

United States Senate
WASHINGTON, DC 20510

October 6, 2022

The Honorable Lina Khan
Chairwoman
Federal Trade Commissioner
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Chair Khan,

We support the Federal Trade Commission's (FTC) issuance of a Section 6(b) order and conducting a study of pharmacy benefits managers' (PBM) business practices.¹ In your recent participation before the Subcommittee on Competition Policy, Antitrust, and Consumer Rights, you did not commit to a timeline to complete the FTC's PBM study.² We believe it is important for this study to be completed in a timely manner as consumers and taxpayers cannot afford any delay. We urge you to publicly commit and for the FTC to complete a study no later than one year from the issuance of the Section 6(b) order.

As you know, PBMs operate with little to no transparency, making it very difficult if not impossible to understand the flow of money in the prescription drug marketplace and how PBMs determine the prices for prescription drugs. Recent consolidations between PBMs, insurance providers, and other health care entities have resulted in vertical integration whereby a small number of companies now manage the vast majority of prescription drug benefits. CVS/Caremark, OptumRx and Express Scripts control roughly 75% of the PBM market and are owned by insurers Aetna, United Healthcare, and Cigna, respectively.

We support legislation that would require the FTC to conduct a study and report to Congress within one year on the effects of consolidation and potentially anticompetitive behavior that may impact prescription drug pricing.³ A few of the provisions required to be examined in the report include whether PBMs charge certain payers a higher price than competing pharmacies or steer patients to pharmacies at which the PBM has an ownership stake, whether PBMs use formulary designs to depress market share of low cost prescription drugs, and if more information about roles of intermediaries in the healthcare marketplace would benefit consumers. In 2021, this legislation was approved unanimously by the Judiciary Committee and awaits action by the full Senate.

¹ Federal Trade Commission, "FTC Launches Inquiry Into Prescription Drug Middlemen Industry," June 7, 2022, <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-launches-inquiry-prescription-drug-middlemen-industry>.

² Oversight of Federal Enforcement of the Antitrust Laws: hearing before the Subcommittee on Competition Policy, Antitrust, and Consumer Rights, 117th Cong. (2022). <https://www.judiciary.senate.gov/meetings/oversight-of-federal-enforcement-of-the-antitrust-laws>.

³ Prescription Pricing for the People Act, S.1388, 117th Cong. (2021). <https://www.congress.gov/bill/117th-congress/senate-bill/1388>.

There is widespread bipartisan support for examining PBMs and looking into whether they are causing Americans to pay higher prices for prescription drugs. This is why we support the FTC's decision to conduct a PBM study. We hear stories about rising drug costs all the time. A timely study into the business practices of these intermediaries would provide transparency, insight about possible competitive harms, and inform potential legislative action. With the FTC's action on June 7, 2022, there is widespread support for the study and interest to review its findings in a timely manner. To ensure the 6(b) study's usefulness, we urge the FTC to issue the report within one year of its issuance. We appreciate the FTC's commitment on this matter to patients and taxpayers.

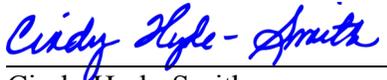
Sincerely,



Charles E. Grassley
United States Senator



Maria Cantwell
United States Senator



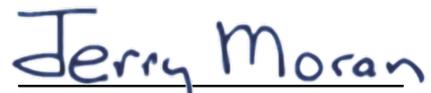
Cindy Hyde-Smith
United States Senator



James Lankford
United States Senator



Marsha Blackburn
United States Senator



Jerry Moran
United States Senator



Thom Tillis
United States Senator