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December 6, 2021

Ms. Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

I write to request that the FTC consider investigating recent consolidations in Oregon's retail pharmacy market to assess whether large national pharmacy chains and health plans have taken actions to make this market less competitive. Specifically, I am concerned about trends that may have led to the recent closure of Bi-Mart pharmacies, a regional chain operating mainly in non-urban areas in the Northwest, following their acquisition by Walgreens, a national chain of pharmacies.

Earlier this month, Bi-Mart began closing its 56 pharmacies across Oregon, Idaho, and Washington,¹ citing "increasing costs and ongoing reimbursement pressure." Thirty-seven of these closures have been in Oregon. Walgreens is taking over in-store pharmacies at Bi-Mart locations without a nearby Walgreens; in other areas, Bi-Mart prescriptions are being transferred to the closest Walgreens.

The experiences of Bi-Mart pharmacies, and negative impacts on their customers, reflect a number of alarming trends in the retail pharmacy market. Rather than a single smoking gun, a number of factors appear to have combined to allow large national chains to beggar their regional and local neighbors. These factors include consolidation among payers, national pharmacy chains and other parts of the supply chain, as well as payers' control payment terms and claw back reimbursements to pharmacies for prescriptions dispensed to Medicare beneficiaries.

Industry dynamics

Closure of independent rural pharmacies and acquisition of these businesses by large national chains is increasingly common in the U.S. From 2003 to 2018, more than 1,200 independently-owned rural pharmacies closed. These closures account for 16% of independent pharmacies, which are more likely to close than their large chain counterparts. At the same time, national

¹ <https://news.walgreens.com/press-center/employee-owned-bi-mart-to-exit-pharmacy-business-and-transition-pharmacy-services-to-walgreens.htm>

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pharmacy chains have consolidated market share through mergers and acquisitions.^{2,3} In 2020, 7 national pharmacy chains accounted for 72% of revenues from dispensing prescription drugs.

In addition, independent pharmacies receive a significant amount of their reimbursement from a highly concentrated number of large national payers. The vast majority of prescription drugs are paid for by a handful of PBMs.⁴ Seventy-seven percent of the prescription drug claims in the U.S. are now attributable to the 3 largest PBMs – CVS Caremark, UnitedHealth OptumRx, and Cigna Express Scripts.⁵

Several of these PBMs are vertically integrated or have partnerships with national retail and mail order pharmacy chains that have been consolidating their market share. For example, CVS Caremark, the single largest PBM, is a subsidiary of CVS Health. In addition to Caremark and its national retail chain, CVS is also in a joint venture with Cardinal Health, a wholesaler. Walgreens has similarly entered into partnerships with UnitedHealthcare (UHC), which has its own PBM, OptumRx. Walgreens and UHC signed a multi-year agreement in 2019 to open “Medicare centers” in Walgreens stores, where customers fill prescriptions and enroll in UHC’s Medicare Advantage plans.^{6,7} In Oregon, about 3.7% of Medicare Part D beneficiaries are enrolled in AARP MedicareRx Walgreens, one of the 5 largest plans in the Medicare Part D program. In fact, 26.5% of Medicare Part D and Medicare Advantage (MA) contracts in Oregon are held by UHC and approximately 28% of Medicare enrollees in Oregon with a drug benefit get that benefit through UHC.

Controlling terms of payment

PBMs pay pharmacies when they dispense drugs to insured customers. Because of their size, PBMs are effectively able to exert significant control over payment rates and terms of remuneration to pharmacies. For example, pharmacies may have to pay fees to access the PBMs’ claims databases, even though checking these databases is something all pharmacies must do routinely to process prescriptions and dispense the associated medications.⁸ Pharmacies may also have to pay to participate in a PBM’s preferred network. Increasingly, these networks are comprised of large national retail pharmacies.⁹

² <https://www.drugchannels.net/2021/03/the-top-15-us-pharmacies-of-2020-market.html>

³ <https://www.pharmacytimes.com/view/consolidation-reshaping-pharmacy-and-beyond>

⁴ <https://www.gao.gov/products/gao-19-498>

⁵ <https://www.drugchannels.net/2021/04/the-top-pharmacy-benefit-managers-pbms.html>

⁶ <https://www.healthcaredive.com/news/walgreens-unitedhealthcare-team-up-to-open-in-store-medicare-centers/568031/>

⁷ <https://www.unitedhealthgroup.com/newsroom/2019/2019-11-25-uhc-medicare-services-centers-walgreens.html>

⁸ <https://www.washingtonpost.com/business/2021/11/10/drugstore-shortage-rural-america/>

⁹ <https://www.drugchannels.net/2021/11/cvs-walgreens-walmart-and-supermarkets.html>

Financial pressures stemming from PBMs' payment terms are becoming particularly pronounced for independent pharmacies under the Medicare Part D program.¹⁰ Over the past several years, PBMs have laid claim to a rapidly increasing share of what pharmacies would ordinarily earn for dispensing prescriptions through retrospective fees, or clawback payments. These clawbacks, referred to as pharmacy direct and indirect remuneration (DIR) fees under Medicare, are imposed by PBMs on pharmacies that have little or no power to negotiate. The fees are often linked to burdensome performance measures, purportedly derived from quality measures established by the Centers for Medicare and Medicaid Services (CMS) to measure insurance plan performance under the Medicare Part D program. However, these measures change frequently and often have little to do with pharmacy performance because they capture outcomes that pharmacies have no control over. When pharmacies fall short on these measures, they must pay more to PBMs in DIR fees. In practice, applying these measures at the pharmacy level promises to have little impact on quality of care.

The rate of growth in pharmacy DIR fees is substantial: according to a report by the Centers for Medicare and Medicaid Services (CMS), PBMs increased pharmacy DIR fees under Medicare Part D by 91,500 percent from 2010 to 2019.¹¹ I am concerned these fees may disproportionately impact the financial viability of independent pharmacies because they have neither the market power to push back, nor the scale to absorb the costs.

Investigating the Bi-Mart pharmacy acquisition

The consequences to consumers of closures like Bi-Mart's are significant. Many of our rural communities depend on local community pharmacists for their care. In some cases these pharmacies are the only readily accessible provider of COVID-19 vaccines and testing. They not only provide access to medication in these communities, they also play an essential role in the delivery of other critical services, such as patient education, management of chronic disease, and preventative care.

My concern is that the benefits of having more than one pharmacy in a geographic area and community services provided by independent pharmacies will disappear if trends continue. My constituents tell me they are already feeling the strain of Bi-Mart's closures and consolidation. For example, in Sutherland, former Bi-Mart customers attempting to fill prescriptions at other pharmacies must now wait up to a week to receive them. Because these pharmacies also don't have the staff to service their new customers, those seeking flu or COVID vaccines have reported waiting for hours to receive them, despite having scheduled ahead. The closure and acquisition of Bi-Mart pharmacies had no single cause, as Bi-Mart itself pointed out in a letter about its closing.¹² However, it appears that DIR fees levied by PBMs played a role.

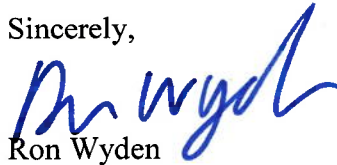
¹⁰ <https://www.gao.gov/products/gao-19-498>

¹¹ <https://ncpa.org/newsroom/news-releases/2021/06/03/its-not-typo-91500-increase-fees-heaped-pharmacies>

¹² <https://www.bimart.com/rxchange>

My deep concern about the trends unfolding in Oregon lead me to request that the FTC investigate Walgreens' acquisition of Bi-Mart pharmacies, including the surrounding circumstances. Although these closures represent a local example, as Chairman of the Senate Finance Committee, I am concerned that they represent a larger national trend in which a few powerful companies have gained the market power to drive competitors out of business and monopolize the market. Should this matter be of interest, Anna Kaltenboeck (Anna_Kaltenboeck@finance.senate.gov) of my staff is able to share additional detail that may facilitate your investigation.

Sincerely,



Ron Wyden
Chairman
Committee on Finance