



Employers' Prescription for Affordable Drugs

May 25, 2022

Ms. Lina Khan, JD
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Solicitation for Public Comments on the Business Practices of Pharmacy Benefit Managers and Their Impact on Independent Pharmacies and Consumers

Dear Chair Khan:

The Employers' Prescription for Affordable Drugs (EmployersRx) is a coalition of employer and health care purchaser organizations dedicated to mobilizing large employers to reduce drug costs by educating and influencing public policies. Built on the tenets of transparency, competition, and value, EmployersRx supports public policies that drive down the cost of drugs while preserving true innovation as part of a value-based health care system. We appreciate the opportunity to respond to your request for information on the role of pharmacy benefit managers in the drug supply chain.

Self-insured employers are the largest customers of pharmacy benefits managers (PBMs) and as such, they have a significant stake in, and deep commitment to, efforts to curb the unsustainable rising costs of prescription drugs. Large employers – many of whom are represented by members of EmployersRx – spend more than \$140 billion annually on prescription drugs on behalf of their employees and families.¹ Our members, and their employees and families, are thus heavily impacted by business practices in the drug supply chain that increase the net price of drugs in the commercial market.

¹ <https://www.kff.org/medicare/issue-brief/how-does-prescription-drug-spending-and-use-compare-across-large-employer-plans-medicare-part-d-and-medicaid/>

The Lack of Oversight in the Current System

While commercial health plans are subject to direct federal regulation under (ERISA), the Affordable Care Act, and other applicable laws, PBMs are not always subject to the same regulatory scheme. Therefore, substantial gaps of oversight and regulation at the federal level remain.

For years, employers and health plan sponsors have tried and often failed to obtain better transparency from their PBMs. Today, many PBM contracts with employer purchasers prohibit the disclosure of data regarding gross and net prices, rebates, and other financial information.² PBM contracts also contain unnecessarily complex definitions of commonly used terms, including “generic” and “specialty” drugs, that are often different from how those terms are used in regulation.³

Given the significant market consolidation in the PBM industry, where three companies control roughly 80 percent of the market, we believe enhanced federal oversight is necessary to hold PBMs accountable to purchasers and patients.

The Current System is Complex and a Highly Consolidated Web

PBMs represent just one part of a highly complicated and consolidated drug supply chain. EmployersRx has identified two separate, but interrelated concerns:

Horizontal Consolidation – As noted above, just three companies – manage roughly 80 percent of all drugs sold in the United States.⁴ The Herfindahl-Hirschman Index (HHI) figure for the PBM sector is in excess of 2100, indicating a “Moderately Concentrated Market.”⁵ The lack of competition among PBMs reduces the ability of employers and purchasers to demand better prices and enhanced transparency. While organizations have sought to disrupt the market by creating transparent PBMs, the dominant purchasing power of the “big three” makes market entry difficult for new startup PBMs.⁶

Vertical integration –The largest PBMs are single business units in very large vertically integrated health insurance companies. In addition to owning large PBMs, each of

² <https://www.pharmacytimes.com/view/pbms-lack-of-transparency-spur-new-models-for-specialty-pharmacy-benefit-management>

³ <https://us.milliman.com/en/insight/pbm-contracts-understand-then-optimize>

⁴ <https://www.hirc.com/PBM-market-landscape-and-imperatives>

⁵ <https://insidesources.com/new-competition-for-pharmaceutical-benefit-managers/>

⁶ <https://www.cfo.com/human-capital/2021/10/employer-group-launches-its-own-pbm/>

those organizations also own their own mail-order and specialty pharmacies, group-purchasing organizations, and health insurance brokerages. This high degree of vertical integration provides enormous opportunity for anti-competitive practices.⁷

The level of complexity in the financial interactions between different business units in these consolidated businesses is nearly impossible for outside stakeholders, including purchasers, to follow.⁸ The opacity that comes with operating in these large systems undermines the transparency employers and purchasers are demanding as customers of PBMs. Indeed, the industry has sued to stop federal regulations that would help purchasers to better understand their costs and savings associated with their prescription drug formularies.⁹

Recommendations to Further Promote Transparency

The Commission should study the effect of horizontal market consolidation in driving up net prices for drugs for employers and purchasers, and in reducing competition from new PBMs and submit its findings along with recommendations to Congress. Further, the FTC should **investigate the role of vertical integration in allowing for anti-competitive practices by PBMs and affiliated entities within the same corporate entities** to increase net prices and shield financial transactions from transparency and oversight.

PBMs and their affiliated entities in the drug supply chain should be transparent so that employers may understand the current prescription drug prices in their formularies. It is important that employers and purchasers be able to see the price of drug units sold from the very beginning of the process (sale from manufacturer to PBM) all the way through to the final sale to the covered individual so plans can act in the best interest of their beneficiaries.

⁷ <https://www.healio.com/news/rheumatology/20220214/vertical-integration-secures-pbms-as-arsonists-and-firefighters-of-drug-prices>

⁸ <https://www.healio.com/news/rheumatology/20220214/vertical-integration-secures-pbms-as-arsonists-and-firefighters-of-drug-prices>

⁹ <https://www.verywellhealth.com/drug-pricing-rule-lawsuit-5206086>

Conclusion

More information needs to be made public in how PBMs and their affiliates operate and we encourage the FTC to study and offer **comprehensive solutions that allow purchasers and consumers to have access to pricing information so that they can continue to benefit from PBMs.**

Thank you again for the opportunity to provide our perspective and your attention on this critical issue for America's employers, purchasers, and consumers.

Sincerely,

American Benefits Council
American Health Policy Institute
The ERISA Industry Committee
HR Policy Association
National Alliance of Healthcare Purchaser Coalitions
Purchaser Business Group on Health
Silicon Valley Employers Forum