

FTC Sues Three Largest Prescription Drug Middlemen Accuses PBMs of anti-competitive practices that inflate insulin prices

The U.S. Federal Trade Commission (FTC) is suing the three largest pharmacy benefit managers (PBMs) over what they say is a “chase the rebate” strategy that causes higher list prices for insulin and reduces patient access to lower priced insulins.

According to the [FTC complaint](#), CVS Health’s Caremark Rx, Cigna’s ExpressScripts, and UnitedHealth Group’s Optum Rx, and their respective group purchasing organizations (GPOs), engaged in unfair methods of competition by “incentivizing manufacturers to inflate insulin list prices, restricting patients’ access to more affordable insulins on drug formularies and shifting the cost of high list price insulins to vulnerable patient populations.”

The PBM is the middleman between the pharmaceutical manufacturer and the payer/insurer and patient. The FTC alleges that PBMs leveraged their size by threatening to withhold drugs from payer drug formularies unless they received higher rebates from the manufacturer. To keep drugs on the formulary, manufacturers would raise the list price of their drugs to provide higher rebates to the PBMs.

Patients with copays and deductibles, or without insurance at all, however, were typically subject to the manufacturer list price, not the rebated price. Even further, according to the FTC, even when lower priced insulins were available, the PBMs systematically kept them off the drug formularies so patients wouldn’t have access to the lower priced options.

The three PBMs identified by the FTC administer about 80% of all prescriptions in the U.S. While the action taken by the FTC focuses on these three PBMs, a [statement](#) by Rahul Rao, FTC’s Bureau of Competition Deputy Director, indicates that the Commission also has concerns about the practices of drug manufacturers. In his statement he said, “Although not named in this case, all drug manufacturers should be on notice that their participation in the type of conduct challenged here can raise serious concerns, with a potential for significant consumer harm, and that the Bureau of Competition reserves the right to recommend naming drug manufacturers as defendants in any future enforcement actions over similar conduct.”

The latest FTC action follows an FTC [interim report](#)— “Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies”—released in July following a two-year FTC inquiry. That report detailed how increasing concentration enabled the three largest players—and vertically integrated with large retail pharmacies and insurance companies—to process nearly 80% of the roughly 6.6 billion prescriptions filled last year in the U.S. and to reap big profits.

“The FTC’s interim report lays out how dominant pharmacy benefit managers can hike the cost of drugs—including overcharging patients for cancer drugs,” FTC Chair Lina M. Khan said in a statement at the time. “The report also details how PBMs can squeeze independent pharmacies that many Americans—especially those in rural communities—depend on for essential care.”

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