FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

For Release

FTC Secures Landmark Settlement with Express Scripts to Lower Drug Costs for American Patients

Settlement resolves FTC lawsuit alleging that Express Scripts' conduct resulted in artificially inflated insulin drug prices

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Tags: Consumer Protection | Competition | Bureau of Competition | Bureau of Consumer Protection | Nonmerger | Pharmacy Benefits Managers (PBM) | Health Care | Drug Stores and Pharmacies | Prescription Drugs

The Federal Trade Commission secured a landmark settlement with one of the nation's largest pharmacy benefit managers ("PBMs"), Express Scripts, Inc., and its affiliated entities (collectively "ESI"). The settlement requires ESI to adopt fundamental changes to its business practices that increase transparency, are expected to drive down patients' out-of-pocket costs for drugs like insulin by up to $7 billion over 10 years, bring millions of dollars in new revenue to community pharmacies each year, and advance the Trump Administration's key healthcare priorities.

The FTC's settlement resolves the Commission's lawsuit against ESI, which alleges that ESI artificially inflated the list price of insulin drugs by using anticompetitive and unfair rebating practices, and impaired patients' access to lower list price products, ultimately shifting the cost of high insulin list prices to vulnerable patients.

"The FTC's settlement with Express Scripts is a clear testament to the Trump-Vance FTC's focus on lowering healthcare costs for American patients," said FTC Chairman Andrew N. Ferguson. "The FTC's settlement with ESI will end its business practices that have kept drug prices high, ultimately providing meaningful financial relief to American patients who depend on ESI to access life-sustaining

prescription drugs as well as community pharmacies who will see new revenues each year and relief from being squeezed. It also delivers significant wins for the broader Trump-Vance healthcare agenda, including reshoring major portions of ESI's business, ensuring regulatory compliance with price transparency laws, requiring disclosures of kickbacks to brokers, and paving the way for Americans to participate fully in TrumpRx."

The FTC's enforcement action against ESI, as well as Caremark Rx and OptumRx, alleges that the PBMs created a system that artificially drove up the list prices of drugs by preferencing rebates. The complaint alleges that this system pushed insulin manufacturers, among others, to compete for preferred formulary coverage based on the size of rebates off the list price rather than net price, which ultimately benefitted the PBMs, including ESI, which keep a portion of the inflated rebates. According to the FTC's complaint, the inflated list prices hurt patients whose out-of-pocket payments like copays and coinsurance are tied to the list price of the drug.

ESI, under the FTC's proposed consent order, has agreed to:

- Stop preferring on its standard formularies high wholesale acquisition cost versions of a drug over identical low wholesale acquisition cost versions;
- Provide a standard offering to its plan sponsors that ensures that members' out-of-pocket expenses will be based on the drug's net cost, rather than its artificially inflated list price;
- Provide covered access to TrumpRx as part of its standard offering upon relevant legal and regulatory changes;
- Provide full access to its Patient Assurance Program's insulin benefits to all members when a plan sponsor adopts a formulary that includes an insulin product covered by the Patient Assurance Program unless the plan sponsor opts out in writing;
- Provide a standard offering to all plan sponsors that allows the plan sponsor to transition off rebate guarantees and spread pricing;
- Delink drug manufacturers' compensation to ESI from list prices as part of its standard offering;
- Increase transparency for plan sponsors, including with mandatory, drug-level reporting, providing data to permit compliance with the Transparency in Coverage regulations, and disclosing payments to brokers representing plan sponsors;

- Transition its standard offering to retail community pharmacies to a more transparent and fairer model based on the actual acquisition cost for a drug product plus a dispensing fee and additional compensation for non-dispensing services;
- Promote the standard offerings to plan sponsors and retail community pharmacies; and
- Reshore its group purchasing organization Ascent from Switzerland to the United States, which will bring back to the United States more than $750 billion in purchasing activity over the duration of the order.

The Commission vote to accept the consent agreement for public comment was 1-0, with Commissioner Meador recused.

The public will have 30 days to submit comments on the proposed consent agreement package. Instructions for filing comments appear on the docket. Once processed, they will be posted on Regulations.gov.

NOTE: When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions.

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Press Release Reference

FTC Sues Prescription Drug Middlemen for Artificially Inflating Insulin Drug Prices

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