



Before The Department of Health and Human Services and The Federal Trade Commission

In the Matter of The Request for Information on Consolidation in Health Care Markets

Comments of the American Consumer Institute

The American Consumer Institute is an independent 501(c)(3) education and research organization. Its mission is to identify, analyze, and protect the interests of consumers in selected legislative and rulemaking proceedings in information technology, health care, insurance, and other matters.

The Department of Health and Human Services (HHS) and Federal Trade Commission's (FTC) interest in addressing problems of competition in the healthcare market is commendable. However, by focusing on private ownership, HHS and the FTC are overlooking a bigger and more obvious problem – the highly consolidated and opaque Pharmacy Benefit Manager (PBM) market. The agencies would be better served by focusing their attention on PBMs to decrease patient costs and increase access to healthcare.

Private equity ownership of healthcare providers offers new services, technological upgrades, and expanded freestanding healthcare facilities and emergency satellite locations.¹ For-profit hospitals, frequently smaller and more rural than nonprofit facilities, are also more likely to serve low-income communities and those experiencing high unemployment.² Even with these patient benefits, there is no difference between for-profit hospitals and other hospitals

¹ Marcelo Cerullo, et. al., "Private Equity Acquisition And Responsiveness To Service-Line Profitability At Short-Term Acute Care Hospitals," *Health Affairs*, vol. 40, no. 11, November 2021, <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2021.00541>.

² Cory Cronin, et. al., "For-profit hospitals have a unique opportunity to serve as anchor institutions in the U.S.," *Preventative Medicine Reports*, vol. 22, June 2021, <https://www.sciencedirect.com/science/article/pii/S2211335521000620>.

when comparing income per discharged patient, charges per inpatient day, charge-to-cost ratio, or share of discharged patients that are using Medicare or Medicaid.³

While there are limited examples of private ownership increasing costs, these examples come with improvements in the quality of care.⁴ One study found that for heart attack victims, private equity hospitals had a lower mortality rate.⁵ During COVID-19, nonprofit and government nursing homes had more total deaths per hundred residents than private care facilities.⁶ Overall, private equity ownership improves hospital efficiency without lowering the quality of care.⁷

Addressing point one in the request for information (effects of consolidation), HHS and the FTC would be better served by directing their resources to shed light on PBMs. These industry middlemen use their unique access to information to profit by increasing patient and insurer prices, including Medicare.⁸ Currently, three PBMs make up 80 percent of the market.⁹

These PBMs stand accused of restricting access to over a thousand generic or biosimilar medicines that would be less expensive than name-brand equivalents,¹⁰ profiting from savings

³ Joseph Bruch, Dan Zeltzer, & Zirui Song, “Characteristics of Private Equity–Owned Hospitals in 2018,” *Annals of Internal Medicine*, vol. 174, no. 2, September 29, 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8299539/>.

⁴ Joseph Bruch, Suhas Gondi, & Zirui Song, “Changes in Hospital Income, Use, and Quality Associated With Private Equity Acquisition,” *JAMA Internal Medicine*, vol. 180, no. 11, August 24, 2020, <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2769549>.

⁵ Marcelo Cerullo, et. al., “Association Between Hospital Private Equity Acquisition and Outcomes of Acute Medical Conditions Among Medicare Beneficiaries,” *JAMA Network Open*, vol. 5, no. 4, April 29, 2022, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2791727>.

⁶ Vitor Melo, “Understanding Nonprofit and Government Ownership: Evidence from Nursing Homes in the COVID-19 Pandemic,” The Mercatus Center at George Mason University, January 25, 2023, <https://www.mercatus.org/research/working-papers/understanding-nonprofit-and-government-ownership-evidence-nursing-homes>.

⁷ Janet Gao, Merih Sevilir, & Yongseok Kim, “Private Equity in the Hospital Industry,” European Corporate Governance Institute, working paper no. 787/2021, last revised April 12, 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3924517.

⁸ Steve Pociask, “Pharmacy Benefit Managers: Market Power and Lack of Transparency,” The American Consumer Institute, 2017, <https://www.theamericanconsumer.org/wp-content/uploads/2017/03/ACI-PBM-CG-Final.pdf>.

⁹ Adam J. Fein, “The Top Pharmacy Benefit Managers of 2022: Market Share and Trends for the Biggest Companies,” *Drug Channels*, May 23, 2023, <https://www.drugchannels.net/2023/05/the-top-pharmacy-benefit-managers-of.html>.

¹⁰ “New Report Finds Largest PBMs Restrict Access to More Than 1,150 Medicines,” PhRMA, May 25, 2022, <https://phrma.org/en/resource-center/Topics/Access-to-Medicines/New-Report-Finds-Largest-PBMs-Restrict-Access-to-More-Than-1150-Medicines>.

intended for safety net hospitals in the 340B program,¹¹ and adding or increasing fees on other parts of the healthcare system.¹² They also engage in “spread pricing” – siphoning rebates and discounts on medicines by paying the discounted rate but charging the insurer, often Medicare, the full cost.¹³

Regarding point four in the request for information (need for government action), it is difficult to know the extent to which PBM abuse of market power is taking place, as there is little transparency in the industry. Due to the level of concentration and lack of pricing transparency, there is an obvious market failure – asymmetric information between buyer and seller.

If HHS and the FTC want to increase competition in the healthcare market, encouraging increased transparency for PBMs regarding fees and rebates would be a good first step, as would requiring drugmaker rebates to be passed along to insurers and patients in the form of lower prices. Currently, insurance companies and hospitals cannot make informed decisions when engaging with PBMs, which drastically limits the competition between them and allows a small number of large industry players to abuse their market power. In the end, patients are left to foot the bill.

Private investment in the U.S. healthcare system is one of many ways to help increase competition, bring down costs, and improve patient outcomes. Shedding light on the PBM market is the most effective way HHS and the FTC can improve competition in the healthcare industry, lower costs, and improve patient outcomes.

Respectfully,

¹¹ Justin Leventhal, “Corporate Welfare and the 340B Drug Program,” *RealClear Policy*, September 19, 2023, https://www.realclearpolicy.com/articles/2023/09/19/corporate_welfare_and_the_340b_drug_program_980561.html.

¹² Eric Percher, “Trends in Profitability and Compensation of PBMs and PBM Contracting Entities,” Nephron Research, September 18, 2023, <https://nephronresearch.com/trends-in-profitability-and-compensation-of-pbms-and-pbm-contracting-entities/>.

¹³ “Spread Pricing 101,” National Community Pharmacists Association, accessed 4/12/2024, <https://ncpa.org/spread-pricing-101>.

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