February 17, 2022

Chair Khan and Commissioners,

The American Society of Health-System Pharmacists (ASHP) is the collective voice of pharmacists who serve as patient care providers in hospitals, health systems, ambulatory clinics, and other health care settings spanning the full spectrum of medication use. Our 60,000 members include pharmacists, student pharmacists, and pharmacy technicians. For 80 years, ASHP has been at the forefront of efforts to improve medication use and enhance patient safety.

ASHP applauds the Federal Trade Commission's (FTC) interest in evaluating the competitive impact of large pharmacy benefit managers (PBMs) and we urge the Commission to investigate PBM practices. Large PBMs control over 85% of the market share across all health plans and engage in a variety of abusive behaviors that ultimately increase patients' health care costs, decrease the quality of care, and threaten the financial viability of pharmacy providers.

PBMs engage in discriminatory reimbursement arrangements that favor their corporate-owned pharmacies, while undermining patient safety. They do this by using their market power to require that certain clinician-administered drugs be sourced exclusively from payer-affiliated pharmacies. PBMs prevent hospitals and clinics from independently sourcing and managing these drugs for administration, and instead force healthcare providers to administer drugs from PBM-affiliated pharmacies, even when these requirements undermine the provider's pharmacy safety controls.

PBMs and their affiliated insurers leverage their market position to selectively underpay safety-net providers that participate in the 340B drug pricing program. Congress created the 340B program to provide resources to hospitals and clinics serving vulnerable populations. Yet, PBMs and insurers capture these resources by using their market power to extract targeted price concessions specifically from providers participating in the 340B program.

PBMs use their market power to retrospectively impose, so-called, "DIR fees" on independent pharmacy providers. PBMS impose these direct and indirect remuneration (DIR) fees on pharmacies based on opaque factors that are often not in the control of the pharmacy, in some cases resulting in net reimbursement below the actual acquisition cost of the dispensed drug. Yet, PBMs charge patients inflated cost sharing calculated based on the initial pharmacy payment, rather than the reduced payment, net of DIR fees. As a result, DIR fees increase the profits of PBMS at the expense of pharmacy providers and their patients.

PBMs and insurers also take advantage of consolidation to sidestep insurance regulations. For example, Issuer-PBM integration serves as a loophole allowing insurers to skirt Medical Loss Ratio requirements by classifying funds paid to their PBMs as medical spend, rather than administrative costs. This allows insurers to retain excess profits, in the form of price concessions from manufacturers and fees collected from pharmacies.

ASHP urges the FTC to investigate these abusive practices on the part of large PBMs and the numerous and significant harms resulting from them.

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