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The FTC's Interim Staff Report on the 6(b) Study of Pharmacy Benefit Managers

Key Takeaways:

- The Report confirms that the marketplace for PBMs has changed drastically since 2005 due to massive consolidation.
    - *"The market for pharmacy benefit management services has become highly concentrated, and the largest PBMs are now also vertically integrated with the nation's largest health insurers and specialty and retail pharmacies."*
- Pharmacies affiliated with the Big 3 PBMs retained nearly $1.6 billion in dispensing revenue in excess of NADAC for the two case study specialty generic drugs from 2020 through part of 2022.
- The FTC recognizes that vertically integrated PBMs have incentives to prefer their own affiliated pharmacies over independent pharmacies.
    - *"Vertical integration in PBM business structures, particularly with respect to integrated health insurers and specialty and mail order pharmacies, likely creates the ability and incentive for PBMs to increase utilization of certain drug products at affiliated pharmacies to generate the greatest revenue and profits for their respective conglomerates."*
- The FTC recognizes that independent pharmacies generally lack the leverage to negotiate network terms and rates.
    - FTC notes, "*…multiple PBMs have during negotiations referred to their "no redlining policy" (i.e., no editing policy) for standard contract terms an conditions, even with large PSAOs."*
    - And, *"Similarly, some PBMs deploy what they call "passive contracts," which are described as a notification outlining terms that take effect without the need for affirmative consent or signature."*
    - *"…the PBM-pharmacy contracts we have obtained and reviewed areopaque, complex, and conditional, making it challenging to understand what pharmacies will ultimately be paid for any given drug."*
- FTC recognizes a proliferation of complex and opaque contract terms and adjustments.
- The rates in PBM contracts often do not clearly reflect the amount the pharmacy will ultimately be paid.
- Insurance companies' profits are skyrocketing as operating profits grew by 133% and net income by 159% from 2016-2023.
- Not only are their profits skyrocketing, but so is their size.
    - *"According to PitchBook, these four entities and their subsidiaries (which include the largest PBMs) collectively engaged in more than 190 transactions over the 2016 to 2023 period (United, 88; CVS, 53; Humana, 39; and Cigna, 14).*
- PBM services are highly concentrated among the largest PBMs

   - *"…PBMs may control significantly higher shares of select regional and state areas based on certain measures."*
   - *"…this long tail of smaller PBMs currently accounts for just six percent of prescription claims managed."*
- PBM's control the higher cost, and presumably more profitable (when factoring manufacturer rebates into the vertical), brand and so-called specialty drugs.
   - *"…the brand and specialty market is effectively controlled by three players: CVS/AET[NA], Cigna/ESI and UnitedHealth/OptumRx."*
   - *"…Big 3 PBMs that dispense specialty medications have particularly benefited from this growth, significantly expanding their share of the specialty segment from 54 percent in 2016 to 68 percent in 2023."*
- AWP laws might actually work.
   - *PBMs appear· less able to steer prescriptions for these [specialty] drugs to affiliated specialty pharmacies within Pait D likely due in part to Medicare's "any willing pharmacy" requirements*