

United States Senate  
WASHINGTON, DC 20510

January 22, 2024

The Honorable Lina Khan  
Chair  
Federal Trade Commission  
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 timely study of pharmacy benefits managers' (PBM) business practices.<sup>1</sup> You wrote on November 8, 2022, that the FTC's inquiry was "a critical step in more closely scrutinizing business practices across the pharmaceutical supply chain that can raise drug prices, limit access for patients, and contribute to the shuttering of independent pharmacies across the country."<sup>2</sup> With the FTC's inquiry reaching its year-and-a-half mark, we urge the FTC to complete the study without delay. In the interim, we believe it is important to know the status of the study and therefore ask the FTC to issue a progress report.

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, and impact the cost of, prescription drugs. Further, 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 vertically integrated with insurers Aetna, United Healthcare, and Cigna, respectively.<sup>3</sup> We appreciate the FTC's recent withdrawal of prior advocacy statements and studies that no longer reflect current market realities.<sup>4</sup>

There is widespread bipartisan support for examining PBM practices to determine whether they are causing Americans to pay higher prices for prescription drugs. This support is evident in legislation that has advanced through a number of Senate committees this Congress. The Senate Committee on Commerce, Science, and Transportation advanced S. 127, the Pharmacy Benefit Manager Transparency Act, which would authorize the FTC to hold PBMs

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<sup>1</sup> Federal Trade Commission (FTC), "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>.

<sup>2</sup> Letter from FTC Chair Lina Khan to Senator Charles E. Grassley, November 8, 2022.

<sup>3</sup> U.S. Senate Finance Committee Report, "Insulin: Examining the Factors Driving the Rising Cost of a Century Old Drug," January 14, 2021, [https://www.finance.senate.gov/imo/media/doc/Grassley-Wyden%20Insulin%20Report%20\(FINAL%201\).pdf](https://www.finance.senate.gov/imo/media/doc/Grassley-Wyden%20Insulin%20Report%20(FINAL%201).pdf).

<sup>4</sup> FTC, "FTC Votes to Issue Statement Withdrawing Prior Pharmacy Benefit Manager Advocacy," July 20, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-votes-issue-statement-withdrawing-prior-pharmacy-benefit-manager-advocacy>.

accountable for unfair or deceptive practices and add transparency to the PBM market.<sup>5</sup> Another bill, S. 113, the Prescription Pricing for the People Act, was approved by the Senate Judiciary Committee and would direct 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.<sup>6</sup> The Senate Committee on Health, Education, Labor, and Pensions and the Senate Committee on Finance also advanced bipartisan legislation to require more PBM transparency and accountability.

With this bipartisan legislative action taking place, we urge the FTC to complete its 6(b) study in a timely manner. In the interim, we request that you publicly release a progress report on the status of your investigation. A commitment to a timely study and interim progress report will provide transparency, insight about possible competitive harms, and inform the responsiveness and cooperation of impacted parties. 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



James Lankford  
United States Senator



Peter Welch  
United States Senator



Susan M. Collins  
United States Senator



Cindy Hyde-Smith  
United States Senator

<sup>5</sup> Pharmacy Benefit Manager Transparency Act, S.127, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/senate-bill/127>.

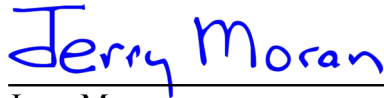
<sup>6</sup> Prescription Pricing for the People Act, S.113, 118<sup>th</sup> Cong. (2023). <https://www.congress.gov/bill/118th-congress/senate-bill/113>.



Christopher A. Coons  
United States Senator



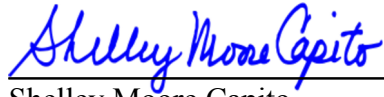
Tommy Tuberville  
United States Senator



Jerry Moran  
United States Senator



Jon Tester  
United States Senator



Shelley Moore Capito  
United States Senator



Thom Tillis  
United States Senator



Mazie K. Hirono  
United States Senator



Marsha Blackburn  
United States Senator