



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

Office of Policy Planning

March 31, 2017

The Honorable William P. Brough
73rd Assembly District
California State Assembly
State Capitol, Suite #3141
Sacramento, CA 94249

Dear Assemblyman Brough:

Thank you for your request that the Federal Trade Commission (“FTC”) or its staff comment on the likely competitive effects of the pharmacy benefit manager (“PBM”) related provisions of California Assembly Bill 315 (“AB-315” or “the Bill”). The Bill, among other things, would provide the California Board of Pharmacy with oversight over PBMs and broad related rulemaking authority. Additionally, the Bill likely would require PBMs to make certain information disclosures to the Board of Pharmacy. You asked FTC staff to examine the Bill “to determine whether the proposed legislation is anti-competitive” and could lead to “an increase in the cost of pharmaceutical benefits for employers, insurers, and ultimately the citizens of California.”¹

We understand that the California Assembly may hold a hearing on AB 315 as early as April 4, 2017. FTC staff is unable to conduct a specific analysis of AB 315 prior to this hearing. We would, however, like to highlight two prior FTC staff comments on similar provisions, which may be relevant to current deliberations by the California legislature.

- First, in a 2011 FTC staff comment regarding similar PBM legislation in Mississippi, FTC staff concluded that allowing the Mississippi Pharmacy Board to regulate PBMs in such a matter would “likely undermine the PBM’s ability to negotiate lower prices for prescription drugs, which in turn, will raise those prices for both insurers and consumers covered by insurance.”²

¹ Letter from Hon. William P. Brough to Tara Isa Koslov, Acting Director, Office of Policy Planning, Federal Trade Commission (Feb. 15, 2017).

² See Letter to Mississippi State Representative Mark Formby from Susan S. DeSanti, Director, Office of Policy Planning, Joseph Farrell, Director, Bureau of Economics, and Richard A. Feinstein, Director, Bureau of Competition (March 22, 2011), <https://www.ftc.gov/sites/default/files/documents/advocacy-documents/ftc-staff-letter-honorable-mark-formby-mississippi-house-representatives-concerning-mississippi/110322mississippipbm.pdf>.

- Second, AB 315 appears to allow the California Board of Pharmacy to obtain from PBMs confidential financial and other business information, and to publish that information in the Board's public annual report.³ FTC staff discussed the potential adverse effects of related information disclosure requirements in a 2014 letter to the ERISA Advisory Council of the U.S. Department of Labor.⁴

We have attached both of these prior FTC staff analyses to this letter, and they are also available on the FTC's website (see links in footnotes).

We hope these documents will be helpful as the California State Assembly considers proposed licensing and reporting requirements for PBMs. We will continue to monitor the progress of AB 315. Please contact us if you have any questions about the attached materials, or if further issues arise at or after the upcoming hearing. You may reach me at tkoslov@ftc.gov or 202-326-2386, or OPP staff attorney Elizabeth Jex at ejex@ftc.gov or 202-326-3273.

Respectfully submitted,

Tara Isa Koslov, Acting Director
Office of Policy Planning

³ See AB 315 § 4228 (3)(b); *cf.* Miss. SB-2445 § 73-21-157 (2)(a-b).

⁴ See Letter to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, from Andrew I. Gavil, Director, Office of Policy Planning, Martin S. Gaynor, Director, Bureau of Economics, and Deborah Feinstein, Director, Bureau of Competition (Aug. 19, 2014), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-erisa-advisory-council-u.s.department-labor-regarding-pharmacy-benefit-manager-compensation-fee-disclosure/140819erisaadvisory.pdf.