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June 15, 2022

The Honorable Lina M. Khan
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Chair Khan,

I write to you today to thank you for reconsidering the vote that was taken by the Federal Trade Commission (FTC) on February 17, 2022 regarding an investigation into Pharmacy Benefit Manager (PBM) practices. I am thankful the FTC is taking initiative to investigate the pharmaceutical industry and its impact on increasing drug prices through unanimously voting to open an investigation into PBM business practices on June 7, 2022.

Over the last several months, the FTC has heard from hundreds of pharmacies and patients negatively impacted by harmful PBM practices through public comments and open town hall meetings. There is broad consensus in Congress that a plethora of unfair ongoing practices clearly contribute to the inflationary drug prices many Americans face.

I work closely with many Oklahoma pharmacists who have engaged with my office over the last several years to share their frustrations with certain PBM practices such as the issuance of hefty retroactive direct and indirect remuneration (DIR) fees, inconsistent quality metrics, unforeseen contract changes, and an overall lack of clarity. These practices harm patients by artificially increasing drug prices at the pharmacy counter and have led to the closure of independent pharmacies in my state, making it more difficult for rural Americans to access care.

Alarming new data from the Centers for Medicare and Medicaid Services (CMS) show that pharmacy price concessions grew more than 107,400 percent between 2010 and 2020. I have introduced legislation to end this practice and to enforce standardized quality metrics to provide pharmacies clarity and the ability to plan ahead. On April 29, 2022, CMS issued a final rule to require that all pharmacy concessions be passed to the pharmacy counter. While I am thankful for this revolutionary first step, CMS has not been able to address the full scope of the level of control PBMs have on the prescription drug market.

Three PBMs make up about 85% of the market. This margin of control impacts prices, coinsurance levels, and takes away the patient-provider relationship by inserting a powerful, yet greatly unknown, third party.

In 2018, the White House Council of Economic Advisors noted that the PBMs' level of control allows them to "exercise undue market power against manufacturers and against the health plans and beneficiaries they are supposed to be representing, thus generating outsized profits for themselves."[1] It is clear that transparency is needed.

Many PBMs are now a large part of massive conglomerates that include an insurer, a retail pharmacy chain, the PBM that negotiates between plans and drug manufacturers, and now sometimes even physician practices. This ownership structure creates a monopoly over a majority of the health care industry, meaning that the same company is able to decide what drug is prescribed, whether a lower cost generic is available to a patient, what drug is covered by insurance and on what formulary tier it is placed, how much the patient's out-of-pocket requirements are for a drug, and where a patient can access their prescription. This level of integrated control opens the door for anticompetitive practices and incentivizes

[1] Council for Economic Advisors, https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/11/CEA-Rx-White-Paper-Final2.pdf

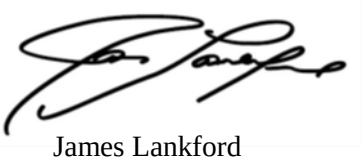
decisions to be made for the benefit of one or all of the several member-companies within an ownership conglomerate, not for the benefit of patients.

PBMs have become one of the most contentious actors in the prescription drug industry. Though their stated goal is to contain costs for the benefit of patients, some PBMs generally benefit from high rebates and exclusive agreements with drug manufacturers. The role rebates play in PBM decision-making not only increases costs but also decreases access to lower cost generic drugs. PBMs are also able to manipulate insurer formularies so that a lower cost drug may actually cost a patient more than a brand drug, based solely on its formulary tier. That does not sound like cost controlling to me; it sounds like patients are suffering and unable to afford their medication while some PBM profit-margins continue to grow.

At the same time Americans are facing record high inflation rates and continued fears about their health after a global pandemic, communities are still losing access to their local pharmacies and paying higher prices for their necessary medications. Patients deserve transparency into business practices impacting their prescription affordability. We should be doing all we can do understand all of the causes of inflated drug prices and pharmacy closures.

I am thankful you were able to build upon existing consensus to come to an agreement with your fellow commissioners on how to properly investigate the prescription drug industry and the role that certain PBM practices play. I look forward to the remaining engaged with the FTC investigation and to shining light on this extremely important issue.

In God We Trust,



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