CAPITOL STREET

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FTC 2nd PBM Report Focuses On Specialty Generics & Steering

Report on GPOs Next as PBMs Continue to Face Congressional Heat

Relevant Companies

Our Take & Next Up

Today, the Federal Trade Commission (FTC) released their second interim report on PBMs which focuses on the dispensing and pricing of specialty generics (here). The report alleges that the big 3 PBMs engage in significant markup of specialty generics for affiliated pharmacies, patient steering, and spread pricing for unaffiliated pharmacies. The FTC is also investigating PBM affiliated Group Purchasing Organizations (GPOs) and noted that they are still waiting on additional documents and data. That report is likely to be released later this year. Next Up (1) we think PBM reform will take place on the federal level in 2025+ (2) a third report on PBM practices will be released by FTC (3) we expect headline noise from new Committee Chairs (Buddy Carter, R-GA, Health Subcommittee Chair, House E&C), a pharmacist who wants to address PBM abuse. See our take on PBM reform here and here.

Key Points

The unanimous approval of the report is an early indicator that the FTC will likely continue to pursue PBM investigation (if not oversight) under the Trump administration. Notably, the Commission voted 5-0 today (here) to allow staff to issue the second interim staff report. The announced FTC Chair, Commissioner Ferguson, previously voted with Democratic commissioners to release the first interim PBM report in mid-2024, despite some concerns. President Trump himself has spoken against vertically integrated PBMs. However, we do not expect to see a concerted effort in breaking up PBMs as the FTC typically does not seek to change business practices themselves. It is more likely that the FTC will work closer with Congress in the next administration in providing recommendations.

The FTC investigation of PBM practices will likely continue under the Trump administration. The report was released with unanimous support from the Commissioners. PBM reform remains a bipartisan issue and in December, President Trump criticized the 'big 3 PBMs' and their role in rising drug costs, stating he is going to "knock out the middleman". Trump's appointment of Commissioner Ferguson, who voted in favor of releasing the report in contrast to Commissioner Holyoak, indicates that the FTC may continue down the path of continued PBM scrutiny, though not to the same degree.

The report focuses on specialty generic pricing practices by the 'big 3 PBMs'—Caremark Rx (CVS), Express Scripts (CI), and OptumRx (UNH). Practices reported on include markups at affiliate pharmacies, steering of commercial patients, and spread pricing of specialty generics dispensed at unaffiliated pharmacies. The overall profitability of specialty generics and rising costs to unaffiliated payers and patients were also highlighted.

The report analyzed specialty generic drugs dispensed from 2017 to 2022 for commercial and Part D members managed by the Big 3 PBMs. The analysis included 51 specialty generic drugs comprising 882 National Drug Codes, which include the generic versions of: Ampyra (multiple sclerosis), Gleevec (leukemia), Sensipar (renal disease), and Myfortic (transplant rejection). The drugs included accounted for 91% of 30-day equivalent prescriptions dispensed and 67% of dispensing revenue generated.

The FTC report states that Big 3 PBMs significantly (100-1,000%) marked up specialty generic drugs dispensed at their affiliated pharmacies. Of the specialty generic drugs analyzed, 63% were reimbursed at rates marked up by more than 100 percent over their estimated acquisition cost (NADAC) while 22% were marked up by more than 1,000 percent. For commercial prescriptions, more than twice as many drugs were marked up by over 1,000 percent when dispensed through affiliated pharmacies.

- **Markups are more spread out for Medicare Part D**. For Part D,
  - 11% of drugs were marked up more than 1,000 % at PBM-affiliated pharmacies,
  - 48 % were marked up between 100 and 1,000 %,
  - 26% were marked up between 10 and 100 %,
  - and 15% were marked up by less than 10%.

- **On spread pricing, the report calculated a combined spread pricing income of $1.4 B generated from the specialty generic drugs**. Most of the spread pricing was from prescriptions dispensed by unaffiliated pharmacies and occurred on commercial claims.

The report also alleges patient "steering" by PBMs to affiliate pharmacies. The majority of the highly marked up specialty generic drugs were dispensed by PBM-affiliated pharmacies. The FTC notes that this is consistent with data in their first interim report that two of the big 3 PBMs filled a significantly larger proportion of their specialty prescriptions at affiliated pharmacies. The FTC states that the Big 3 PBMs' affiliated pharmacies generated over $7.3 B of dispensing revenue in excess of the National Average Drug Acquisition Cost (NADAC).

The report is more data driven than the FTC's prior interim report released in July 2024 (our analysis is here). As a reminder, the first interim report on PBMs focused on PBM's formulary, rebating, and steering practices at large. The PBM 6(b) inquiry examined: PBM control over formularies, pressure on independent pharmacies, and rebating practices. FTC findings note how the vertically integrated and concentrated market structure has allowed PBMs to control drug costs and availability, limit access to generics and biosimilars, and engage in patient steering to their own affiliate pharmacies.

Following the 1st report, the FTC sued the big 3 PBMs (Caremark Rx, Express Scripts (ESI), and OptumRx) and their affiliated group purchasing organizations (GPOs) for allegedly engaging in anticompetitive and unfair rebating practices for insulin drugs (here). The lawsuit alleges that the big 3 PBMs (UNH, CVS, CI) and their GPOs have abused their economic power by rigging pharmaceutical supply chain competition in their favor. The FTC focused on the rebating system and increasingly inflated insulin list prices.

The agency states that insulin products with higher list prices generate higher rebates and fees for the PBMs and GPOs and further accuses PBMs of keeping hundreds of millions of dollars in rebates and fees each year and using rebates to attract clients. The complaint also stated that even when low list price insulins became available, the PBMs systematically excluded them in favor of identical high list prices.

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