June 30, 2021

Commissionner Rohit Chopra
United States of America
Federal Trade Commission
Washington, D.C. 20580

Re: Pharmacy Benefits Manager Anti-Competitive Behavior

Dear Commission Chair Khan,

Thank you for the opportunity to offer written comment. Thank you also for your May 28, 2021 statement regarding pharmacy benefits manager ("PBM") practices, including PBM rebate walls. GPhA was encouraged by your statement drawing attention to PBM practices – practices that we believe are rife with conflicts of interest, a lack of transparency, and that appear to fall within the very definition of anti-competitive behavior.

Your statement rightfully focuses on the role rebate practices of PBMs play in increasing the cost of prescription drugs. It is also noteworthy that rebate and formulary practices reduce access to drugs and often force patients to obtain brand name drugs where generic equivalent drugs are available for less than the copay on the brand name drug for which the PBM is capturing a rebate.

While GPhA was pleased to see your attention to this matter the fact remains that, under the previous administrations, the FTC failed to identify anti-competitive risks associated with vertical integration in the health care space, including in mega mergers such as CVS' acquisition of Aetna and Cigna's acquisition of Express Scripts. Anti—competitive practices are not the outlier - they are the norm, and they are stamping out small businesses and compromising the care of millions of Americans.

Through virtually uncontested vertical integration, the big PBMs are not only affiliated with insurers, but also with pharmacies that compete with other non-PBM affiliated pharmacies such as Walgreens and independent community pharmacies whereby the PBMs are setting reimbursement rates for their competitors. PBMs often reimburse non-affiliate pharmacies woefully under pharmacy acquisition cost while billing their

clients for those same drugs significantly more money, a practice known as spread pricing.

In addition, PBMs often engage in the practice of recouping money retroactively from network pharmacies (often referred to as DIR fees) which has resulted in the closure of untold community pharmacies further reducing patient access to care. Ironically, or perhaps by design, many of these closures result in the PBM affiliated pharmacies purchasing the prescription files from the competitor pharmacy who closed for pennies on the dollar. In addition, the practice of imposing fees after the point of sale often results in patients and plans overpaying based upon the price at point of sale while PBMs enjoy the benefit of the post adjudication recoupment.

Aside from rebate practices that restrict choice and care, reimbursement practices that simultaneously under reimburse competitors while raising the cost of prescription drugs to their clients, and the imposition of retroactive fees that harm competitor pharmacies and inflate costs to patients and payors, PBMs engage in a far more insidious practice that is not only anti-competitive, but compromises patient care – PATIENT STEERING.

Everyday in this country our sickest patients, those fighting for their lives battling cancer, HIV, and other life-threatening diseases, are forced to use pharmacies owned or affiliated with PBMs delaying and compromising care while at the same time taking patients away from their choice of oncology and other specialty physicians practices and pharmacies that compete with the PBM owned/affiliated pharmacies. How are PBMs able to do this? They offer, design, and implement plans that mandate patients use PBM owned/affiliated pharmacies or that penalize or deny coverage to patients who seek to fill prescriptions at non-affiliate pharmacies.

In Georgia, steps have been taken to try and eliminate these practices. By way of example, in connection with the CVS Aetna merger, the Commissioner imposed certain preconditions via the Consent Order, including:

- CVS/Aetna allow Georgia patients to use any health care provider that is agreeable to applicable terms and conditions; and
- Aetna invite non-CVS health care providers (pharmacies, physicians, clinics, etc.) to join its networks, and allow patients to use any provider within their respective networks.

Additionally, in 2019 and 2020 the Georgia General Assembly passed legislation seeking to prohibit these self referral practices finding, amongst other things, that these practices:

> May limit or eliminate competitive alternatives in the health care services market, may result in overutilization of health care services, may increase costs to the health care system, may adversely affect the quality of health care, may disproportionately harm patients in rural and medically underserved areas of Georgia, and shall be against the public policy of this state.

Ga. Code § 26-4-119.

Despite these attempts to rein in anti-competitive PBM steering practices, PBMs continue to steer in the state, every day.

In light of the foregoing, we ask that the FTC make it a priority to rein in these anti-competitive practices through its considerable investigatory, prosecutorial, and rule-making powers as soon as possible. The harm to community pharmacies, oncology and other specialty practices, payors, and patients as a result of PBM anti-competitive practices is acute and as a result stopping these practices should be an FTC priority.

Sincerely,

Bob Coleman
CEO, Georgia Pharmacy Association