

STATEMENT OF THE COMMISSION

In the Matter of Omnicare, Inc./NeighborCare, Inc. File No. 041 0146

The Federal Trade Commission has closed its investigation of Omnicare, Inc.'s tender offer for NeighborCare, Inc. Although the two companies are respectively the largest and likely second-largest institutional pharmacies ("IPs") in the United States today, the evidence uncovered in a thorough investigation indicates that the transaction is not likely to reduce competition.

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IPs deliver prescription drugs to residents of long term care ("LTC") facilities – primarily in fullp172h60.00

containers according to the specific drug regimens for individual SNF residents. At the IP facility, licensed pharmacists supervise the process by which prescriptions are filled, sorted, and prepared for delivery. SNFs usually receive deliveries at least once daily, seven days per week, and on a 24-hours-per-day emergency basis. IPs are therefore typically located within about 100 typically IPs are the

¹ In addition to SNFs, LTC facilities also include assisted living facilities ("ALFs"). Residents of SNFs primarily are elderly and generally have serious, chronic medical conditions. Residents of ALFs also primarily are elderly, but tend to be more ambulatory, with less severe health care needs, than SNF residents. IPs are, in most cases, the sole providers of prescription drugs to SNF residents. Because SNFs, unlike ALFs, turn virtually exclusively to IPs for pharmacy services, staff focused its investigation on the transaction's competitive implications on the market to supply pharmaceutical products to SNF residents.

² U.S. Dep't of Justice and Fed. Trade Comm'n, *Horizontal Merger Guidelines* § 1.51 (Apr. 2, 1992; revised, Apr. 8, 1997).

The Commission has concluded that, under current market conditions, Omnicare's acquisition of NeighborCare is not likely to result in anticompetitive effects – arising either from a unilateral exercise of market power by Omnicare, or from coordinated interaction among remaining rival IPs. In a very high percentage of the areas where Omnicare and NeighborCare both are capable of serving the same SNF – because each has a pharmacy within 100 miles – PharMerica and/or Kindred are also located within 100 miles. Most of the remaining SNFs have three or more independent IPs located within 100 miles. The vast majority of SNFs, therefore, have multiple rival IPs within their service areas.

The investigatory record – including pricing data, customer-loss (bid) data, and scores of interviews and testimony from industry participants – suggests that independent IPs generally are effective rivals to the chain IPs in the service areas where they compete. It is not likely that Omnicare, post-acquisition, could unilaterally impose an anticompetitive increase in price or reduction in quality on SNF.0000 cm0.00 0.00 0.00 eb0.0000 Ts (b)(4) participants suggest that independent I

³ Medicare Prescription Drug, Improvement and Modernization Act of 2003, P.L. 108-173.

through coordination with rivals, be able to leverage its market position to extract above-market rates from PDPs as a condition of joining their networks. We have concluded that the available facts, on balance, do not support such a theory at this time.

When it announced its Medicare Part D program in January, CMS said that it will “improve competition in the LTC pharmacy market while preserving the pharmacy relationships and levels of service that LTC facilities now enjoy.”⁴ CMS stated that pharmacies, in negotiating price terms with PDPs, “must do so in a way that provides the be

⁴ CMS Issue Paper #26, “High-Quality Access to Long-Term Care Pharmacies” (January 21, 2005), available at www.cms.hhs.gov.

⁵ Id.

⁶ Id.

⁷ Id.