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PHARMALOT

FTC plans to reverse years of policy statements supporting pharmacy benefit managers

By Ed Silverman July 20, 2023
ALEX BRANDON/AP

The U.S. Federal Trade Commission is reversing years of prior advocacy in support of pharmacy benefit managers amid increased scrutiny of the controversial role these companies play in the U.S. pharmaceutical supply chain.

During a Thursday meeting, the agency plans to issue a statement "cautioning against reliance" on previous advocacy statements and studies that "no longer reflect current market realities" about pharmacy benefit managers. The shift comes in response to efforts by pharmacy benefit managers to point to past statements in order to blunt legislation designed to alter their business practices.

Pharmacy benefit managers are linchpins in the pharmaceutical pricing system and under a microscope for allegedly driving up consumer costs. The three largest pharmacy benefit managers — CVS Caremark, Cigna's Express Scripts, and UnitedHealth Group's OptumRx — control nearly 80% of the U.S. market, and also operate mail-order pharmacies.

Through their unique position, these companies act as middlemen working on behalf of health plans and employers to create formularies, which are lists of medicines covered by insurance. This involves negotiating rebates and other discounts from drug companies in exchange for favorable placement on those formularies.

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But drugmakers argue that demands for higher rebates cause them to hike list prices, which raises costs for people without insurance or those with high-deductible health plans, whose out-of-pocket cost for a medicine is tied to the list price. Pharmacy benefit managers, however, argue that drug companies raise list prices to boost profits.

This ongoing blame game has triggered anger among a growing number of state and federal lawmakers over a lack of transparency. Two months ago, the U.S. Senate Committee on Health, Education, Labor and Pensions passed a bill to alter business practices. And next week, the U.S. Senate Finance Committee will mark up legislation that analysts believe represents the most significant legislative effort so far to target pharmacy benefit managers.

The FTC, meanwhile, last year launched an investigation and has promised to "ramp up enforcement" of any "illegal bribes and rebate schemes" that make it harder for patients to access lower-cost medicines. More recently, the agency expanded its probe to include group purchasing organizations that were formed by pharmacy benefit managers.

In years past, though, the FTC opposed state legislation designed to bolster transparency of pharmacy benefit manager practices, according to David Balto, a former FTC policy director, who now represents a coalition of consumer groups that have been urging the agency to probe pharmacy benefit managers.

As an example, he pointed to a letter the FTC wrote to Rhode Island state lawmakers in 2004 that seven different bills under consideration there would be "eliminating an important form of competition in the market for pharmaceutical services," and could increase costs for consumers. One bill would have required health insurers and employee benefit plans to include any pharmacy willing to agree to their terms in their networks.

As attention intensifies, the pharmacy benefit managers have cited previous FTC positions to push back against legislation and FTC scrutiny. Michael Carrier, a Rutgers Law School professor who specializes in antitrust and intellectual property issues, pointed to a statement issued last year by the Pharmaceutical Care Management Association, a trade group for pharmacy benefit managers.

In its statement, he noted, the group pushed back against the FTC and cited a 2005 agency report in which then-FTC Chair Deborah Platt Majoras wrote that PBM "use of owned mail-order pharmacies generally is cost-effective for (health) plan sponsors." At the time, there was growing concern that pharmacy benefit managers unfairly favored their mail-order pharmacies, a conflict-of-interest issue that persists today.

"During the early 2000s, there was a trend by states to regulate PBMs after finding a wide variety of anticompetitive matters. But the FTC weighed in on the side of the PBMs saying regulation requiring transparency was leading to collusions and inhibiting innovation in contracting arrangements," Balto explained. "These were based on economic theory, but there was no empirical basis for their comments.

"But our understanding of PBM operations has changed dramatically since the FTC issued these letters, they have been used in a misguided fashion by PBM lobbyists as a weapon to blunt meaningful reform," he continued. "Now, Congress is trying to weigh in and this new statement (from the FTC) will make a real difference in the ongoing legislative debate."

A spokesman for the PMCA sent us a statement saying, "in the absence of any new FTC guidance and considering the FTC's previous actions, it is critical to carefully protect data that helps maintain a competitive marketplace. Therefore, PCMA will continue to cite previous FTC studies, statements, and enforcement actions that recognize the risks associated with proprietary pricing disclosure requirements that would limit pharmacy benefit companies' ability to manage costs for employers and consumers and would only serve to empower drug companies to raise costs."

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