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For Release: September 10, 2004

Related Documents:

FTC Staff: California Bill May Raise Prices for Pharmaceuticals

[Competitive Effects of California Assembly Bill 1960](#) (September 7, 2004) V040027

[Improving Health Care of Competition](#)

In response to a request from California Assembly Member Greg Aghazarian, FTC staff have commented on a bill (AB 1960) that requires pharmacy benefit managers ("PBMs") to disclose certain information to purchasers and prospective purchasers of their services, as well as to prescribers and consumers. The bill has been passed by both the California Senate and Assembly and is currently pending before Governor Schwarzenegger.

Health plan sponsors and health insurers hire PBMs to administer drug benefits programs. AB 1960 is intended to increase cost transparency in transactions between PBMs and their health plan clients, provide more information to consumers and prescribers with respect to certain drug substitutions, and ensure that any realized cost savings are passed on to consumers. The FTC staff letter concludes that AB 1960 is actually more likely to increase the cost of pharmaceuticals, increase health insurance premiums, and reduce the availability of insurance coverage for pharmaceuticals.



"This bill looks good on paper but may well harm consumers," said Maureen Ohlhausen, Acting Director of the FTC's Office of Policy Planning. "Many drug substitutions are good for consumers' health and their pocketbooks. Unfortunately, AB 1960 makes all substitutions more difficult, time-consuming, and expensive."

"This bill may make it more difficult for some purchasers to compare prices of PBM services, and they may mistakenly choose a higher-priced option as a result," said Luke Froeb, Director of the FTC's Bureau of Economics.

Analysis of the California Bill

AB 1960 requires PBMs to disclose certain financial information concerning their transactions with pharmaceutical companies to purchasers and prospective purchasers of PBM services. It also imposes disclosure requirements on prescribers and patients before a PBM may substitute one medication for another. Although a PBM does not have to make disclosures to prescribers when it is requesting substitution of a generic equivalent of the prescribed medication, it must communicate certain information to consumers when any drug substitution is requested. The bill also requires PBMs to monitor the health of patients for whom drug substitutions were made.

The staff analysis finds that AB 1960 is likely to have an adverse effect on consumers in two ways. First, mandated disclosures may actually increase prices. "Whenever PBMs have a credible threat to exclude pharmaceutical manufacturers from their formulary, manufacturers have a powerful incentive to bid aggressively. . . . Whenever competitors know the actual prices charged by other firms, tacit collusion - and thus higher prices - may be more likely. It is for this reason that California law requires the state to use sealed bids to procure desired goods and services whose value exceeds \$25,000," the FTC's letter states.

Second, the bill has a number of provisions that are likely to make drug substitution more expensive. PBMs frequently use drug substitution to reduce costs and promote competition between branded drug makers. Generic substitution is encouraged by the FDA and widely recognized as safe, and California already requires prescriber approval for the substitution of one branded drug for another. Because current safeguards appear sufficient to protect consumers, AB 1960 is likely to increase costs to consumers without providing any additional benefits.

The letter observes that competition in the market for PBM services appears to be working, and that "vigorous competition in the marketplace for PBMs is more likely to arrive at an economically efficient level of transparency than regulation of those terms." The letter also notes that, in general,

consumers do not need "information about the cost structure of those with whom they do business . . . to make efficient purchasing decisions."

The letter concludes that "AB 1960 is more likely to undermine competition than promote it. AB 1960's mandated disclosure of information may increase the cost of pharmaceuticals and health insurance premiums. . . Any such cost increases are likely to undermine the ability of some consumers to obtain the pharmaceuticals and health insurance they need at a price they can afford."

The FTC and the Department of Justice recently issued a report, [Improving Health Care: A Dose of Competition](#), to inform consumers, businesses, and policy makers on a range of issues affecting the cost, quality, and accessibility of health care. The report concludes that robust competition in the PBM market will benefit consumers by lowering premiums and costs and improving the quality of services provided. As in the staff letter sent today, the report also states that competition, rather than regulation, encourages the optimal level of transparency in the marketplace for PBMs.

The Commission vote authorizing the staff to file the comments was 4-0. The comments are available on the FTC's Web site as a link to this press release.

NOTE: These comments represent the views of the staffs of the FTC's Office of Policy and Planning and Bureaus of Competition and Economics, and not necessarily those of the Commission or any individual Commissioner.

Copies of the document mentioned in this release are available from the FTC's Web site at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Call toll-free: 1-877-FTC-HELP.

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