

Experts say broad FTC probe could bring new crackdown and laws on PBM industry

By **Robert King** • Jun 10, 2022 03:00pm

pharmacy benefit management

FTC

Express Scripts

OptumRx



It may take more than six months for the Federal Trade Commission to issue its final report on the pharmacy benefit management industry, experts have predicted. (AlexanderFord/Getty Images)

The Federal Trade Commission's (FTC's) decision to probe the pharmacy benefit management industry could spark lawmakers in Congress and states to crack down on practices such as clawback fees and rebates, several experts said.

Earlier this week, the FTC announced [an investigation of six large PBMs \(https://www.fiercehealthcare.com/payers/ftc-launches-investigation-major-pharmacy-benefit-managers-business-practices\)](https://www.fiercehealthcare.com/payers/ftc-launches-investigation-major-pharmacy-benefit-managers-business-practices) in the U.S., sending orders for information and records on business practices. Experts say that while a report on the practices could take months, it would have lasting implications on a market that has received increased scrutiny from Congress and state legislatures.

"This is a very comprehensive study and reflects the FTC's recognition there is a broad scope of anti-competitive and anti-consumer conduct going on," said David Balto, a former FTC policy director and current antitrust attorney.

A 6(b) study gives the FTC special authority to compel parties to turn over information. Previously, the FTC has used that authority to study the generic drug industry, which led to reforms in Congress.

"This 6(b) authority has been called the strongest investigatory power that almost any agency within the government has," said A.J. Barbarito, an associate with the law firm Frier Levitt, in an interview with Fierce. "It has been likened to a grand jury. It is not a criminal investigation. The reason it is like a grand jury investigation is that it is an extremely broad authority to look into frankly whatever the agency is interested in."

The FTC announced that the scope of the study will focus on a series of practices used by PBMs and their role in the drug system. The agency said its investigation will examine possibly unfair audits of independent pharmacies, the impact of drug rebates, specialty drug policies and fees or clawbacks charged to pharmacies not affiliated with the PBM.

Critics have also complained that PBMs have become vertically integrated with large insurers and that patients are only steered to pharmacies affiliated with the insurer. But the PBM industry counters that the companies fulfill a major need for employers by managing drug benefits and negotiating with drug companies for rebates and lower prices.

The commission, which is comprised of three Democrats and two Republicans, voted unanimously to launch the study.

Now, the six PBMs—CVS Caremark, Express Scripts, OptumRx, Humana, Prime Therapeutics and Medimpact Healthcare Systems—will have 90 days to comply with the requirements for turning over information and records. However, PBMs can file a dispute and even go to court over whether the company has to turn over the documents, Barbarito said.

It could be six months until the FTC has the data, and then the agency must go through them to craft the report. However, the report itself has the potential to spark major reforms in the industry, experts say.

"It can bring enforcement actions—not only antitrust, but it simply could be consumer protection actions going after deceptive and fraudulent practices," Balto said.

FTC actions could take the form of consent decrees against specific PBMs, which could result in civil monetary penalties.

“If the FTC does determine that PBMs are unfairly advantaging their own wholly owned pharmacies they may seek some kind of injunction to prevent them from continuing to engage in those activities,” Barbarito said.

The report will also be sent to Congress, which can consider further action on PBMs. Some lawmakers have [already introduced legislation \(https://www.fiercehealthcare.com/payers/senate-bill-aims-ban-pbm-practices-such-spread-pricing-and-boost-ftc-enforcement-powers\)](https://www.fiercehealthcare.com/payers/senate-bill-aims-ban-pbm-practices-such-spread-pricing-and-boost-ftc-enforcement-powers) to give the FTC more powers to go after PBMs.

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By Teresa Carey, Dave Muoio, Anastassia Gliadkovskaya • Aug 16, 2023 06:00am

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(Teledoc)

A limited, but growing, number of healthcare providers are announcing policies to charge patients for electronic messages sent to clinicians. The organizations say it's necessary in light of the time commitment doctors and others spend on each message. Patient advocacy groups say otherwise. This week on 'Podnosis,' Fierce's Dave Muoio talks with John Hargraves, the director of data strategy for the Health Care Cost Institute. They discuss the background of these policies, their pushback, and whether they're likely to spread.

Also on the show: Jake Prigoff, general partner at Gaingels, an LGBTQ-ally collective with more than 2,000 members interested in investing in diverse and inclusive companies. Prigoff talks with Fierce's Anastassia Gliadkovskaya about the importance of diverse investors and founders.

To learn more about topics in this episode:

- Reflecting on Pride Month, industry leaders see progress—and persistent challenges—for better LGBTQIA+ healthcare (<https://www.fiercehealthcare.com/providers/look-pressing-lgbtq-healthcare-pride-month-ends>)
- LGBTQ+ care providers calling for advocacy, education to push back against anti-transgender efforts (<https://www.fiercehealthcare.com/providers/abbott-assault-trans-rights-texas-has-far-reaching-consequences>)
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- As major hospitals now bill for some patient-provider messaging, the move could usher wider adoption (<https://www.fiercehealthcare.com/providers/major-providers-decision-bill-time-consuming-electronic-patient-messages-could-usher>)
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