



**Testimony of**

**Pharmaceutical Care Management Association**

**Submitted to the**

**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON COURTS AND COMPETITION POLICY**

*“Antitrust Laws and Their Effects on Healthcare  
Providers, Insurers and Patients”*

**December 1, 2010**

The Pharmaceutical Care Management Association (PCMA) is the national association representing America's pharmacy benefit managers (PBMs), which administer prescription drug plans for more than 210 million Americans with health coverage provided through Fortune 500 employers, health insurers, labor unions, Medicare, Medicaid, and the Federal Employees Health Benefits Program (FEHBP). PCMA appreciates the opportunity to submit written testimony to the Subcommittee on Courts and Competition Policy.

Pharmacy benefit managers (PBMs) typically reduce drug benefit costs by 30 percent<sup>1</sup> for public and private payers by encouraging the use of generic drug alternatives, negotiating discounts from manufacturers and drug stores, saving money with home delivery, and using health information technology like e-prescribing to reduce waste and improve patient safety. Prior to the advent of these tools, there was no system wide approach to fully address the real dangers and costs of misuse, overuse, or under-use of prescription drugs. In the Medicare Part D program, research cited by the Centers for Medicare & Medicaid Services (CMS) notes that strong Part D plan negotiations have been a key driver in the benefit now costing \$373 billion over ten years, a 41 percent drop from the initial cost estimate of \$634 billion for 2004-2013.<sup>2</sup>

PBMs achieve savings for the federal government as well as thousands of different employer and health plan clients who have differing needs and resources available to finance health benefits. However, all PBM clients – private and public sector alike – share the goals of wanting benefits that provide great access to prescription drugs, are affordable and, in the case of the private sector, help retain and recruit top-notch personnel.

The Federal Trade Commission (FTC) has extensively evaluated the PBM industry and confirmed that it is both highly competitive and provides savings. It should be noted that the FTC found in its most recent antitrust analysis of the PBM industry that competition among PBMs for contracts with health plan sponsors is “vigorous.”<sup>3</sup>

According to the FTC, there are 40 to 50 PBMs operating in the United States including those owned by supermarkets, large pharmacy chains, and large insurers.<sup>4</sup> In addition, the commission states that one-third to one-half of each regional market is serviced by smaller PBMs.<sup>5</sup>

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<sup>1</sup> PricewaterhouseCoopers, “Medicare Part D: An Assessment of Plan Performance and Potential Savings,” analysis prepared for the Pharmaceutical Care Management Association, January 2007

<sup>2</sup> Statement of Paul Spitalnic, CMS Office of the Actuary, “Medicare Part D Premiums Going Up by \$1 in 2011,” Walker, Emily. August 19, 2010.

<sup>3</sup> US Federal Trade Commission, *In the Matter of Caremark Rx, Inc./AdvancePCS*, File No. 0310239 n. 6, February 11, 2004, statement of the Commission, available at <http://www.ftc.gov/os/caselist/0310239/040211ftcstatement0310239.pdf>.

<sup>4</sup> US Federal Trade Commission, “Pharmacy Benefit Managers: Ownership of Mail-Order Pharmacies,” August 2005, available at <http://www.ftc.gov/reports/pharmbenefit05/050906pharmbenefittrpt.pdf>

<sup>5</sup> US Federal Trade Commission, “The Importance of Competition and Antitrust Enforcement to Lower-Cost, Higher-Quality Health Care,” Statement before the Subcommittee on Consumer protection, Products Safety, and Insurance Committee on Commerce, Science, and Transportation, United States Senate, July 16, 2009.

In evaluating mail-order pharmacy, the FTC also determined that PBM-owned mail-order pharmacies save payers money and that allegations of PBMs' conflict of interest were "without merit." Specifically, FTC found that PBM-owned mail-order pharmacies:

- Offer lower prices on prescription drugs than retail pharmacies and non-PBM owned mail pharmacies;
- Are very effective at capitalizing on opportunities to dispense generic medications; and
- Have incentives closely aligned with their customers: the third-party payers who fund prescription drug care.

We caution against any policy which would grant special antitrust exemptions to independent pharmacies. During testimony before the U.S. House Judiciary Committee Antitrust Task Force on this issue, the FTC stated: "*Giving health care providers . . . a license to engage in price fixing and boycotts in order to extract higher payments from third-party payers would be a costly step backward, not forward, on the path to a better health care system.*"<sup>6</sup>

The Congressional Budget Office (CBO) has also found that sweeping antitrust exemptions for independent pharmacies would increase costs for Medicare Part D, Medicaid, the Federal Employees Health Benefits (FEHB) program, and as well as for employers and consumers.<sup>7</sup>

In 2008, CBO found that H.R. 971, the Community Pharmacy Fairness Act, would increase federal costs by \$640 million over ten years and that increased drug costs to private health plans, employers, and consumers would result in "reductions in the scope or generosity of health insurance benefits, such as increased deductibles or higher copayments." CBO's analysis also contends that cost increases resulting from the legislation would be passed along to workers, reducing "both their taxable compensation and other fringe benefits."

PBMs' proven track record of improving quality, reducing costs, and expanding access to affordable prescription drugs are key drivers toward enhancing meaningful competition in health care.

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<sup>6</sup> US Federal Trade Commission, Concerning the "Community Pharmacy Fairness Act of 2007," Statement before the Antitrust Task Force of the Committee on the Judiciary, United States House of Representatives, October 18, 2007.

<sup>7</sup> United States Congressional Budget Office "H.R. 971 Community Pharmacy Fairness Act of 2007," As ordered reported by the House Committee on the Judiciary on November 7, 2007. September 26, 2008