Statement for the Record

U.S. Senate Committee on Commerce, Science, and Transportation

Bringing Transparency and Accountability to Pharmacy Benefit Managers

February 16, 2023

On behalf of the food industry, including many thousands of supermarket pharmacies and those of our member companies that provide health care coverage to their employees, we at FMI – the Food Industry Association thank Chairwoman Cantwell, Ranking Member Cruz and the Senate Committee on Commerce, Science, and Transportation for holding this hearing to shine a spotlight on the conflicts of interest embedded in the structure of the pharmacy benefit manager (PBM) industry while considering how the *Pharmacy Benefit Manager Transparency Act* (S. 127) would bring increased transparency into PBM business practices and prohibit several anticompetitive PBM tactics. The legislation would also give the Federal Trade Commission (and state attorneys general) greater enforcement authorities to prevent PBM abuses, which is particularly important given the Commission's ongoing inquiry into the impact of vertically integrated PBMs on the access and affordability of prescription drugs and following its decision to increase enforcement against those PBMs participating in rebate schemes that block access to lower cost drugs.

FMI strongly agrees with the Committee that the largest PBMs – both in terms of how they are allowed to operate and due to the lack of transparency surrounding their operations – contribute to significantly higher costs for patients, pharmacies, other health care providers, and employers. We are particularly concerned about the way PBMs threaten the country's most accessible and trusted health care professionals – pharmacists and their pharmacies. Supermarket pharmacies are especially important access points for consumers in underserved, low-income, rural, and urban communities, but PBM practices and the lack of meaningful federal oversight are preventing FMI member companies from opening new pharmacies and causing some to leave the pharmacy business altogether. FMI thanks Chairwoman Cantwell and Sen. Grassley for championing the *PBM Transparency Act* and the Senate Commerce Committee for advancing the bill previously, and we urge swift passage of this bipartisan legislation in the 118th Congress.

As the food industry association, FMI works with and on behalf of the entire industry – from retailers who sell to consumers, including supermarket pharmacies, to producers who supply the

food and other products sold in grocery venues – to advance safer and more efficient consumer supply chains for both food and pharmaceuticals. In total, FMI member companies, which range from independent operators to the largest national and international players, operate roughly 33,000 grocery stores and 12,000 pharmacies, ultimately touching the lives of more than 100 million U.S. households on a weekly basis and representing an $800 billion industry with nearly 6 million employees. Throughout the ongoing COVID-19 health emergency, our members have been and continue to be a critical component of ensuring the availability of food, pharmacy and health care services in communities across this nation. Moreover, supermarket pharmacies have played an outsized role in the COVID-19 vaccination effort while also serving as a bridge between our communities and other providers, offering patients immediate care that is close and convenient to home. www.fmi.org

Background

Although unknown to much of the American public, PBMs are powerful middlemen at the center of the U.S. prescription drug system. Historically, PBMs played an important role in the administration of prescription drug programs – designed to take the paperwork burden away from pharmacists. However, in recent years, the PBM marketplace has transformed considerably, and they are doing just the opposite. As a result of consolidation among PBMs, health insurance companies and acquired pharmacies, a small number of large corporations now wield nearly limitless power and influence over the prescription drug market for 260+ million Americans. Among other things, PBMs negotiate drug costs, dictate which drugs will be included on plan formularies, and control how those drugs are dispensed. In other words, they control which medicines are prescribed to patients, which pharmacies patients can access, how much patients will pay at the pharmacy counter, and the amount pharmacies are ultimately reimbursed. Yet, PBMs are one of the least regulated sectors of the healthcare system and drug supply chain; there has been almost no federal antitrust enforcement, oversight, or regulation.

Supermarket Pharmacy

PBMs' market concentration empowers them to offer supermarket pharmacies of all sizes take-it-or-leave-it contracts: The pharmacy must either accept a PBM's mandated contract terms (including, among other things, allowing the PBM to unilaterally set prices for certain drugs and then later impose retroactive fees based on an opaque methodology), or give up the ability to serve the many customers whose health plans contract with the PBM, which would include existing customers who have longstanding relationships with their pharmacists. Therefore, these nonnegotiable, take-it-or-leave-it contracts allow PBMs to create endless schemes to reduce reimbursement, claw back funds, restrict networks, require extensive audits and effectively force pharmacies to provide drugs below cost.

PBMs frequently assert that below-cost reimbursement is a problem only for poorly run pharmacies and that low PBM reimbursement rates create an incentive for such poorly run pharmacies to improve their purchasing practices. However, the PBM industry has resisted

attempts to force price transparency that would reveal the basis for these claims. Furthermore, pharmacies of all sizes – not just "poorly run" ones – are suffering as a result of PBMs' below-cost pricing. Even FMI's largest members – Fortune 500 companies with efficiencies, expertise in supply chain logistics, and economies of scale – struggle to operate financially viable pharmacies.

Unlike independent pharmacies, FMI supermarket pharmacy members are not dependent solely on their pharmacy operations for survival, and therefore, PBM abuses may not threaten to force them to close their doors to grocery operations. However, PBM practices make it likely that grocers will be forced to continue leaving the pharmacy business – either by outsourcing their pharmacy operations to the biggest, PBM-affiliated players in the market, or worse, by abandoning pharmacy operations altogether. Supermarket pharmacy closures, and abandoned expansions, thus contribute to the overall trend of decreased access to pharmacies and "pharmacy deserts." The effect of such closures is particularly acute in certain rural and urban communities, where closures are more prevalent and detrimental to a community's access to health care. The closure of pharmacies in recent years has created "pharmacy deserts" in some underserved communities.

Employer Health Care

As employers that sponsor plans to provide health care coverage to their employees, FMI member companies see how PBM practices exploit inherent conflicts of interest to the detriment of health care plans and beneficiaries. Case in point, PBMs are responsible for developing health care plan formularies, or lists of drugs that a plan will cover, and drug companies compete to have their drugs listed on those formularies by offering compensation to PBMs in the form of rebates. PBMs base formulary access decisions on the amount of the rebates, which incentivizes drug manufacturers to offer higher rebates to secure preferred status and the PBMs, in turn, to put higher-cost drugs on their formularies, because the rebates are based on a percentage of a drug's list price. Put simply, PBMs may be making decisions on inclusion of a drug based not on clinical research or evidence-based efficacy and safety, but on which manufacturer offers a higher rebate payment.

Therefore, in pursuit of higher rebates, PBMs routinely deny access to formularies, change drug formularies, or require prior authorization for drugs that may be best for a patient's condition, even in cases where a more affordable medication is available. For example, a PBM often excludes a lower priced generic or biosimilar because the higher priced branded drug offers higher rebates. Meanwhile, our members' health plans have little visibility into these rebates, making it difficult for them to monitor whether their contracted PBMs are choosing drugs to reduce plan costs or to increase the PBMs' own financial models. In short, the current system incentivizes PBMs to give higher–priced drugs more favorable health-plan coverage, directing patients toward more expensive drugs.

Conclusion

PBMs have been allowed to operate without oversight, shrouded in secrecy, to the detriment of consumers, pharmacies, providers and employers. Now, Congress has an opportunity to advance legislation that would help control consumers' drug costs, stabilize the operating environment for pharmacies, and incentivize transparent PBM practices that enhance employer-sponsored health coverage for beneficiaries and get PBMs back to their original mission – reducing paperwork so pharmacists can spend more time with patients. We look forward to working with the Senate Commerce Committee, Senate leadership and the many pharmacy champions throughout Congress to get this legislation across the finish line.

FMI thanks the Committee for the opportunity to provide input on this critically important topic. If you have questions about these comments or would like additional information, please feel free to contact Peter Matz at pmatz@fmi.org or (202) 452-8444.

Sincerely,

Peter Matz
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