

July 18, 2022

Holly Vedova  
Director, Bureau of Competition  
Federal Trade Commission  
400 7<sup>th</sup> Street NW  
Washington, DC 20024

Re: Opposition to the Prime Therapeutics LLC acquisition of Magellan RX Management

Dear Director Vedova,

On behalf of National Community Pharmacists Association (NCPA), I am writing you to express NCPA's opposition to Prime Therapeutics' acquisition of Magellan RX Management. Every day, our members see and feel the effects of consolidation in the pharmacy benefit manager space. With Aetna/CVS, Cigna/Express Scripts, and UnitedHealth/Optum taking 80 percent of the market share already, a merger between two major players in the remaining 20 percent of the marketplace could mean further exacerbation of the negative consequences already seen for small-business independent pharmacies and the patients they serve.

There is much more to this proposed acquisition than meets the eye. When considering Prime Therapeutics, which is owned by 19 Blue Cross Blue Shield plans, one must consider Prime as one and the same with Cigna's Express Scripts. As you know, in 2019, Express Scripts announced a deal with Prime to "deliver more affordable care to more than 100 million Americans." At the time of the "collaboration," Express Scripts held 23 percent of the market share and Prime held 6 percent. In that deal, Express Scripts agreed to provide Prime with retail pharmacy network and pharmaceutical manufacturer contracts services, i.e., PBM services.

The effect of this collaboration forced our members to proactively opt out of the Express Scripts/Prime network, or they were deemed to have automatically accepted the new terms "offered" by Express Scripts/Prime. The updated terms included, among other problematic terms, reimbursement rates below product acquisition costs with automatic reimbursement rate decreases in years two and three and \$0.00 dispensing fees. Those terms represented a marked decline from what Prime itself had offered, which should have resulted in lower costs for consumers. But did it?<sup>1</sup> Has this collaboration resulted in a fair, open, and competitive market for pharmacy, and lower costs for consumers, or did it simply line the pockets of Express Scripts and Prime at the expense of consumers and competition? NCPA believes further inquiry into the Express Scripts/Prime collaboration must happen as a part of any FTC analysis of Prime's acquisition of Magellan.

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<sup>1</sup> O'Brien, S. (2021, November 11). *Average family premiums for employer-based health insurance have jumped 47% in the last decade, outpacing wage growth and inflation*. CNBC. Retrieved July 12, 2022, from <https://www.cnbc.com/2021/11/11/premiums-for-employer-health-insurance-have-jumped-47percent-in-10-years.html#:~:text=Personal%20Finance-.Average%20family%20premiums%20for%20employer%2Dbased%20health%20insurance%20have%20jumped,outpacing%20wage%20growth%20and%20inflation&text=While%20average%20premiums%20are%20up,an%20average%20%241%2C669%20from%20%24991>.

Prime’s market dominance in certain areas of the country compounds the closed-loop barriers to entry, or “walled gardens,” that Express Scripts and Prime already have. Take Alabama, for example, where Prime serves as Blue Cross of Alabama’s PBM.<sup>2</sup> According to the Government Accounting Office, BCBS of Alabama had 92.9 percent of the market share in 2016.<sup>3</sup> If BCBS of Alabama maintained a similar market share in 2019, not accepting the new Express Scripts/Prime terms would have meant losing access to nearly every commercially insured patient in Alabama.

### Magellan’s PBM Business

While Magellan might have adjacent offerings, ultimately, its primary business is that of a PBM.<sup>4</sup>

Its Medical Pharmacy Solution helps health plans manage “medical pharmacy drugs,” which is a term it uses to describe provider-administered specialty drugs. In providing this service, Magellan leverages its analytics and digital technology capabilities to provide prior authorizations, claim edits, network strategies, site of service management, and formulary management. Each of these services have cross functionality with PBM services. “Site of service management” stands out as being a PBM-related function. It is a service that steers patients to the “lowest cost provider” – which is defined as supplying the lowest cost to the plan sponsor, but not necessarily the lowest cost provider to the patient. It is a service that Express Scripts/Prime can easily convert to the type of patient steering we see so often from Express Scripts/Prime. Could this service enhance an already robust ability to steer patients to Express Scripts/Prime’s mail-order pharmacies? We believe a full investigation by FTC staff beyond the first 30-day Hart Scott waiting period is necessary to determine the effect on competition – both in terms of price and choice – that this transaction will have in all the affected markets.

Magellan has a standalone Formulary Management service. This service is described as a way to control drug prices and new high-cost therapies. However, as we have seen, PBMs, despite their statements to the contrary, are a primary contributor<sup>5</sup> to increased drug costs. To allow further consolidation in this space can only lead to higher drug prices for consumers for drugs like insulin and rheumatoid arthritis medications. Putting more functionality or capabilities in the hands of Express Scripts/Prime will be bad for consumer pocketbooks, as PBMs have yet to prove efficiencies of consolidation have led to lower prices for consumers. As PBMs utilize their market power to serve as gatekeepers to patients and prescription drugs, and as the government places added scrutiny on rebates and the effects of that market power, PBMs are shifting their focus to specialty drugs. As we have noted in earlier communications with the FTC, classification of specialty drugs is the invention of the PBM industry. Specialty drugs are yielding enormous profits for PBMs, so it makes sense that Prime is also trying to push into that space with the acquisition of Magellan and its Formulary Management service. This consolidation would place even greater pressure on access and affordability of specialty drugs and substantially lessen competition.

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<sup>2</sup> Blue Cross and Blue Shield of Alabama. (2022). *Pharmacy resources: Blue Cross and Blue Shield of Alabama*. Pharmacy Resources | Blue Cross and Blue Shield of Alabama. Retrieved July 13, 2022, from <https://www.bcbsal.org/web/pharmacy/index.html>.

<sup>3</sup> U.S. Government Accountability Office. (2019). *Private Health Insurance: Enrollment remains concentrated among Few Insurers, including exchanges*. GAO. Retrieved 12 July 2022 from, <https://www.gao.gov/assets/700/697746.pdf>.

<sup>4</sup> Magellan’s CEO sits on the Pharmaceutical Care Management Association’s Board of Directors. PCMA. Retrieved 12 July 2022 from, <https://www.pcmanet.org/board-of-directors/>.

<sup>5</sup> Rutledge, L. (2022). *Complaint*. Govdelivery.com. Retrieved 12 July 2022 from, [https://content.govdelivery.com/attachments/ARAG/2022/05/11/file\\_attachments/2156162/2022-05-11-%20Insulin%20Complaint%20FINAL%20DRAFT.pdf](https://content.govdelivery.com/attachments/ARAG/2022/05/11/file_attachments/2156162/2022-05-11-%20Insulin%20Complaint%20FINAL%20DRAFT.pdf).

MRx Easy Dose and MRx Cares are Magellan’s mail-order and call center solutions. Express Scripts and Prime each have their own mail-order pharmacies. Magellan’s mail-order solution is integrated with Personal Rx. Consolidation of this solution would not just be a consolidation between Magellan and Prime, but one that also has tentacles into Express Scripts and Personal Rx’s mail-order solutions. We have all heard the negative consequences of PBMs forcing patients into mail order,<sup>6</sup> and therefore, we urge the Commission to look closely at the implications of further consolidation in this space.

Advanced Analytics MRx View is a solution that will supply Express Scripts/Prime valuable insight into claims-level data potentially on competitors that currently use Magellan. They could use that claims-level data to cherry-pick the lowest risk/highest reward patients from their competitors. It will also put into Express Scripts/Prime’s hand a powerful tool that performs “copay modeling.” *Modern Healthcare* reported<sup>7</sup> on a study by the National Bureau of Economics<sup>8</sup> that shows as copays increase, adherence drops, and mortality spikes.

### The FTC Should Block this Acquisition

NCPA believes that after conducting a full investigation, the FTC staff and Commission will find that an asset divestiture alone or even in combination with a conduct remedy will not be sufficient to prevent the substantial lessening of competition that will result from this transaction. Further consolidation of an already consolidated market would only serve to heighten Express Scripts/Prime’s market power, which has already enabled each of them to impose unfair fees and claw backs, impose take-it-or-leave-it contracts that often reimburse our members less than their costs of acquisition, and steer patients to PBM-owned pharmacies. This market power has also harmed patients by refusing access to affordable drugs through formulary exclusions, imposing unnecessary and burdensome step therapies, higher copays, and less pharmacy choice.

Given the foregoing, NCPA urges the Commission to investigate this acquisition further and file a complaint against the merging entities for violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and Section 5 of the FTC Act, as amended 15 U.S.C. § 45.

Sincerely,

*Matthew Seiler*

Matthew Seiler, R.N., Esq.

Vice President and General Counsel, NCPA

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<sup>6</sup> Bedoya, A. (2022). *STATEMENT OF COMMISSIONER ALVARO M. BEDOYA Regarding 6(b) Orders to Study Contracting Practices of Pharmacy Benefit Managers*. FTC.gov. Retrieved 12 July 2022, from [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Bedoya\\_Statement\\_re\\_PBM\\_Study\\_%28FINAL%29\\_6-7-2022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Bedoya_Statement_re_PBM_Study_%28FINAL%29_6-7-2022.pdf).

<sup>7</sup> Kacik, A. (2021, February 12). *Rising prescription copays drop adherence, spike mortality, research shows*. Modern Healthcare. Retrieved July 15, 2022, from <https://www.modernhealthcare.com/patients/rising-prescription-copays-drop-adherence-spike-mortality-research-shows>.

<sup>8</sup> Chandra, A., Flak, E., & Obermeyer, Z. (2021, February). *The health costs of cost-sharing*. Retrieved July 12, 2022, from [https://www.nber.org/system/files/working\\_papers/w28439/w28439.pdf](https://www.nber.org/system/files/working_papers/w28439/w28439.pdf).