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Federal Trade Commission

# FTC Deepens Inquiry into Prescription Drug Middlemen

Agency issues orders to companies affiliated with CVS Caremark, Express Scripts, and Prime Therapeutics as it examines the PBMs' impact on the access and affordability of medicine

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As part of its ongoing inquiry into pharmacy benefit managers (PBMs) and their impact on the accessibility and affordability of prescription drugs, the Federal Trade Commission has issued compulsory orders to two group purchasing organizations (GPOs) that negotiate drug rebates on behalf of other PBMs. The compulsory orders will require these entities to provide information and records on their business practices.

Having previously issued compulsory orders to the six largest PBMs in the U.S. healthcare industry, the FTC today issued two additional orders to Zinc Health Services, LLC, and Ascent Health Services, LLC.

The largest PBMs are part of vertically integrated companies and act as middlemen and negotiate rebates and fees with drug manufacturers, create drug formularies (lists of medications that are covered by insurance) and policies, and reimburse pharmacies for patients' prescriptions.

As part of its ongoing inquiry, the FTC issued similar compulsory orders on June 6, 2022 to the six largest PBMs: CVS Caremark; Express Scripts, Inc.; OptumRx, Inc.; Humana Pharmacy Solutions, Inc.; Prime Therapeutics LLC; and MedImpact Healthcare Systems, Inc.

The largest PBMs are integrated with the largest health insurance companies and wholly owned mail-order and specialty pharmacies. They influence which drugs are prescribed to patients, which pharmacies patients can use, and how much patients ultimately pay at the pharmacy counter. PBMs also have substantial influence over independent pharmacies, which have collectively voiced concern that PBMs negotiate and leverage contractual terms with these pharmacies that are confusing, unfair, arbitrary, and harmful to their businesses.

The FTC's inquiry is aimed at shedding light on several PBM practices, including charging fees and clawbacks to unaffiliated pharmacies; steering patients towards PBM-owned pharmacies; potentially unfair auditing of unaffiliated pharmacies; the use of complicated and opaque pharmacy reimbursement methods; and negotiating rebates and fees with drug manufacturers that may skew the formulary incentives and impact the costs of prescription drugs to payers and patients.

Zinc and Ascent refer to themselves as group purchasing organizations or GPOs, sometimes also called rebate aggregators, which negotiate rebates with drug manufacturers on behalf of the PBMs and hold the contracts that govern those rebates.

Zinc was founded in 2020 and operates as the GPO for CVS Caremark. Ascent was founded in 2019 and operates as a GPO for Express Scripts, Prime Therapeutics, Envolve Pharmacy Solutions, and Humana Pharmacy Solutions.

The FTC is issuing the orders under Section 6(b) of the FTC Act, which authorizes the Commission to conduct studies without a specific law enforcement purpose. The companies will have 90 days from the date they receive the order to respond.

The Commission voted 3-0 to issue the Section 6(b) orders to Zinc and Ascent as part of the FTC's study of PBMs' business practices.

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