

Speaker 1:

Good afternoon everyone. This meeting will come to order. We are meeting in open session today to consider certain items before the commission. We had an overwhelming response from speakers interested in sharing their concerns. Without further ado, I will turn it over to Lindsay Krisak.

Lindsay Krisak:

Thank you, Madam chair. Before we begin, please note that the FTC is recording this event, which may be maintained, used, and disclosed to the extent authorized or required by applicable regulation or order. And it may be made available in whole or in part with the public record accordance with the commission's rules. At this time, I'd like to welcome the honorable representative John Rose of Tennessee's sixth congressional district to share some remarks. Congressman.

John Rose:

Thank you, Lindsey. And thank you Madam chair and members of the commission for calling this meeting and allowing members of the public to submit comments on the important issue affecting the lives and livelihoods of people all across the country, and certainly right here in middle Tennessee in the sixth district of Tennessee that I represent. Last August in my district, I convened a community pharmacy advisory council meeting, where I heard from numerous pharmacists that have alleged that anti-competitive contracting policies from Pharmacy benefit managers, or PBMs as they're known, are significantly power and develop and their business relationships to drive up costs to pharmacies, unit especially through the use of take it or leave it contracts. My constituents and I strongly support the federal trade commissions study of PBMs and any FTC efforts to ascertain PBMs individual pharmacy clawback information.

John Rose:

Currently PBMs will not allow pharmacies to disclose this information, so the FTC must request it. I applaud any effort to bring desperately needed transparency to PBMs practices and strongly urge the FTC to utilize every tool and resource available to aggressively collect information on PBMs, their anti-competitive behavior. If we don't act decisively act soon, more and more mom and pop pharmacies around the country, like my own that has served me so well throughout my life, will be forced to close because they cannot cope with the unfair conditions placed on them by pharmacy benefit managers who operate with little or no public transparency. Thank you to the commission and thank you for the opportunity to speak with you today.

Lindsay Krisak:

Thank you Congressman for your remarks. We will now hear a video submission from the honorable rep Buddy Carter from Georgia's first congressional district.

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Diane Jens:

I believe all of this will do a great disservice to not only the small bicycle independent shops, but the communities at large who depend on these small shops for sales service. I would ask that the FTC look into what I believe might be an effort to not only control the supply chain, but also competition and in turn pricing. Thank you for your attention. I appreciate it.

Lindsay Krisak:

Thank you Diane. Our next speaker is Steven Moore. Steven.

Steven Moore:

Hi, good afternoon. TT693 (o)-9.o2 (n)2.2k(v)-2.5 (l)10.6 (y)-4.5 (o)-6.6u(n)2.2 (.)1 ()10.6M(y)-7.9 (y)4.1 ()-9.o2

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Bill Keep:

Third, often mention examples of atypical earnings rely the underlying interest of upline distributors and the parent MLM, em. 44.64 Tm [(o)-oi.32rn4 Tm [(o)56q7.8 (s.2 (rn)2 u)2.3 (pire)7.8 12 -08aiP(M)6.2 (L)-4.

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00:38:33]. This is not the case as many PBMs routinely steer patients or worse require patients use a

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commission moving forward with a six piece study of the PBM industry, including the relationship between large PBMs and pharmacies. PBMs frequently assert that below cost reimbursement is a problem only for poorly run pharmacies and that their low reimbursement rates can create an incentive for such poorly run pharmacies to improve. However, the PBM industry has long resisted attempts to bring transparency that would reveal the basis for these claims and all pharmacies, not just poorly run ones, are suffering as a result of PBMs, take it or leave it contracts and below cost pricing schemes. Even FMI's largest members fortune 500 companies with efficiencies, expertise in supply chain logistics and economies of scale, struggle to operate financially viable pharmacies as a result.

Peter Mats:

Moreover, below cost pricing is just one way that PBMs systemically leverage their market power to the detriment of supermarket pharmacies and other stakeholders throughout the health system. Unlike independent pharmacies, FMI members that operate supermarket pharmacies are not dependent solely on their pharmacy operations for survival. However, while PBM abuses may not force our members to close their doors altogether, they make it very likely that supermarket companies will be forced to continue leaving the pharmacy business, either by outsourcing their pharmacy operations to the biggest players in the market or worse, by abandoning pharmacy operations altogether. Neither of these

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mail order, and reg18/22)

until October 2021 I was the owner operator of Navis pack and ship, Philadelphia. Since as long ago as 2017, Annex has allowed some, but not all commercial franchisees to operate satellite facilities under the false flag of virtual locations. However, these satellite operations are not virtual. They are physical bricks and mortar locations. Rent is paid, operating hours are posted and customers are encouraged to drop off items to be shipped. There is nothing virtual about them. The virtual locations have not been announced to the system, rules and regulations have not been established, franchise purchase fees have not been paid, and they have not been listed in the Annex Brands FDDs or anywhere else.

Peter Michaelson:

These improper arrangements disadvantaged the commercial locations that were not offered the same opportunity to establish a virtual satellite location, and may have been injured due to sales stolen by a nearby virtual location. Annex brands has for years been in violation of the most essential role of a franchisor to establish and maintain a regulated, equitable, and fully disclosed business environment for its franchisees. Their actions have restricted competition by favoring some franchisees over others. A comprehensive complaint was received yesterday at each of your offices and I encourage you to investigate and pursue these violations by Annex brands and take appropriate remedial actions. Thank you.

Speaker 2:

Thank you, Peter. Our next speaker is Sandeep Patel. Sandeep?

Sandeep Patel:

Thank you, madam chair and the commissioners for giving me opportunity to speak about my issues. My name is Sandeep Patel, and I'm a second generation of hoteliers who began my journey working at my parents' small motel and moved to Maryland to operate their first small economy franchise hotel in 1993. I operate some hotels out just outside of Washington, DC. I'm speaking right from my hotel breakfast lobby. In today's world of franchising, we have many unknown fees that franchisees does not know when they sign their franchise agreement. Example is the hidden kickbacks from the items being mandated by the franchisors which are higher than the same item purchased directly from the different sources with the same guidelines and the specs. I'll give you a couple examples. The first example is Comcast's internet service required by IEG, which is built on our franchise monthly bill, and is higher by \$200 compared to m(p)5.2 (is)-1.310.1 (t)rstes(a)-3.3 odao()TJ 0.hoe -6 (s)-4.3 (d)-0.7 0.1 (t)rsto n ((p)5.2 h) stTj Tc 01206 Tw -1206410.228(h)02 T(c)1 Fw.9ar(f)s-08 [0\$\$sea c2 st (t)1 (k)t(t)-383 ((p32.3 (y)th)7 (o)Td 6.7

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Speaker 2:

Thank you, Sandeep. ~~On~~ Next speaker is Henry Ranger. Henry?

Henry Ranger:

Greg Ribald:

Pharmacies against those patients wills. These practices restrict access to care, they compromise care and they limit patient choice while really driving up costs for patients and for taxpayers. Finally as you begin the investigatory process, I would just urge you to steal your resolve and this agency resolve because you're going to be delving into practices of some of the largest companies in the world that are

rather than one performed by the PBMs themselves to avoid a potentially biased and skewed review. Thank you very much for taking the time to listen to me.

Lindsey:

Thank you, Heidi. Our next speaker is Ted Okon. Ted.

Ted Okon:

Thank you madam chair and commissioners. I am Ted Okon, executive director of the Community and Oncology Alliance a nonprofit organization representing community oncology practices in patients they serve. This morning we released a new report providing the most detailed compilation to date of abusive and anti-competitive PBM tactics. The report pharmacy benefit manager expose how PBMs adversely impact cancer care while profiting at the expensive patients, providers, employers, and taxpayers. Provides a comprehensive expose and legal analysis of the most pervasive and abusive PBM tactics. Highlighting the adverse impact they have on patients, providers, and healthcare payers including Medicare, Medicaid, employers, and taxpayers. The goal is for the report to serve as an authoritative reference for policymakers, regulators, employers, and other seeking greater understanding of PBM behavior, while also suggesting solutions to reshape the healthcare industry for the better. The report sheds light on how a few vertically integrated Bahamas control 80 plus percent of

G-E-R fees weeks or months after the sale. These fees are unpredictable and unprecedented in any other industry. PBMs negotiate the medications that are on their formularies often choosing a medication that may cost the patient or the pharmacy more to dispense but the PBM prefers this more expensive medication because they get a more favorable manufacturer rebate.

Clint Hopkins:

This high cost pay to play strategy has resulted in skyrocketing costs of brand new medications over the last decade making brand name medications unaffordable to many patients and causing patients on Medicare part D plans to go through their coverage phases faster and faster each year. Ultimately this costs all taxpayers more as Medicare is taxpayer funded healthcare. Those rebates are not shared with the pharmacies or patients who paid more ~~front~~ they are retained by PBMs as profits. For far too long, PBMs have operated in the shadows extracting exorbitant amounts of money from pharmacies and consumers across the nation. Now is the time for the FTC to conduct this study, to reign in these behemoths, and break up these monopolies to save healthcare in America. Thank you.

Lindsey:

Thank you, Clint. Our next speaker is Monique Whitney. Monique.

Speaker 3:

Thank you, madam commissioner and members of the commission. My name is Monique Whitney and I am the executive director of Pharmacists United for Truth and Transparency or PUTT. PUTT is a nonprofit pharmacy and patient advocacy organization. We collect the stories and evidence from pharmacies and their patients about PBM abuse which we then ~~help~~ educate the public, the media, and government officials. For us, it's the daily experience of hearing stories and being incredibly shocked and then thinking, "Wow, how could what we're hearing be happening in the 21st century and particularly in our country where we say that small business is the backbone of the economy." We fr () e o i003

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Lina Khan:

For example, in 2017, the FTC found that Uber had been exaggerating the yearly and hourly income that drivers could earn. Uber ultimately agreed to pay \$20 million to resolve these charges. The entirety of which went towards providing refunds to harm drivers. Last year, the agency also took action against Amazon for deceiving drivers who deliver packages through Amazon flex. Despite claiming that drivers would receive a 100% of the tips that they earned, Amazon ~~steal~~ ~~took~~ over \$60 million in tips that rightfully belonged to over 140,000 drivers. Amazon settled with the FTC agreeing to turn over the full amount of the wrongly withheld tips for redress for the affected drivers. Evidence suggests that gig workers are disproportionately likely to be people of color, immigrants, or from other marginalized groups. Communities already reeling from the effects of the deadly pandemic. I'm also concerned by how false claims can aid firms in amassing market power and locking ~~in~~ ~~and~~ how that market in turn may also enable deceptive claims.

Lina Khan:

Lina Khan:

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Okay. We can hear you. Yes.

Noah Phillips:

You're not the only one madam chair having IT issues. Thank you for that and my apologies for speaking over a Commissioner Slaughter for the second. And thanks also to Melissa for that great presentation. I won't go through every name of the team members that the chair mentioned but thanks to all of you and also Katie Daffan and Alyssa Gelsen for all of your excellent work on this advanced notice of proposal making. Thanks also to the chair for docketing this AFR. For decades, our division of marketing practices has done important work to protect consumers from deceptive earnings claims made by companies, including multilevel marketing companies or MLMs. MLMs often recruit down line participants by describing opportunities to earn. And so companies must be careful to ensure that they have a reasonable basis for any claims they make. Too often, we have seen MLMs induce consumers to join with deceptive promises of a wealthy lifestyle or high incomes limited only by consumers own efforts.

Noah Phillips:

honest and substantiated reflects an underappreciated obligation of the FTC to protect Americans as workers and not simply as the end consumers of products and services.

Rebecca Slaughter:

Markets cannot function effectively without honest and transparent pricing. That is just as true for the labor market as it is for consumer goods. False or misleading earnings claims rob people of their investments, their time, and the value of their labor. It's also worth remembering, individuals who put their savings into securities largely wealthier individuals, can rely on the SEC to police misrepresentations about earnings claims with respect to those investments. But less wealthy individuals who may pour their life savings into promised business opportunities deserve the protection of the federal government as well. That is why we must aggressively police [inaudible 01:28:21] demonstrate how this kind of exploitation works in practice last year the FTC settled with the owners and operators of [inaudible 01:28:28]. The company primarily targeted Latinas with Spanish language ads that made false promises of significant earnings reselling luxury products. [inaudible 01:28:37] marketing campaign

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Hudson and Katie Doughin and the division of marketing practices, and also like to thank Lisa Gelsen, the council to the director for the bureau, Kenny Wright in the office of the general counsel, Jason Adler and Guy 0.0(n)5.2 1.2 (Gu)37 (r- 0.0(ar()-11.2frod)52.4 (ark7.9 (o2.3 (e)-3 (d)2]TJ -M)5.27.6 (o)-6.6()-11.wd)2

Lina Khan:

Thanks, Commissioner Wilson. So the motion having been seconded, I will call for a vote. Commissioner Wilson.

Commissioner Wilson:

Yes.

Lina Khan:

Commissioner Slaughter.

Rebecca Slaughter:

Yes.

Lina Khan:

Commissioner Phillips.

Noah Phillips:

Yes.

Lina Khan:

And I vote, yes. The motion passes by unanimously. As we move forward with this rule making effort, I will really look forward to comments and engagement from the public, which we will be seeking as part of our process. Well now to turn to our next agenda item, the use of the commission's investigative authority under section 6B of the FTC Act to issue orders to large pharmacy benefit managers, to study a range of their commercial practices, to give us better insight into their drug pricing practices and their contracts with pharmacies, including for the purpose of examining whether those contracts negatively impact independent or unaffiliated pharmacies over recent decades, we've witnessed two trends in particular in the drug prescription sector. On the one hand, patients pay ever higher prices for drugs, including those needed for survival.

Lina Khan:

As we've heard across our meetings from our public commenters, these price increases have impacted

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prescription drug benefits on behalf of private health insurers, Medicare plans employers and other payers have in recent decades vertically integrated with affiliated health insurance companies in retail and specialty pharmacies, potentially creating financial incentives for them to steer patients towards affiliated services.

Lina Khan:

For the last several years, independent pharmacies and other stakeholders across the drug supply chain have claimed that these vertically integrated PBMs play a major role in increased cost of drugs to patients and in the gradual elimination of independent pharmacies from the market, in particular, these

These studies are coupled with hundreds of complaints that the commission has received in our public docket and during our commission meetings from patients and agreed pharmacists alike. Therefore, and despite the agency's limited resources, I believe it is vital to launch this study. We have an imperative to better understand and ultimately tackle anticompetitive conduct that may be contributing to sky high drug price and the decline of independent pharmacies and better grasping the role of PBMs is a key part of this work.

Lina Khan:

The FTC has a long history of pursuing market studies to deepen our understanding of economic conditions and business conduct, including a PBM study that Congress required the commission to conduct in 2005. Much has changed in the industry since that first study was conducted. Therefore, I believe that we should direct our efforts at updating our understanding of this industry and scrutinizing the practices that many have suggested maybe culprit. In addition to the orders the commission would send out to the large vertically integrated PBMs, I would also seek voluntary comments from the pub for their views on how these PBMs may be affecting drug prices and competition in these markets.

Lina Khan:

I want to thank again, the staff who worked diligently for months on this study and who went to great lengths to accommodate requests from my fellow commissioners. I view this as a critical issue for the commission and believe the study would advance our mission and benefit the people we are charged with protecting based on the significant need for the commission to explore potential anticompetitive practices that may be negatively affecting drug prices and independent and specialty pharmacies. I am making the following motion, I move that the commission approved the issuance pursuant to its authority under section 6B of the FTC Act of the order debated under matter number P2212 on February 17th, 2022 to study the pricing and contracting practices of PBMs. Is there a second?

Rebecca Slaughter:

I second.

Lina Khan:

Thanks, Commissioner Slaughter. I will now turn to my fellow commissioners to share any remarks before calling for a vote. Commissioner Phillips.

Noah Phillips:

Thank you, Madam chair. The FTC pursues a comprehensive agenda to address anticompetitive mergers and unlawful conduct in healthcare and pharmaceuticals. I am proud of the work we do to ensure that Americans continue to benefit from competition in ways that lower costs, increase choice and quality of care. For example, recently blocking the Methodist Tenant Hospital merger and our recent successful settlements and litigation in the Vierra case involving Mr. Martin [inaudible 01:42:14]

proposed 6B study on PBMs relationship with their vertically integrated or affiliated pharmacies and non-affiliated or independent pharmacies.

Noah Phillips:

PBMs manage prescription drug benefits for patients on behalf of insurance companies and employers, that 6B study was designed to give us insight into trends over time in contractual provisions ~~rebetw~~ between PBMs and pharmacies. It did not address DIR fees in light of the forthcoming CMS rule making to regulate such fees. It did not address prices to consumers. I want to commend staff for their diligence and effort in drafting the study.

Noah Phillips:

Depending on what we found the study might have revealed that certain contractual provisions look different in a PBMs contract with its ~~in-house~~ pharmacies when compared to contracts with non-affiliated or independent pharmacies. The press release for today ~~states~~ claims that "the proposed 6B study will study a competitive impact of contractual provisions, reimbursement adjustments, and other practices affecting drug prices, including those practices that may disadvantage independent or specialty pharmacies." But the 6B study was not designed to assess the competitive effects of those contractual provisions we would study in including on independent pharmacies. The study was one of trends, not outcomes. The study also would not tell us how the contractual ~~provisions~~ at issue might impact drug prices overall or the out of pocket drug costs consumers pay when they go to the pharmacy to get their prescriptions.

Noah Phillips:

To me, the most important things are the amount of money that Americans are spending on prescriptions and the kind of care they are getting. Just hours ago, I received a substantially revised study with no accompanying analysis or supporting documentation, this version goes much broader looking at the relationships between PBMs and pharmaceutical manufacturers, the drug companies, which relationship has been a matter of much public discussion over the years. As far as I know, this new version was prepared in the last day or two. I've not had a chance to review it carefully or to consult with staff in the bureaus of economics or competition ~~and in-house~~ subject matter experts. So I do not know what questions the new study is designed to answer, or whether it is properly scoped to answer them.

Noah Phillips:

Our agency faces practical resource c

I remain open to working with my colleagues on a 6B study that can generate useful information about prescription drug costs and the role and impact of PBMs. For example, merger retrospectives like those Commissioner Slaughter has called for, or a 6B study designed to study the competitive effects of specific industry practices. We need to find clear questions to test, take the time to scope proper requests and devote the resources to the project moving forward. Thank you, Madam chair.

Lina Khan:

Thanks, Commissioner Phillips. Commissioner Slaughter.

Rebecca Slaughter:

Thank you so much, Madam chair. Let me start by saying, I strongly support doing this study and by doing this study, what I mean is there can be many iterations of a PBM study that I could and would

COVID from 2010 to 2019, and have not led to ~~an~~ increase in the number of independent pharmacies, which have remained relatively flat pre COVID from 2015 to 2019.

Commissioner Wilson:

Given the concerns that have been raised about PBMs, members of Congress have introduced directing the FTC to again, examine the PBM industry. I thank Congresswoman Cathy McMorris Rogers, and Senator Grassley for their support of further FTC work in this area. And to be clear, I support an FTC analysis of this industry. In fact, one of the first staff briefings that I ~~re~~ ~~de~~ ~~le~~ ~~a~~ ~~s~~ a commissioner focused on PBMs. If there is ~~an~~ ~~o~~ ~~m~~ ~~p~~ ~~e~~ ~~t~~ ~~i~~ ~~t~~ ~~i~~ ~~v~~ ~~e~~ ~~co~~ ~~n~~ ~~d~~ ~~u~~ ~~c~~ ~~t~~ in the supply chain for prescription drugs, I want to know about it. The FTC has a long history of investigating healthcare concerns on both the consumer protection and ~~competit~~ ~~io~~ ~~n~~ ~~s~~ ~~i~~ ~~d~~ ~~e~~ ~~s~~ of the house, and Commissioner Phillips described some of our latest efforts. The FTC has maintained this focus because healthcare represents a large and growing percentage of our economy. And these expenses are felt by consumers every day.

Commissioner Wilson:

At an open commission meeting last October, we heard patients struggling with skyrocketing insulin costs. Insulin is only one example. Total prescription drug spending in the US reached 348.3 billion in 2020, and PBMs play an ~~im~~ ~~p~~ ~~o~~ ~~r~~ ~~t~~ ~~a~~ ~~n~~ ~~t~~ ~~o~~ in the drug distribution chain. Studying this component of the supply chain is critical to informed policy and law enforcement. Through careful preparation and a bipartisan effort, I do expect the FTC to launch a 6B study on the PBM industry ~~ir~~ ~~r~~ ~~e~~ ~~l~~ ~~e~~ ~~v~~ ~~a~~ ~~n~~ ~~t~~ ~~e~~ ~~d~~ ~~q~~ ~~u~~ ~~e~~ ~~s~~ ~~t~~ ~~i~~ ~~o~~ ~~n~~ ~~s~~ ~~I~~ ~~w~~ ~~o~~ ~~u~~ ~~l ^d like answered, how do patient experiences including price, quality, convenience, and access vary depending on whether cost fill their prescriptions at independent pharmacies or PBM affiliated pharmacies? What factors drive ~~for~~ ~~m~~ ~~u~~ ~~l~~ ~~a~~ ~~r~~ ~~y~~ ~~d~~ ~~e~~ ~~s~~ ~~i~~ ~~g~~ ~~n~~ ~~? What mechanisms do manufacturers use to disincentivize PBMs from placing their rivals on formularies? But we must use our significant authority and scarce resources judiciously.~~~~

Commissioner Wilson:

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