

February 2, 2022

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

Mr. Jonathan Kanter  
Assistant Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Chair Kahn and Assistant Attorney General Kanter:

NCPA represents America's community pharmacists, including 19,400 independent community pharmacies who have played a critical role throughout the pandemic by providing critical access to COVID-19 immunizations and therapies. Almost half of all community pharmacies provide long-term care services and play a critical role in ensuring patients have immediate access to medications in both community and long-term care (LTC) settings. Our members dispense nearly 40% of the nation's retail prescriptions and 57% of independent pharmacies service communities that rank high or very high on the CDC's Social Vulnerability Index. Members are small-business owners that are some of the most accessible healthcare providers in many rural and underserved areas.

I am writing to you today to express the continued concern of NCPA members about the vertical consolidation of PBMs with up-stream health insurers and downstream pharmacy providers. PBMs acting in their role as data platforms have the ability and incentive to access competitor data and engage in unfair methods of competition against downstream rivals. Examples of the use and misuse of competitor data collected by PBMs to advantage their downstream pharmacies includes termination of competing pharmacies from PBM networks; steering customers to in-house pharmacies for high-value specialty drugs; prohibiting refills at the original pharmacy provider and requiring patients to utilize in-house pharmacies; and directly soliciting customers of competing pharmacies. Regulations currently in place do not prevent the misuse of information and data in the hands of vertically integrated entities.

The proposed acquisition by UnitedHealth Group's Optum of Change Healthcare will exponentially increase the ability of vertically integrated UHG-Optum-OptumRx to exploit competitor data to its advantage, including targeting specific patients and steering business to

OptumRx. As we explained to DOJ staff in September of 2021, Change operates as an intermediary that digitally connects providers with payors. In the pharmacy world, Change's eRx "switch" is one of the market leaders by number of prescription transactions processed. eRx, like its competitors, is an add-on to a pharmacy management/dispensing system (PMS). The PMS vendor contracts with the "switch" – which pays the PMS a commission on each transaction. The pharmacy typically is locked into the arrangement made by the PMS. A typical pharmacy transaction involves the exchange of highly specific patient, provider, and payor data which is transmitted back and forth through the "switch" between the pharmacy and the PBM/payor. Currently, eRx is a neutral information collection and routing tool. In the hands of the vertically integrated UHG-Optum- Optum Rx, it's a gold mine of competitor information – the keys to the kingdom. The trove of competitively sensitive information that Change collects every day about patients and competitors would not be protected by firewalls, which the FTC and DOJ have both acknowledged are difficult to monitor and enforce.

NCPA's reiterates its prior call for the FTC to work with the DOJ on addressing the anticompetitive practices of PBMs, including transactions such as UHG/Optum-Change that impact markets in which both agencies have expertise, and to use its 6(b) authority to investigate PBM anticompetitive practices.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Douglas Hoey". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

B. Douglas Hoey RPh, MBA  
CEO, National Community Pharmacists Association

Cc: Doha Mekki, Principal Deputy Assistant Attorney General, Antitrust Division, U.S. DOJ  
Aaron Hoag, Chief, Technology and Digital Platforms Section, Antitrust Division, U.S. DOJ  
Jennifer Howard, Chief of Staff to Chair Lina Khan, FTC