



**THE VOICE OF FOOD RETAIL**

Feeding Families  Enriching Lives

December 8, 2017

**VIA ELECTRONIC FILING:** <https://ftcpublishcommentworks.com/ftc/pharmaworkshop/>

The Honorable Maureen K. Ohlhausen  
Acting Chairman  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.,  
Washington, D.C. 20580

**RE: Notice of Workshop and Opportunity for Comment: Understanding Competition in U.S. Prescription Drug Markets: Entry and Supply Chain Dynamics**

Dear Chairman Ohlhausen:

On November 8, 2017, the Federal Trade Commission (FTC) conducted a public workshop entitled, “Understanding Competition in Prescription Drug Markets: Entry and Supply Chain Dynamics.” The second session evaluated intermediaries in the pharmaceutical supply chain, focusing on pharmacy benefit managers (PBMs) and group purchasing organizations (GPOs). Food Marketing Institute (FMI), on behalf of the food retail industry, seeks to provide input regarding the impact of current intermediaries in the pharmaceutical supply chain on retail pharmacies, and potential solutions to enhance transparency and competition in delivering prescription drugs and medicines to retail pharmacies.

By way of background, the Food Marketing Institute (FMI) proudly advocates on behalf of the food retail industry, which employs nearly 5 million workers and represents a combined annual sales volume of almost \$800 billion. FMI member companies operate nearly 33,000 retail food stores and 12,000 pharmacies. FMI membership includes the entire spectrum of food retail venues; single owner grocery stores, large multi-store supermarket chains, pharmacies, online and mixed retail stores. Through programs in public affairs, food safety, research, education, health and wellness and industry relations, FMI offers resources and provides valuable benefits to almost 1,000 food retail and wholesale member companies and serves 85 international retail member companies. In addition, FMI has almost 500 associate member companies that provide products and services to the food retail industry. For more information, visit [www.fmi.org](http://www.fmi.org) and for information regarding the FMI Foundation, visit [www.fmifoundation.org](http://www.fmifoundation.org)

Health and wellness is of the utmost importance to retailers and for years, FMI and its members have recognized the need to help consumers navigate these important aspects of the shopping experience. Retailers continuously strive to provide consumers with innovative ways to improve

and maintain their health by making it easier for them to identify nutritious foods, and by providing wellness-focused programs that help customers improve their overall well-being. Supermarket programs range from carrying more health and wellness specific products to educational programs, dietitian tips and cooking classes. From an in-store clinic and pharmacy perspective, these stores are able to offer a vast array of services, including medication counseling, blood pressure monitoring and other screening programs, prescription compounding and delivery, medical equipment training, immunizations and many more. Additionally, these health professionals are increasingly working as a team to advance health and wellness initiatives in stores and in the community. As an example, 75% of stores report that their pharmacists and dietitians are collaborating by referring customers to each other.<sup>1</sup>

Finally, supermarket pharmacies remain an important factor in the ability of American consumers to purchase the drugs they need to remain healthy. Supermarket pharmacies are among the most efficient and lowest cost competitors in the pharmacy market. Many supermarket pharmacies offer reduced price or free generic drug programs, free vaccinations, and other benefits that are important to low-income areas they serve. These efforts by the supermarket industry are recognized by many cities, states and even by the U.S. Departments of Agriculture, Health and Human Services, and Treasury as attempts to incentivize grocery stores to enter communities to improve the health and wellness profile of an area (i.e. “food deserts”).

It is important to our members and the communities they serve to maintain these pharmacies and the benefits they provide. As such, we appreciate the opportunity to provide comments on competition in the prescription drug market. We provide our responses, which addresses Questions 3 and 4, below:

**Question 3: What role do intermediaries, such as pharmacy benefit managers (PBMs) and group purchasing organizations (GPOs) play in prescription drug pricing, consumer access, and quality? What are the benefits and costs of intermediaries in the pharmaceutical supply chain?**

**Question 4: How do companies assess the benefits, costs, and risks of contracting with intermediaries? How well do consumers understand intermediaries’ roles? Is more information necessary?**

As noted above, supermarket pharmacies provide a positive competitive market force in delivering affordable and accessible prescription medicines to consumers and patients. In recent years, however, many FMI members’ retail pharmacies have become subject to a lack of price transparency, as well as lack of certainty in reimbursements from intermediaries, including pharmacy benefit manager (PBM) companies. “DIR Fees” have been particularly

---

<sup>1</sup> FMI Report, Retailer Contributions to Health & Wellness (2017).

problematic since they are often assessed well after pharmacist dispensing and sale of medicines. One example from an FMI member noted a flat rate DIR fee increase from \$4 to \$6.25 per “clean” claim (56%) in one calendar year. Worse yet, such fees are often assessed retroactively, after point-of-sale and without the pharmacy’s knowledge of how the fee was calculated. On the topic of reimbursement, FMI members regularly face uncertainty as to these rates and the reasons for changes, which are oftentimes very significant. For example, an FMI member recently experienced an arbitrary \$4 per prescription reduction in reimbursement from the pharmacy benefit manager without notice or ability to appeal. Those pharmacies who seek to negotiate such fees or formularies in intermediary contracts, have very limited ability to appeal retroactive fees, both of which may lead a PBM to remove from an intermediary’s reimbursement network for reasons outside of quality, efficiency or “clean” dispensing.

Even when pharmacies have withstood the DIR process in exchange for PBM network access, they have experienced PBMs using reimbursement data to, without prior-approval from the pharmacy, directly contact pharmacy patients and steer those customers to competing mail-order or retail pharmacies where the PBM has a financial interest. The combination of increased fees, lowered reimbursement rates, and lost access to pharmacy patients is harming supermarkets’ ability to maintain pharmacies, as well as other health and wellness services, particularly for stores operating in marginal areas with limited patient access. While the increased fees and lower reimbursement rates are concerning in and of themselves, they are even more significant in the supermarket industry where retailers operate on extremely thin profit margins, generally between 1.0 and 2.0%.<sup>2</sup> At such low profit margins, grocery retailers have virtually no ability to absorb unexpected costs and are ultimately forced to pass the cost on to consumers in the form of higher prices or to reduce services such as those discussed above. FMI raised many of these concerns in our February 2012 comments to FTC related to the merger of Medco Health Solutions and Express Scripts, Inc., many of which have since been realized in industry dealings with such intermediaries.

FMI members also seek for FTC to increase oversight of intermediaries in the pharmaceutical supply chain, particularly pharmacy benefit managers (PBMs), including a more transparent formulary basis and protection from retroactive DIR fees assessed on “clean” claims, allowing for retail pharmacists to contact and consult with FTC personnel regarding onerous contract provisions without being considered to have violated network/contract terms. PBMs claim budgetary savings while not making such savings public, and should be required to demonstrate any claimed savings through the pharmaceutical supply-retail chain. With such low profit margins, supermarkets rely heavily on predictability when determining the number of pharmacists and health professionals to hire, and the additional services such as health screenings and immunizations they are able to provide each year. Increased oversight and a more transparent formulary basis will help increase FMI members’ ability to calculate the cost of drugs and operating pharmacies. By building more predictable costs into their yearly

---

<sup>2</sup> FMI Report, Food Retailing Industry Speaks (2016).

operating calculations, supermarkets will be more able to maintain these important pharmacies and the benefits they offer to customers.

For these same reasons, FMI also supports additional transparency from prescription drug intermediaries, as well as protections against retroactive DIR fees. In particular, FMI supports the provisions of the Prescription Drug Price Transparency Act ([H.R. 1316](#)) and the Improving Transparency and Accuracy in Medicare Part D Spending Act ([H.R. 1038/S. 413](#)). The Improving Transparency and Accuracy in Medicare Part D Spending Act ([H.R. 1038/S. 413](#)) would prohibit Medicare PDP sponsors and MAPD orgs from retroactively reducing payment on “clean” claims submitted by pharmacies. After the date of receipt of a clean claim by a pharmacy, the PDP sponsor may not retroactively reduce payment on such a claim directly or indirectly through aggregate effective rate except if claim is not clean (lacking required documentation) and this action would not prohibit retroactive increase in payment. The Prescription Drug Price Transparency Act ([H.R. 1316](#)), under the Medicare for prescription drug plans and MA-PD plans, Tri-Care and Federal Employee Benefits programs, would require provide pharmacies access to a transparent prescription drug pricing and reimbursement formula.

FMI appreciates the opportunity to provide comments, on behalf of supermarket pharmacies, on the impact and potential safeguards needed to ensure competition and consumer access in U.S. prescription drug markets, particularly involving intermediaries. Transparency and protections are needed to provide patients access to various market options for prescription medicines and other health services, including from supermarket pharmacies.

If you have questions about these comments or would like additional information, please feel free to contact me at [dgraber@fmi.org](mailto:dgraber@fmi.org) or 202-452-8444.

Sincerely,



Dana Mullen Graber  
Regulatory Counsel