Chair Lina M. Khan

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Statement of Chair Lina M. Khan
Joined by Commissioners Alvaro M. Bedoya & Rebecca Kelly Slaughter
Regarding the Pharmacy Benefit Managers Interim Staff Report
Commission File No. P221200

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The Federal Trade Commission's work in healthcare markets can have life-or-death stakes for millions of Americans. In recent years the FTC has heard an outpouring of concern from doctors, patients, and pharmacists about pharmacy benefit managers (PBMs), which has become influential middlemen in our healthcare system. We've heard accounts of how the business practices of PBMs may deprive patients of access to the most affordable medicines and how doctors find themselves having to subordinate their independent clinical judgment to PBMs' decision-making at the expense of patient health.[1] Pharmacists from West Virginia to Texas have written to the FTC, expressing concern that PBMs' business practices are creating risk for their patients while squeezing independent pharmacies that have served their communities for

decades.[2] Against this backdrop, the Commission in 2022 unanimously voted to launch an inquiry into PBMs using the Commission's 6(b) authority to conduct market studies.[3]

Given the stakes, there is enormous urgency in understanding PBMs' practices. Accordingly, we strongly support the issuance of the interim staff report issued today, Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies.[4] Even as FTC staff continue to collect and analyze information from the PBMs, the team has already examined thousands of documents and surfaced key facts. The PBM Interim Report discusses how increased concentration and vertical integration have given PBMs significant power over prescription drug access and prices, and explains that these trends may be enabling PBMs to disadvantage rivals and inflate drug costs.[5] It describes how PBMs may wield substantial influence over independent pharmacies, including evidence of their use of confusing and unfavorable contracts that can harm independent pharmacies and the communities they serve. Most strikingly, the Report describes evidence indicating that PBMs are overcharging for two case study cancer drugs (generic Gleevec and Zytiga) and reimbursing their affiliated pharmacies at significantly higher rates than unaffiliated pharmacies for these same drugs.[6] This overcharging represents billions of dollars in drug spending and reveals the incentives PBMs can have to preference their own affiliated pharmacies regardless of what is best for patients.

Commissioner Holyoak dissents from the issuance of the Report, lamenting that the staff's work is incomplete and dismissing its analysis. We disagree with her conclusion that the analysis in the Report is not worth sharing with the public. The Report sketches out how the PBM market has changed over the last two decades and describes key developments, including horizontal and vertical consolidation, the growth of specialty drugs, the reimbursements paid to pharmacy competitors, and the evidence suggesting that PBMs use rebates to exclude certain generic rivals. Although staff continues to push respondents for the production of

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[2] Comment Submitted by Heidi Romero, Solicitation for Public Comments on the Impact of Benefit Managers' Business Practices, Regulations.gov (May 31, 2022), https://www.regulations.gov/comment/FTC-2022-0015-0819 (One pharmacist from rural West Virginia, whose family pharmacy has operated since 1892, was not able to use her own pharmacy to fill her prescription for critical medication during her pregnancy because her health insurer would only provide coverage if she got the medicine from its PBM-affiliated specialty pharmacy—a process so onerous that it took several weeks, putting her pregnancy at risk.); Comment Submitted by Infinity Pharmacy Solutions, Solicitation for Public Comments on the Impact of Benefit Managers' Business Practices, Regulations.gov (June 3, 2022), https://www.regulations.gov/comment/FTC-2022-0015-1138 at 4 ("[I]n Texas, a PBM controls an overwhelming portion of the market, [and] the pharmacy must 'agree' to the terms and conditions the PBM dictates, or risk being excluded from those crucial networks. In other words, because of their market dominance, PBMs have created an atmosphere in which every pharmacy contract is a contract of adhesion. Pharmacies have no meaningful opportunity to negotiate such contracts, and must simply accept the harshest possible terms and conditions").

[3] Press Release, Fed. Trade Comm'n, FTC Launches Inquiry Into Prescription Drug Middlemen Industry (June 7, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-launches-inquiry-prescription-drug-middlemen-industry. It is odd that Commissioner Holyoak recycles other people's process grievances from a period when she was not on the Commission to form her independent views.

[4] FED. TRADE COMM'N, PHARMACY BENEFIT MANAGERS: THE POWERFUL MIDDLEMEN INFLATING DRUG COSTS & SQUEEZING MAIN STREET PHARMACIES – INTERIM STAFF REPORT (2024) [hereinafter PBM Interim Report or Report].

[5] PBM Interim Report at 2-4.

[6] PBM Interim Report at 40-44 (describing how "pharmacies affiliated with the Big 3 PBMs are often paid 20-40-times the average acquisition cost of the drugs, and significantly more than unaffiliated pharmacies, for the two case study specialty generic drugs).

the data necessary to conduct a full analysis of prices,[7] this report lays out an initial economic analysis, including a discussion of how exclusionary rebates may be having negative spillover effects on competition in drug markets, impeding generic entry.[8] We also disagree with Commissioner Holyoak's view that the two case studies are not worth releasing. Thousands of cancer patients depend on these medicines to survive; the PBMs