The Pharmacy Benefit Manager Transparency Act of 2023 Is Anticompetitive

The Pharmacy Benefit Manager Transparency Act of 2023 (S.127) would give the Federal Trade Commission (FTC) detailed regulatory authority over the basic business operations of companies, PBMs, involved in managing prescription drug benefits, as well as their affiliates, subsidiaries, and agents. It bars commonly used business practices, in some cases altogether, in others unless paired with public reporting of proprietary transaction-level pricing and financial information. In addition to FTC enforcement, the bill allows for enforcement by states and stiff penalties for noncompliance.

This bill provides for an egregious expansion of the power, authority, and jurisdiction of the FTC, placing the agency in the middle of private business dealings normally handled by contracts, and allows the agency to pick industry winners and losers.

- The bill bans basic business practices, such as recovering funds after an audit, or charging a set margin, when customers agree to pay it in exchange for avoiding price fluctuations.
- These practices are used to hold down costs for consumers.

No other industry is regulated in such an intrusive and anticompetitive manner, forced to provide potential customers, suppliers, and the public with detailed financial information.

- Historically, the FTC has focused its transparency efforts primarily on consumer protection and education, instead of promoting disclosure of proprietary information.

The FTC has historically spoken out against over exposing information about private business dealings because such an approach leads to collusion and is deeply damaging to a competitive marketplace.

- The FTC previously stated, "If pharmaceutical manufacturers learn the exact amount of the rebates offered by their competitors (either because the safeguards on subsequent disclosure by purchasers and prospective purchasers are insufficient or because the mandated disclosure to prescribers provides sufficient information for pharmaceutical manufacturers to calculate these amounts) then tacit collusion among manufacturers is more feasible. Consequently, the required disclosures may lead to higher prices for PBM services and pharmaceuticals."
- The bill would raise costs for consumers while helping pharmacies and drug manufacturers charge higher prices.

This expansion of the FTC's authority sets a precedent that would allow the FTC to regulate prices and business practices in any industry.

- This dramatic expansion of the FTC's powers would ripple into the entire business sector as many PBM companies are owned by organizations with broad business interests, and the bill regulates all entities affiliated with any PBM operations and sets a new precedent for FTC intervention in private business dealings.

The bill fundamentally misunderstands how PBMs operate.

- Roughly 83% of pharmacies contract with powerful pharmacy services administrative organizations (PSAOs) to negotiate pharmacy network contracts and perform many fundamental administrative operations for their pharmacies. This bill assumes that PBMs negotiate directly with pharmacies.

ABOUT PCMA

PCMA is the national association representing America's pharmacy benefit managers (PBMs). PBMs administer prescription drug plans for more than 266 million Americans who have health insurance from a variety of sponsors including: commercial health plans, self-insured employer plans, union plans, Medicare Part D plans, the Federal Employees Health Benefits Program (FEHBP), state government employee plans, Medicaid plans, and others.

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