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In the Spotlight: PBM's Economic Influence on Drug Prices

The Federal Trade Commission (FTC) failed to obtain enough votes to go forward with a proposed study into the impact of pharmacy benefit managers (PBMs) on drug prices and pharmacies. The 2-2 vote, taken Thursday, February 17, 2022, effectively blocks the probe that would have examined the overall competition posture of PBMs, including their contracts and practices. The FTC last studied this issue in 2005¹ and FTC Chairman Khan sought to study more recent PBM actions and impacts.²

PBMs manage prescription drug benefits on behalf of private health care providers, Medicare Part D plans, employers who provide health care plans for their employees, and others. They negotiate with pharmaceutical companies to secure substantial drug price discounts for those they represent. They also negotiate which drugs the plans will cover. Employers who hire PBMs are often aggregated into large coalitions, creating market power that PBMs can use to negotiate better pricing and coverage. PBMs also facilitate reimbursement to pharmacies for the prescription drugs they dispense.

The FTC proposed the study after receiving complaints from participants in the health care community. Antitrust experts have expressed concern over the recent consolidation in the industry. Three PBMs control almost 80 percent of the prescription drug market and have become directly integrated with retail pharmacies and insurance companies. Independent and small community pharmacies say they are disadvantaged because PBM-owned or affiliated pharmacies pull patients to their own pharmacies. They also claim that, after they fill a prescription, they often receive less in reimbursement for that drug than what they paid for it. Further, they point to

¹ See "Federal Trade Commission." *Pharmacy Benefit Managers: Ownership of Mail-Order Pharmacies*, (Aug. 2005) (evaluating performance of PBMs with respect to mail-order pharmacies they own). <https://www.ftc.gov/sites/default/files/documents/reports/pharmacy-benefit-managers-ownership-mail-order-pharmacies-federal-trade-commission-report/050906pharmbenefitrpt_0.pdf> (accessed February 21, 2022).

² "Federal Trade Commission." *Remarks of Chair Lina M. Khan Regarding the 6(b) Study on Pharmacy Benefit Managers Commission File No. P221200*. (February 17, 2022). <https://www.ftc.gov/system/files/documents/public_statements/1601071/p221200khanstatementr_ebms.pdf> (accessed February 21, 2022).

occasions on which PBMs have “clawed back” remuneration fees days or months after the point of sale, leading to actual losses on drug sales.

Other critics claim the PBMs use a highly complex, opaque financial process to control drug pricing and keep contracts secret so participants cannot compare information. Pharmacies and patient advocacy groups say the PBMs often keep a substantial percentage of savings for themselves and contribute to overall higher drug prices.

But PBMs claim they are providing value and savings to consumers, holding the line against drug manufacturers who set high prices. They say that, by representing large groups, PBMs ensure sufficient negotiating power to go head-to-head with these manufacturers. They point to significant drug pricing reductions they have secured for large groups of consumers. They also say they are securing the local competition that patients want and that this competition helps keep drug costs down for these patients.

PBMs have published statistics showing that most employers are satisfied and find that their PBMs have been effective in reducing drug costs for their organizations. PBMs also argue that they deliver more than financial benefits. They argue that their services help extend and improve patients’ quality of life and prevent medical errors.

Since the Supreme Court unanimously decided *Rutledge v. Pharmaceutical Care Management Association*³ in 2020, states have escalated their efforts to regulate PBMs.⁴ The FTC vote likely means that the focus on PBM regulation will remain largely at the state level.

Although the FTC will not launch a study into the PBMs, the issues involved are in the spotlight and civil claims are likely to follow. Vega’s team and experts have in depth knowledge of the economics issues surrounding PBMs and is well suited to assist our clients navigate and address these issues. For more information about our experience or experts, contact us at experts@vegaeconomics.com.

³ *Rutledge v. Pharmaceutical Care Mgmt Assoc.*, 141 S. Ct. 474 (2020) (holding that ERISA does not preempt Arkansas law that regulates PBM pharmacy reimbursements).

⁴ See, e.g., Hall, Margaux, Esq., Harvey Cotton, Esq., Christopher Gillis, Esq., and Sam Perrone, Esq., “Rutledge vs. PCMA: The future of state regulation of pharmacy benefit managers in the wake of the SCOTUS decision.” *Ropes & Gray* (June 25, 2021)

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