Moreover, the system creates perverse incentives to drive up costs for patients. Without FTC action, the market will continue to consolidate and divert care decisions away from patients and doctors over to PBMs.

Transparency, choice, and a level playing field serve as the foundation of a truly competitive market. The FTC's role is to ensure that competition and consumer protection are upheld as sacrosanct in the marketplace. It is incumbent upon the FTC to ensure that the

changing economy, evolving business practices, new technologies, and international developments, do not infringe upon consumer choice. With this in mind, I have grave concerns about the anti-competitive practices PBMs interject into the health care market. PBMs control the prescription drug coverage for 238 million Americans. Currently just three PBMs dictate health care decisions for 89 percent of those lives. Two of those three only contract with specific pharmacies. The evolution of PBMs from innocuous claims adjudicators to profit driven market dominators has occurred largely unchecked for two decades – it is time to re-insert clarity and consumer choice into the drug supply chain.

PBMs have stated their role in the drug supply chain is to control costs. However, patients' out-of-pocket costs have increased by 169 percent from 1987 to 2008. Employers have seen a 1,553 percent increase in drug benefit costs over that same time period. By developing a complex system of rebates and fees, PBMs have eliminated any incentive for them to drive down costs. If a pharmaceutical company wants patients to have access to their product, they are instructed to set a higher list price in order to deliver a rebate to the PBM. If they refuse, the PBM simply excludes the product from their formulary and deny access to the millions of lives they control. When pharmacists try to negotiate contracts with PBMs to ensure the best value for their patients, they are often told by the PBM that the contract is non-negotiable, and are subsequently forced to make the false choice of accepting the terms or being deemed out of network for their patients. Thus many pharmacists are forced into contracts that are not in the best interests of their patients or their practice. These practices prevent true competition from entering the market in any stage of the drug supply chain, keeping prices high and choices limited for patients.

PBMs use their sheer size, complex contracts and rebate negotiations to eliminate competition and restrict the ability of their counterparts to question their businesses practices. For instance, contracts are peppered with provisions that demand total confidentiality, and place excessive restrictions on contacting sponsors or media regarding the imbalanced terms of the contract. Some PBM contracts contain “gag-clauses” that prevent pharmacists from telling their patients when it would be less expensive to purchase their drugs with cash than with their insurance. If pharmacists violate these terms by sharing pricing information with patients, or discussing their specific contractual challenges with elected officials or the media, they risk retaliation from PBMs and losing their ability to serve their community.

Even more concerning, as PBMs see less opportunity for horizontal mergers they have begun to acquire and consolidate with other stakeholders in the drug supply chain. This practice is further consolidating their stranglehold on the market and blocking any competition to drive down health costs. The Council of Economic Advisors specifically identified PBM monopolies as a major culprit for the lack of competition within the United States health system.

As we have all seen during the debates taking place around the nation surrounding drug pricing, PBMs have manipulated the public perception of their role in the drug supply chain through their opaque business practices that ultimately obfuscate the true cost of drugs. PBMs sit in the middle of the supply chain and thus have the ability to control the pharmaceutical manufacturer rebate, plan formulary, fee paid to the pharmacist and the price of drugs to patients. They effectively dictate every contract and transaction through the drug supply chain.

Furthermore, they maintain this unique vantage point without any fiduciary duty to employers, plan sponsors, or patients. Therefore, they negotiate throughout the drug delivery process without any responsibility to manage or disclose any benefits they may receive preventing patients, manufacturers, and plan sponsors from determining their true value. Due to their lack of transparency and fiduciary duty, they have no legal obligation to ensure they add value to the system, and moreover exist largely unchecked without appropriate transparency surrounding their business practices.

In addition to their opaque and inequitable business strategies, PBMs maintain a number of conflicts of interest that inhibit their ability to effectively manage drug costs. Many PBMs not only serve as middlemen between drug makers and plan sponsors, but they also own their own specialty and mail order pharmacies. PBMs often design plans where they have the ability to incentivize or even require patients to choose the PBM-owned pharmacy over a competitor if the patient wants their drug covered by their insurance plan. This allows PBMs to effectively dictate the terms on which patients can receive their care. Allowing the PBMs to cherry-pick their own pharmacies can serve as a significant barrier to access for many patients, especially those with medically complex medical needs where a longer drive to the pharmacy can lead to great discomfort and pain.

I appreciate the opportunity to share my thoughts and concerns about how PBMs have thus far evaded scrutiny by the FTC and have harmed patients in the process. As we have seen over the past decade with the growth in the PBM industry, patients have had fewer choices surrounding what types of treatment they receive and where. Without FTC action, we will see greater market consolidation and PBMs putting their own profits ahead of what is best for patients. I look forward to working with you in the future to better serve the American people and bring transparency and responsibility in the drug supply chain.

Sincerely,

Earl L. "Buddy" Carter
Member of Congress