United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510–6275

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August 17, 2018

VIA ELECTRONIC TRANSMISSION

The Honorable Joseph Simons
Chairman
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Dear Chairman Simons:

I write with regard to the Federal Trade Commission's recent inquiry into intermediaries in the pharmaceutical supply chain, including pharmacy benefit managers (PBMs) and group purchasing organizations (GPOs). As you know, the pharmaceutical supply chain is currently witnessing significant consolidation and vertical integration, by way of the proposed mergers of Cigna Corp. with Express Scripts Holding Co. and CVS Health Corp. with Aetna Inc. The resulting entities would have considerable market share in the provision and management of prescription drug benefits.

According to a new report from the Kaiser Family Foundation, the two combined entities, along with UnitedHealth and Humana, would cover 71% of all Medicare Part D enrollees and 86% of stand-alone drug plan enrollees.[1] Moreover, these transactions would result in substantial vertical integration within the pharmaceutical supply chain, with the three largest PBMs all vertically integrated with insurance companies. Vertical integration, like the proposed transactions, can often result in increased efficiencies and consumer benefits, and should be evaluated accordingly.

Such integration, however, can also lead to higher barriers to entry for competition in each standalone market, leading to further consolidation. These risks have been highlighted by key administration stakeholders. According to President Trump's Council of Economic Advisers, "[p]olicies to *decrease* concentration in the PBM market and other segments of the supply chain (i.e., wholesalers and pharmacies) can *increase* competition and further reduce the price of drugs paid by consumers."[2] Further, Food and Drug Administration Commissioner Scott Gottlieb recently warned that "consolidation and market concentration make the rebating and contracting

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[1] Juliette Cubanski, Anthony Damico, and Tricia Neuman, "Medicare Part D in 2018: The Latest on Enrollment, Premiums, and Cost Sharing," (May 17, 2018), *available at* https://www.kff.org/medicare/issue-brief/medicare-part-d-in-2018-the-latest-on-enrollment-premiums-and-cost-sharing/.

[2] The Council of Economic Advisers, "Reforming Biopharmaceutical Pricing at Home and Abroad," (Feb. 2018), *available at* https://www.whitehouse.gov/wp-content/uploads/2017/11/CEA-Rx-White-Paper-Final2.pdf.

schemes [of PBMs] all that more pernicious. And the very complexity and opacity of these schemes help to conceal their corrosion on our system — and their impact on patients."[3]

Accordingly, it is critical for Congress to understand the FTC's perspective on these issues, including the potential impact of concentration on the marketplace, and more broadly, whether the presence of PBMs and other intermediaries in the pharmaceutical supply chain tends to reduce, control, or increase the cost of healthcare in the United States. In the past, the FTC has asserted that allowing competition among PBMs will yield more benefits than contract terms mandated by government.[4] Further, a 2005 FTC study of PBMs that own mail-order pharmacies found that such ownership arrangements "generally did not disadvantage plan sponsors" and that "competition in this industry can afford plan sponsors with sufficient tools to safeguard their interests."[5]

The pharmaceutical industry, however, has experienced significant changes and consolidation in the intervening years. In light of these changes, and of the Commission's recent roundtable discussion on these complex issues, I respectfully request written answers to the following questions by no later than September 17, 2018.

1. At its November 2017 roundtable entitled "Understanding Competition in Prescription Drug Markets: Entry and Supply Chain Dynamics," the FTC invited comment on the following question:

    a. What role do intermediaries, such as pharmacy benefit managers (PBMs) and group purchasing organizations (GPOs) play in prescription drug pricing, consumer access, and quality? What are the benefits and costs of intermediaries in the pharmaceutical supply chain? Has consolidation affected price, access, or quality?

    What specific conclusions has the FTC drawn from the comments and dialogue it received in response to the above question?

2. At its November 2017 roundtable, the FTC invited comment on the following question:

    a. How do companies assess the benefits, costs, and risks of contracting with intermediaries? How well do consumers understand intermediaries' roles? Is more information necessary?

    What specific conclusions has the FTC drawn from the comments and dialogue it received in response to the above question?

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[3] FDA Commissioner Scott Gottlieb, MD, "Capturing the Benefits of Competition for Patients," (Mar. 7, 2018), *available at* https://www.fda.gov/NewsEvents/Speeches/ucm599833.htm (emphasis added).

[4] FTC Staff Comment to the Honorable James L. Seward Concerning New York Senate Bill 58 on Pharmacy Benefit Managers (PBMs), (Mar. 31, 2009), *available at* https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-honorable-james-l.seward-concerning-new-york-senate-bill-58-pharmacy-benefit-managers-pbms/v090006newyorkpbm.pdf.

[5] FTC, *Pharmacy Benefit Managers: Ownership of Mail-Order Pharmacies* ii (Aug. 2005), *available at* http://www.ftc.gov/reports/pharmbenefit05/050906pharmbenefitrpt.pdf.

3. What specific actions does the FTC intend to take as a result of its November 2017 roundtable? Please provide a detailed description of any relevant forthcoming actions—including policy proposals, additional research or roundtable discussions, consumer education efforts, or enforcement actions—that Congress should be aware of at this time.

4. Based on recent market consolidation and integration efforts, does the FTC believe there is sufficient competition in the various markets of the pharmaceutical supply chain?

5. What specific legal or regulatory obstacles, if any, is the FTC currently facing in its efforts to ensure a competitive and transparent marketplace in the pharmaceutical supply chain, including but not limited to the PBM marketplace?

6. What specific legislative actions, if any, should Congress be considering at this time to increase transparency in the pharmaceutical supply chain and to best ensure that cost savings or efficiencies are actually passed onto consumers?

Thank you for your attention to this matter, and I look forward to your response. If you have any questions, please contact Ryan Dattilo or Kyle McCollum of my Judiciary Committee staff at 202-224-5225.

Sincerely,

Chuck Grassley

Charles E. Grassley
Chairman
Committee on the Judiciary