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Xavier Becerra
Secretary
U.S. Department of Health and Human Services
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Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Re: Request for Information on Consolidation in Health Care Markets (Docket No. ATR 102)

Dear Assistant Attorney General Kanter, Secretary Becerra, and Chair Kahn,

The Pharmaceutical Research and Manufacturers of America (PhRMA) appreciates the opportunity to comment in response to your joint request for information on consolidation in the health care market. PhRMA represents the country's leading innovative biopharmaceutical research companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier, and more productive lives. The biopharmaceutical sector is one of the most research-intensive industries in the United States: over the last decade, PhRMA member companies have more than doubled their annual investment in the search for new treatments and cures, including nearly $101 billion in 2022 alone.[1]

The U.S. competitive market is the engine that drives the innovative biopharmaceutical research and development ecosystem. Since 2000, biopharmaceutical companies have launched more than 750 new medicines in the U.S., resulting in significant progress against some of the most costly and challenging diseases.[2,3,4,5] Yet, as a result of robust negotiation and competition in the market, retail and physician-administered medicines continue to represent just 14 percent of overall health care spending, a substantially smaller share than the more than half of health care spending going towards hospitals and physicians' offices.[6,7] More than half of spending on medicines goes to entities other than the brand biopharmaceutical companies that researched and developed them, including pharmacy benefit managers (PBMs), health plans, the government, hospitals, pharmacies, and others, and the share of spending flowing to these entities has increased by 17 percentage points since 2013.[8,9] Many of the private entities retaining a share of medicine spending are part of vertically integrated organizations, allowing them to profit at multiple points along the supply and reimbursement chain.

For decades, competitive market dynamics have worked successfully to balance innovation, patient access to medicines, and cost containment. But that balance is increasingly threatened by misaligned financial incentives and conflicts of interest for PBMs, insurers, and hospitals. Years of horizontal consolidation in those industries, and vertical integration throughout the health care sector have resulted in a market dominated by just a handful of large corporations, whose business models often work to the detriment of patients and competition. We discuss the ramifications of increased market consolidation and vertical integration for patients, providers, other stakeholders, and the health care system as a whole, in detail below.

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EXECUTIVE SUMMARY

After years of aggressive consolidation and integration in the health care system, a small number of corporate giants now wield overwhelming influence and control over health care decisions that impact patients and the broader system. This extensive consolidation has substantial implications for patients' access, choice and affordability; costs to the broader health care system; and stability of the competitive market.

Three pharmacy benefit managers (PBMs), CVS Caremark, Express Scripts and OptumRx, now control 80 percent of prescriptions dispensed in the United States. These same companies are vertically integrated with the three largest health insurance companies, Aetna, Cigna, and UnitedHealthcare. They each also own a specialty and mail order pharmacy, and some have and are acquiring provider groups at a rapid pace.

As a result, three large health care conglomerates exert unprecedented control over what medicines patients have access to, what they pay out of pocket, what pharmacies they visit, and the utilization management barriers they face. Patients are often steered towards medicines and pharmacies that make these corporate giants more money, regardless of what's best for patients and the health care system as a whole. Vertically integrated PBMs often exclude generics, biosimilars, and lower list priced versions of products from their formularies. In fact, between 2014 and 2020, there was a 676 percent increase in the number of medicines excluded from at least one of the three largest PBMs.

At the same time, physician practice and hospital consolidation within and across markets has skyrocketed, with help from private equity firms' investment, greatly impacting quality of care and creating perverse incentives. Continuous market consolidation has also consolidated risk, resulting in potential 'single points of failure,' as was seen in the recent cybersecurity breach of Change Healthcare–part of the health care giant UnitedHealth Group.

The extensive consolidation and vertical integration throughout the health care delivery system has dramatic consequences for patients, competition in the market, and costs across the system. Regulatory, legal, and legislative actions are needed to pursue market-based solutions that address misaligned incentives in the system and ensure patients can access the medicines they need.

PhRMA supports the efforts of the Department of Justice (DOJ), Federal Trade Commission (FTC), and Department of Health and Human Services (HHS) to better understand the effects of health care consolidation and encourages the FTC to complete the Section 6(b) study on the PBM industry launched in May 2022. We also support efforts by the agencies to provide greater oversight to 340B business relationships and scrutiny to hospital mergers and physician practice acquisitions. Additionally, Congress should act on a number of key reforms that would realign incentives, strengthen market competition, and improve patients' access to care.