

FTC says pharmacy benefit managers are stonewalling requests for information

By Ed Silverman Feb. 27, 2024



A much-anticipated inquiry by U.S. antitrust regulators into pharmaceutical industry middlemen has been stymied because the companies have failed to provide many of the documents that, in some cases, were requested as far back as June 2022.

The inquiry was begun by the Federal Trade Commission in response to the role that pharmacy benefit managers play in the cost of prescription medicines. Through their unique position, these companies — including CVS Caremark, Express Scripts, and OptumRx — help determine which medicines are covered by commercial health insurers and the prices that are paid at pharmacy counters, among other things.

Over the past several years, though, these companies have come under increased scrutiny amid concerns that a lack of transparency into their dealings with pharmaceutical manufacturers and state Medicaid programs has driven up health care costs for consumers as well as taxpayers. Criticism mounted as a growing number of Americans complained that they could not afford their medicines.

At the same time, independent pharmacy groups have complained that opaque fees charged by pharmacy benefit managers inflate drug prices and also contribute to decisions by numerous independent pharmacies to close. The pharmacy groups argue this reduces competition and allows large chains to dominate local communities, ultimately raising costs for consumers.

In June 2022, the FTC acted on the complaints and [opened an inquiry](#) into how pharmacy benefit managers operate and sought documents from six of the largest such companies in the U.S. The effort was [expanded](#) last May to include three group purchasing organizations that are run by several of these pharmacy benefit managers. [Each company had 90 days to provide the information.](#)

So far, though, these companies have failed to comply with compulsory orders issued by the FTC. In fact, none of the pharmacy benefit managers or the group purchasing organizations has turned over “sufficient documents and data to be in full compliance with those orders,” FTC Chair Lina Khan [wrote](#) in a Feb. 13 letter to U.S. Sen. Chuck Grassley (R-Iowa), who had [inquired](#) about the progress of the effort.

She added that FTC staff is pushing the companies to produce the information “as quickly as possible” and that the companies “have proceeded with varying levels of speed... We expect to have all the materials very soon.” Although she maintained the probe is a “time-sensitive matter of paramount importance,” she did not offer a timetable by which it would be completed.

Khan insisted the inquiry remains one of her “top priorities” and she views it as a “crucial part of scrutinizing business practices across the pharmaceutical supply chain” that can raise drug prices and limit access for patients and may contribute to independent pharmacies closing down.” And so she maintained she asked the FTC staff to provide its findings as quick as possible.

We asked the pharmacy benefit managers for comment and will update you accordingly. Besides CVS Caremark, Express Scripts, and OptumRx, the FTC is also seeking information from Humana Pharmacy Solutions, Prime Therapeutics, and MedImpact Healthcare Systems.

The delay angered Grassley, who released the FTC reply on Tuesday. In a statement, he argued that the “FTC’s deficient response amplifies the urgent need for transparency and accountability across the board. The agency ought to provide Congress a concrete status update, and pharmacy benefit managers must start playing ball and coughing up the information FTC requested on day one of its investigation.”

The FTC is focusing on rebates paid by drugmakers to pharmacy benefit managers in order to win favorable placement on formularies, which are the lists of medicines covered by health insurance. In general, drugmakers argue they must raise prices to compensate for rebates, while pharmacy benefit managers maintain drug companies raise prices to boost profits.

But critics contend rebates create incentives for pharmacy benefit managers to accept higher prices rather than negotiate lower prices for health insurers and employers. They also argue group purchasing organizations were created as an end-run by negotiating on behalf of the pharmacy benefit managers, but pocket some rebates as fees. And the pharmacy benefit managers profit by retaining those fees.

The group purchasing organizations include Zinc Health Services, which operates on behalf of CVS Caremark; Ascent Health Services, which operates on behalf of Express Scripts, Prime Therapeutics, Envolve Pharmacy Solutions, and Humana Pharmacy Solutions; and Emisar, which negotiates on behalf of OptumRx. Both Emisra and OptumRx are units of UnitedHealth Group.

The FTC is also looking at allegedly unfair audits of independent pharmacies; methods for determining reimbursement fees; formulary restrictions placed on patient access to certain drugs; and the extent to which pharmacy benefit managers steer patients toward their own pharmacies. CVS, for instance, owns CVS Caremark, one of the biggest pharmacy benefit managers, and the CVS chain of retail drug stores.

The hold-up occurs as Congress has abandoned its attempt to reform how pharmacy benefit managers operate. The Senate health committee had passed legislation to require the companies disclose rebates, fees, and other payments they receive and to pass them on to health insurers for whom they negotiate those concessions.

The full House of Representatives, meanwhile, passed a few policies mostly focused on increasing transparency and ban pharmacy benefit managers from using spread pricing. The Energy and Commerce Committee also explored policies that would decouple pharmacy benefit manager fees from drug prices, ensure seniors do not pay more for drugs than insurers, and speed the uptake of biosimilars.