

January 14, 2025

## [CVS, CI, UNH]: FTC 2nd (Negative) Report on PBMs Doesn't Change Overhang Trajectory

The FTC's unanimously-supported release of its [second interim report](#) on pharmacy benefit managers (PBMs), focused on specialty drug dispensing at affiliated pharmacies [CVS, CI, UNH] that generated an extra \$7.3B in revenue over six years, as well as its comments at an open meeting this morning, threw another log onto an already-simmering fire directed at the PBMs [CVS, CI, UNH, HUM, ELV]. We therefore continue to expect the following:

- Congress to include in its FY25 omnibus spending bill, due in March, the bipartisan PBM reforms struck from the December continuing resolution: 1) mandatory PBM disclosures to employer / insurer customers; 2) mandatory pass-through to commercial customers by PBMs and its group purchasing organizations (GPOs) / rebate aggregators of 100% rebates and discounts, excluding bona fide service fees; 3) Medicare Part D delinking of PBM compensation, excluding bona fide service fees, from drug prices / volumes; 4) Medicare Part D standardized pharmacy provisions; 5) Medicaid spread pricing ban; and 6) Medicaid pharmacy payment policies.
- We **doubt** this includes the Hawley-Warren bill requiring insurers / PBMs to divest affiliated pharmacies.
- FTC to proceed with its administrative complaint against the "Big 3" PBMs and their affiliated GPOs, alleging unfair methods of competition under Section 5 of the FTC Act by favoring brand-name insulins over cheaper ones via formulary placement and rebates. The agency seeks structural remedies, like barring PBMs from securing rebates based on a drug's (not just insulin) list price. In November, the PBMs moved to dismiss the complaint. While we are unpersuaded that an administrative trial later this year will take place before Chief Administrative Law Judge D. Michael Chappell, this lawsuit is likely to remain an overhang, especially since we doubt the incoming FTC Chairman and current GOP commissioner Andrew Ferguson will immediately backtrack.
- President Trump to be tactical in his attacks on the PBMs as part of his long-term effort to bring down drug prices and consumer's healthcare costs. He is likely to make frequent use of his bully pulpit to pressure the industry to either make broader and bolder behavioral changes and / or agree not to raise enrollee / employer premiums.

## FTC Second Interim Report and Open Meeting

Ahead of its open commission meeting today, the FTC released its staff's 60-page second interim report, entitled "Specialty Generic Drugs: A Growing Profit Center for Vertically Integrated Pharmacy Benefit Managers," as a follow-up to its earlier interim report and part of the commission's long-standing 6(b) study on PBMs. The issuance was not a surprise, since a majority is needed for action and the three Democrat commissioners have always appeared more antagonistic toward the industry.

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### CVS Health Corp (CVS)

Price:	\$51.57
52-Week High:	\$80.75
52-Week Low:	\$43.56

### Cigna Corp (CI)

Price:	\$285.03
52-Week High:	\$370.83
52-Week Low:	\$262.03

### UnitedHealth Group Incorporated (UNH)

Price:	\$543.74
52-Week High:	\$630.73
52-Week Low:	\$436.38

### Humana Inc (HUM)

Price:	\$282.63
52-Week High:	\$455.53
52-Week Low:	\$213.31

### Elevance Health Inc (ELV)

Price:	\$393.16
52-Week High:	\$567.26
52-Week Low:	\$362.21

### Centene Corp (CNC)

Price:	\$63.40
52-Week High:	\$81.42
52-Week Low:	\$55.03

### Goodrx Holdings Inc (GDRX)

Price:	\$4.15
52-Week High:	\$9.26
52-Week Low:	\$4.09

What *was* unexpected was: 1) a unanimous bipartisan 5-0 vote, and 2) the vote having occurred yesterday, despite the meeting agenda listing consideration of issuing the report as a business item for *today*.

The FTC staff report examined how PBMs use specialty generic drugs to drive up their revenues and profits. Specifically, the FTC staff found that the “Big 3” PBMs and their specialty pharmacies brought in more than \$7.3B in revenue during 2017-22 by charging much more than the national average cost on 51 specialty generic drugs (cancer, multiple sclerosis, HIV, organ transplants, etc.).

In examining both the commercial and Medicare Part D markets, the FTC staff identified a material delta between PBM-affiliated versus unaffiliated pharmacies with respect to reimbursement rates, dispensing rates, income streams, and plan sponsor / patient expenditures. It concluded:

- Significant price markups (to the tune of 1000s of percent) of specialty generic drugs dispensed at affiliated pharmacies vs. unaffiliated pharmacies and higher markups in the commercial market than in Medicare Part D.
- Greater dispensing of heavily marked-up specialty generic drugs by affiliated pharmacies vs. unaffiliated pharmacies, particularly in the commercial market, which the staff alleged implies patient steering by the PBMs.
- Higher pharmacy dispensing revenue in excess of the national average drug acquisition cost for affiliated pharmacies vs non-affiliated pharmacies, with 85% of the nearly \$7.3B of dispensing revenue coming from the top 10 specialty generic drugs (of the 51 in total in the six-year sample)
- Higher spread pricing revenues as a result, with the staff estimating \$1.4B during the period.
- Plan sponsor and patient drug spending rose sizably because of these decisions, with higher rates for commercial claims, in particular.

While the FTC staff did not articulate whether any of these observations rise to level of antitrust law violations, it suggested that legislative reforms may be warranted and encouraged the current congressional work.

Meanwhile, today's open meeting, with only the three democrat commissioners attending, added little color to the report or FTC actions, outside of the chairwoman stating that on Monday, the FTC voted 5-0 for release. After an open forum where nearly one-third of the public commenters castigated the PBMs (just two spoke in their support), the staff presented the second interim study's highlights and the three democrat commissioners commended the work.

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