



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Concurring Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson

*Regarding 6(b) Orders to Study Contracting Practices of Pharmacy Benefit Managers
June 6, 2022*

We are proud of the work the Federal Trade Commission does to ensure that Americans benefit from competition in healthcare that lowers costs and increases choice and quality of care. At a time when inflation is at a 40-year high, healthcare costs are a major issue for American consumers. We continue to be concerned about out-of-pocket drug and insurance costs, and believe the agency needs to continue to focus on the impact of business practices on consumers.

The FTC, at the direction of Congress, previously examined the PBM industry.¹ Economists and lawyers at the FTC crafted a thorough set of 6(b) Special Orders issued in May 2004.² The result was a data-driven and objective report of the PBM industry issued in August 2005.³ Since then, we (and our colleagues at the Antitrust Division of the Department of Justice) have looked at PBMs repeatedly, for example in the context of merger reviews.⁴

But markets evolve, and so further study is warranted. The 6(b) study we announced today into pharmacy benefit managers is a step in the right direction. We commend the PBM team at the FTC – comprised of staff and leadership from the Bureau of Economics, the Office of Policy Planning, and the Bureau of Competition – who have worked tirelessly to scope and draft the study. We thank them for their work thus far, and for the task ahead. We hope that the study being voted out today will allow the FTC to update the findings of the 2005 study, a task that will require resources and commitment to finishing the task.

A 6(b) study should approach questions comprehensively and rigorously, and we have opposed them when they fail that test.⁵ In February, the Chair moved a vote on a 6(b) study that

¹ Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, tit. I, § 110, 117 Stat. 2066, 2174 (2003) (codified at 42 U.S.C. § 1395w-101 (Historical and Statutory Note)).

² Pharmacy Benefit Managers: Ownership of Mail-Order Pharmacies, Fed. Trade Comm'n at xxi & appendices A & C (Aug. 2005), https://www.ftc.gov/sites/default/files/documents/reports/pharmacy-benefit-managers-ownership-mail-order-pharmacies-federal-trade-commission-report/050906pharmbenefitrpt_0.pdf.

³ *Id.*

⁴ See e.g., Closing Statement, *Statement of the Department of Justice Antitrust Division on the Closing of Its Investigation of the Cigna-Express Scripts Merger* (Sep. 17, 2018), <https://www.justice.gov/atr/closing-statement>; Press Release, *FTC Closes Eight-Month Investigation of Express Scripts, Inc.'s Proposed Acquisition of Pharmacy Benefits Manager Medco Health Solutions, Inc.* (Apr. 2, 2012), <https://www.ftc.gov/news-events/news/press-releases/2012/04/ftc-closes-eight-month-investigation-express-scripts-incs-proposed-acquisition-pharmacy-benefits>.

⁵ See e.g., Remarks of Commissioner Noah Joshua Phillips at Feb. 17, 2022 Open Commission Meeting, Transcript pp. 30-32,

https://www.ftc.gov/system/files/ftc_gov/pdf/FTC%20Transcript%20February%2017%2C%202022%20Open%20Co

was neither comprehensive nor rigorous, and that failed even to examine the topic the agency announced on its website at that time – the competitive impact of PBM contracting practices. It omitted a number of matters raised by proponents of issuing the study, including the impact upon consumers. The study was hastily prepared. Unbeknownst to us at the time, it was modified minutes before it was circulated for a vote. We opposed issuing that study.

This one is different. This 6(b) study was prepared with input and leadership from our PBM team. It is scoped to study the competitive impact of PBM practices, including – critically – how those practices might impact out-of-pocket costs for consumers. The study will examine relationships between PBMs and pharmacies and also PBMs and pharmaceutical manufacturers, a matter of much public interest. This is a study we can support.

We are hopeful that this study will generate useful information about prescription drug costs and the role and impact of PBMs. We also hope that agency leadership will commit to devoting the necessary resources to the project moving forward. We look forward to reviewing the results and working with our colleagues as we consider how best to share what we learn with the public.

[mmission%20Meeting.pdf](#); Oral Remarks of Commissioner Christine S. Wilson at Open Commission Meeting on February 17, 2022, https://www.ftc.gov/system/files/ftc_gov/pdf/oral-remarks-wilson-open-meeting-february.pdf.