



June 30, 2022

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Jonathan Kanter
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Dear Director Vedova and Assistant Attorney General Kanter,

American Pharmacy Cooperative (“APCI”), consisting of more than 1,700 community pharmacies across thirty states, writes to you in opposition of the proposed acquisition of Magellan Health, Inc.’s pharmacy benefits management business, Magellan Rx Management (“Magellan Rx”), by Prime Therapeutics and to urge your close scrutiny of the proposed merger from a horizontal and vertical perspective.

APCI believes that horizontal and vertical integration between pharmacy benefits managers (“PBM[s]”), insurers, pharmacies, and other supply chain intermediaries, has significantly harmed competition, increased costs, reduced patient choice and access to care, ravaged community pharmacies and oncology practices, and led to increasing waste in healthcare. As such, APCI stands in opposition to any large PBM affiliated with an insurer seeking to grow market share via acquisition.

However, due to the complex relationships at issue in this merger, APCI is particularly concerned regarding the impact to competition and to the prescription drug marketplace.

As will be more fully elaborated below, the acquiring company, Prime Therapeutics, one of the six largest PBMs in the nation, would grow its footprint by approximately 50% if it acquires Magellan Rx. In addition to the sheer size of the acquisition, past experience with horizontal and vertical integration in the PBM/insurer space point not to efficiencies achieved, but rather, to anticompetitive effects including increased prices

for payors and for patients at the pharmacy counter. In addition, implications from a horizontal perspective include the fact that Prime Therapeutics administers prescription drug benefits on behalf of several clients that enjoy near monopolies in certain markets. Additionally, Prime Therapeutics contracts with Express Scripts, a competitor of Prime Therapeutics, owned by Cigna, and itself one of the largest PBMs in the world, to manage certain PBM functions on its behalf including network design, rebate negotiations with drug makers, as well as specialty pharmacy services.

From a vertical perspective, Prime Therapeutics is owned, directly or indirectly, by nineteen Blue Cross Blue Shield (“BCBS”) companies for whom Prime Therapeutics administers prescription drug benefits. Some of those BCBS companies are dominant in their respective marketplaces. Additionally, Prime Therapeutics is planning on leveraging Magellan Rx’s mail order and specialty pharmacies raising vertical integration concerns regarding patient steering.

With regard to the selling company, Centene, a company roiled with investigations for affiliate behavior in connection with prescription drug management, appears to be attempting to flip Magellan Rx despite the fact that Centene claimed prominently that one of the purposes for its acquisition of Magellan Health was to expand its whole health capabilities.

Finally, Prime Therapeutics, its competitor Express Scripts with whom Prime contracts for certain PBM services, along with four other PBMs are currently the subject of a Federal Trade Commission (“FTC”) 6b inquiry for practices relating to amongst other things, the impact horizontal and vertical integration, rebates, brand mandates, and steering. In addition, the FTC has issued a policy statement in connection with PBM rebate practices along with steering patients to more expensive brand name drugs.

Simply put, Prime Therapeutics’ acquisition is likely to create more conflicts of interest, reduce competition, and lead to greater inefficiencies in an already inefficient and flawed system. Rather than allowing this merger to proceed, the Agencies would do well to utilize their authority to not only stop this proposed acquisition but also investigate the premise for Centene’s acquisition of Magellan Health in light of Centene’s past behaviors in the PBM space combined with the proposed divestiture seemingly standing in contrast to the claimed reasons for its acquisition in the first place.

Centene’s acquisition of Magellan Health should be retrospectively reviewed based on developments subsequent to the Hart-Scott-Rodino review period.

In light of the timeline and representations made by Centene between its announcement of its intent to acquire Magellan Health, its subsequent consummation of that acquisition, and now its attempt to sell Magellan Health’s pharmacy benefits management business (“Magellan Rx”), scrutiny is needed not only of Centene’s attempt to sell Magellan Rx, but also, Centene’s acquisition of Magellan Health.

Centene is the largest Medicaid managed care organization in the nation and is currently ranked number 26 on the Fortune 500 list.¹ On January 4, 2021, Centene announced its intent to acquire Magellan Health.² Magellan Health, ranked number 432 on the 2020 Fortune 500 list,³ provides services related to behavioral health as well as pharmacy benefits management.⁴ In its announcement, Centene emphasized prominently that the acquisition would reap the benefit of “broadening and deepening Centene’s whole health capabilities at a critical time.”⁵

Centene’s move away from pharmacy benefits management stands in contrast to its stated goal of “broadening and deepening [its] whole health capabilities.”

Prior to consummating its acquisition of Magellan Health, Centene announced in an October 2021 call with investors, that it was planning on stopping its work as a pharmacy benefits manager and that managing its pharmacy benefits “wasn’t among its core functions.”⁶ Centene indicated it would be launching a \$30 billion dollar RFP for pharmacy benefits management that will be awarded in 2023.⁷

This announcement stood in stark contrast to Centene’s claimed intention of “broadening and deepening [its] whole health capabilities,” via its acquisition of Magellan Health.

Indeed, pharmacy benefits appears to figure centrally in Centene’s whole health offerings, as illustrated by its “Whole Health Solutions,” landing page which provides, amongst other things,:

- Specialty Pharmacy: Comprehensive specialty drug management services focused on improving care and outcomes for patients living with complex conditions. Solutions are designed to put patients first and bring a personal touch to specialty drug management.

¹ <https://www.centene.com/>. See also 2021 Fortune 500 list available online at <https://fortune.com/company/centene/fortune500/>.

² Centene, January 4, 2021, Centene Signs Definitive Agreement to Acquire Magellan Health [press release], available online at <https://investors.centene.com/news-events/press-releases/detail/6/centene-signs-definitive-agreement-to-acquire-magellan>.

³ See 2020 Fortune 500 list available online at <https://fortune.com/fortune500/2020/search/>.

⁴ <https://www.magellanhealth.com/solutions/solutions/>.

⁵ Centene, January 4, 2021, Centene Signs Definitive Agreement to Acquire Magellan Health [press release], available online at <https://investors.centene.com/news-events/press-releases/detail/6/centene-signs-definitive-agreement-to-acquire-magellan>.

⁶ Marty Schladen, “After Ohio scandal, Medicaid managed-care giant to exit the pharmacy business,” Ohio Capitol Journal. November 2, 2021, available online at <https://ohiocapitaljournal.com/2021/11/02/after-ohio-scandal-medicare-managed-care-giant-to-exit-the-pharmacy-business/>.

⁷ Id.

- Pharmacy Benefit Management (PBM): National comprehensive specialty pharmacy services and PBM helps organizations reduce pharmacy spend and maximize individuals' health.

Thus, moving away from specialty pharmacy and pharmacy benefit management reflects a commitment not to broaden and deepen its whole health capabilities, but rather a commitment away from whole health capabilities in its entirety.

Despite Centene's announced intention to move away from pharmacy benefits management prior to its acquisition of Magellan Health, Centene proceeded with its acquisition and following the deal's consummation, announced again that the acquisition "enables Centene to provide whole-health, integrated solutions to deliver better health outcomes at lower costs for complex, high-cost population."⁸

While Centene did emphasize strengthened behavioral health offerings in its announcement, absent was any explanation as to why Centene was acquiring a significant pharmacy benefits management business claiming it would enhance whole health offerings while at the same time it was making plans to exit the pharmacy benefits management business.⁹

Centene settled with multiple states in connection with its pharmacy benefits manager practices subsequent to the Hart-Scott-Rodino review period.

Subsequent to Centene's announcement of its intention to acquire Magellan Health and subsequent to the Hart-Scott-Rodino review period, Centene has entered into multiple state settlements in connection with pharmacy benefits management practices of its affiliates in state Medicaid managed care programs. More specifically, Centene has settled with the following states:

- \$88.3 million to Ohio;¹⁰
- \$56.7 million to Illinois¹¹;
- \$15.2 million to Arkansas;¹²

⁸ Centene, January 4, 2022, Centene Completes Acquisition of Magellan Health, Establishing a Leading Behavioral Health Platform at a Critical Time[press release], available online at <https://investors.centene.com/news-events/press-releases/detail/1011/centene-completes-acquisition-of-magellan-health>.

⁹ Id.

¹⁰ Attorney General Dave Yost, June 14, 2021, Centene Agrees to Pay a Record \$88.3 million to Settle Ohio PBM Case Brought by AG Yost [press release], available online at [https://www.ohioattorneygeneral.gov/Media/News-Releases/June-2021/Centene-Agrees-to-Pay-a-Record-\\$88-3-Million-to-Se](https://www.ohioattorneygeneral.gov/Media/News-Releases/June-2021/Centene-Agrees-to-Pay-a-Record-$88-3-Million-to-Se).

¹¹ Samantha Liss, "Centene reaches \$72M settlement with Illinois, Arkansas for alleged Medicaid overcharges," Healthcare Dive. October 1, 2021, available online at <https://www.healthcaredive.com/news/centene-72m-settlement-illinois-arkansas-overcharge-Medicaid-medicines/607535/>.

¹² Id.

- \$55.5 million to Mississippi;¹³
- \$27.6 million to Kansas;¹⁴
- \$21.1 million to New Hampshire;¹⁵ and
- \$13.7 million to New Mexico.¹⁶

Significantly, other states including Georgia and California continue to investigate the behavior of Centene and its affiliates in connection with pharmacy benefits management in state Medicaid managed care programs and Centene also set aside funds in excess of \$1 billion following its settlement with Ohio.¹⁷

Centene's acquisition of Magellan Health should be reviewed.

On August 3, 2021, the FTC referenced "a tidal wave of merger filings that is straining the agency's capacity to rigorously investigate deals ahead of statutory deadlines," and provided that:

the law permits the antitrust agencies to determine that a merger is illegal even after the companies have merged and even if the merger was subject to premerger review.¹⁸

In light of the developments subsequent to the applicable Hart-Scott-Rodino review period, including its decision to move away from whole health capabilities via an exit from the PBM business as well as the rash of state investigations into Centene affiliate PBM practices, further scrutiny by the Agencies seems appropriate to determine

¹³ Will Stribling, "Mississippi reaches \$55.5M settlement with state's largest Medicaid contractor Centene of pharmacy benefits," Mississippi Today. June 14, 2021, available online at <https://mississippitoday.org/2021/06/14/mississippi-centene-55-million-settlement/>.

¹⁴ Page Minemyer, "Centene to pay \$27.6M to settle PBM investigation in Kansas," Fierce Healthcare. Dec. 7, 2021, available online at <https://www.fiercehealthcare.com/payer/centene-to-pay-27-6m-to-settle-pbm-investigation-kansas>.

¹⁵ Smantha Liss, "Centene reaches latest settlement over alleged PBM overcharging, agrees to pay New Hampshire \$21M," Healthcare Dive. Jan 10, 2022, available online at <https://www.healthcaredive.com/news/centene-reaches-settlement-new-hampshire-pbm/616894/#:~:text=Centene%20has%20agreed%20to%20pay,John%20Formella%20said%20last%20week>.

¹⁶ Smantha Liss, "Centene settles with New Mexico on PBM overcharging allegations," Healthcare Dive. June 15, 2022, available online at <https://www.healthcaredive.com/news/centene-settles-new-mexico-pbm-overcharging-allegations/625492/>.

¹⁷ Samantha Young, "With Georgia case pending, Centene probed in California," Kaiser Health News. April 11, 2022, available online at <https://www.georgiahealthnews.com/2022/04/georgia-case-pending-centene-probed-california/>. See also John Tozzi, "Centene Reserves \$1.1 Billion for Pharmacy Disputes," Bloomberg. June 14, 2021, available online at <https://www.bloomberg.com/news/articles/2021-06-14/centene-reserves-1-1-billion-in-pharmacy-dispute-with-states>.

¹⁸ Holly Vedova, "Adjusting merger review to deal with the surge in merger filings," FTC Bureau of Competition. August 3, 2021, available online at <https://www.ftc.gov/enforcement/competition-matters/2021/08/adjusting-merger-review-deal-surge-merger-filings>.

whether the acquisition with the intent to flip the Magellan Rx business was anti-competitive.

Anti-competitive concerns regarding Prime Therapeutics' acquisition are bolstered by actual effects of previous horizontal and vertical mergers in the PBM/insurer space.

America has a prescription drug pricing and access problem created by this country's largest PBMs. The PBM market today is heavily consolidated with six PBMs claiming about 96% of the market share and three of those six claiming approximately 80% of the market share.¹⁹ In addition, many of the large PBMs are vertically integrated with, amongst other things, affiliate insurers as well as affiliated pharmacies.²⁰

Importantly, Prime Therapeutics rounds out the list of the six largest PBMs but, as more fully elaborated below, it also contracts with Cigna's Express Scripts, the nation's second largest PBM, in connection with core pharmacy benefit management functions consisting of pharmacy networks, pharmaceutical manufacturer contracts (rebates negotiations)²¹, and mail order and specialty pharmacy services via Express Scripts Pharmacy and Accredo (Express Scripts affiliated pharmacy).²²

While more fully elaborated in APCI's May 25, 2022, letter to Commissioner Khan regarding business practices of PBMs, PBM rebate practices, pricing methodologies, and patient steering, combined with the sheer size of the largest PBMs create a toxic anti-competitive cocktail that increases costs, reduces access to drugs in the marketplace, and reduces consumer choice of provider.

- Rebates: problematic rebate practices of large PBMs include (1) denying patients the benefit of drug maker rebates at the point of sale; (2) mandating more expensive brands when there are lower cost generic equivalents available; and (3) engaging in rebate driven restrictive formulary practices. All of these practices have the effect of raising the price of prescription drugs at the pharmacy counter for patients which leads to decreased adherence and poorer patient outcomes. In addition, a recent study revealed the 3 largest PBMs placed a total of 1,156 unique medicines on their standard exclusionary lists

¹⁹ Adam J. Fein, Ph. D., "The Top Pharmacy Benefit Managers of 2020: Vertical Integration Drives Consolidation," Drug Channels. April 6, 2021, available online at <https://www.drugchannels.net/2021/04/the-top-pharmacy-benefit-managers-pbms.html>.

²⁰ Id.

²¹ <https://www.express-scripts.com/corporate/articles/express-scripts-and-prime-therapeutics-collaborate-deliver-more-affordable-care-more-100>; see also <https://www.drugchannels.net/2020/01/express-scripts-prime-therapeutics-our.html>.

²² Adam J. Fein, Ph. D., "Prime Therapeutics Deepens Its Reliance on Express Scripts: Our Four Takeaways From Their New Pharmacy Relationship," Drug Channels. December 14, 2020, available online at <https://www.drugchannels.net/2020/12/prime-therapeutics-deepens-its-reliance.html>

thereby restricting access to patient care.²³ Rebates also have severe impact to prescription drug pricing, broadly impacting drug prices for insureds as well as cash paying customers alike.

- Drug pricing methodologies: PBMs use a variety of complex methodologies to set the prices pharmacies are reimbursed for prescription drugs, and patients and payers pay for prescription drugs. PBMs are often able to play arbitrage, exploiting pricing variations between the parties as well as through the use of drug maker rebates and pharmacy discounts. PBMs have proven flexible, able to maximize revenue and profits by raising drug costs for payers in some cases, and patients in others, while often reimbursing community pharmacies below their acquisition costs. Some of these methodologies include spread pricing, generic effective rate pricing, use of direct and indirect remuneration fees in Medicare Part D, and maximum allowable cost (“MAC”) pricing.
- Steering: A practice that has grown as a result of vertical integration is that of patient steering. Steering can take a variety of forms including mandating patients use a particular pharmacy, withholding coverage unless certain pharmacies are used, and through the use of narrow networks. PBMs often steer patients to PBM or insurer owned/affiliated mail order pharmacies, specialty pharmacies, and in some cases retail pharmacies.²⁴ PBMs also sometimes steer patients to affiliate pharmacies of other PBMs. Large PBMs aggressively target patients on specialty medications to treat serious conditions such as cancer and HIV, as well as patients on medications to manage chronic conditions such as diabetes, high blood pressure and heart disease.²⁵ The negative impact to patients from PBM steering can include, amongst other things, loss of patient choice, fragmented patient care, delays to and impeding access to care, and poorer patient outcomes.²⁶

Large vertically integrated PBMs often tout efficiencies that will be realized via growth and horizontal and vertical integration, but reality has proven otherwise. Through utilizing the above practices and using them at scale, prescription drug prices have risen for patients at the drug counter, access to medicine and care has and continues to be compromised, and patient choice has been restricted.

²³ https://www.xcenda.com/-/media/assets/xcenda/english/content-assets/white-papers-issue-briefs-studies-pdf/xcenda_pbm_exclusion_may_2022.pdf.

²⁴ Marty Schladen, Catherine Candisky, “Mail-order pharmacy system delays care for some patients,” The Columbus Dispatch. June 3, 2018, available online at <https://www.dispatch.com/story/lifestyle/health-fitness/2018/06/03/mail-order-pharmacy-system-delays/12069189007/>.

²⁵ Id. See also Marty Schladen, “Pharmacist: CVS dominates cancer-drug business,” The Columbus Dispatch. June 3, 2018, available online at <https://www.dispatch.com/story/lifestyle/health-fitness/2018/06/03/pharmacist-cvs-dominates-cancer-drug/12069174007/>.

²⁶ Id.

Importantly, problematic PBM practices, along with horizontal and vertical integration in the PBM industry and their corresponding anti-competitive effects, have not gone unnoticed by the FTC.

In a recent enforcement policy statement, the FTC announced its intention to “ramp up enforcement against any illegal bribes and rebate schemes that block patients’ access to competing lower-cost drugs.”²⁷

Additional FTC action includes the launching of an inquiry into large PBMs, including Prime Therapeutics, in which the FTC will:

scrutinize the impact of vertically integrated pharmacy benefit managers on the access and affordability of prescription drugs.²⁸

In sum, horizontal and vertical integration in the PBM and insurer marketplace has brought us increased drug prices, reduced access to medications, and reduced patient choice. These results should serve as a warning to the potential effects of further horizontal and vertical integration in the PBM/insurer space.

The proposed acquisition of Magellan Rx raises horizontal anti-competitive concerns.

As indicated above, Prime Therapeutics is one of the six largest PBMs in the country.²⁹ Magellan Rx, while not one of the largest, remains a giant in its own right as reflected by the \$1.35 billion price tag for the proposed acquisition.³⁰ Should this acquisition proceed, Prime Therapeutics would be poised to take a quantum leap in the number of customers served going from approximately 33 million to approximately 49 million customers thereby growing its customer base by approximately 48%.³¹ Prime

²⁷ FTC, June 16, 2022, FTC to Ramp Up Enforcement Against Any Illegal Rebate Schemes, Bribes To Prescription Drug Middlemen That Block Cheaper Drugs [press release], available online at <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-ramp-up-enforcement-against-illegal-rebate-schemes>.

²⁸ FTC, June 7, 2022, FTC Launches Inquiry Into Prescription Drug Middlemen Industry [press release], available online at <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-launches-inquiry-prescription-drug-middlemen-industry>.

²⁹ Adam J. Fein, Ph. D., “The Top Pharmacy Benefit Managers of 2020: Vertical Integration Drives Consolidation,” Drug Channels. April 6, 2021, available online at <https://www.drugchannels.net/2021/04/the-top-pharmacy-benefit-managers-pbms.html>.

³⁰ Prime Therapeutics, May 5, 2022, Prime Therapeutics is acquiring Magellan Rx . . . [press release], available online at <https://www.primetherapeutics.com/news/prime-therapeutics-is-acquiring-magellan-rx-to-advance-integrated-specialty-drug-management-accelerating-efforts-to-lower-the-cost-of-drugs-and-improve-health-outcomes/>.

³¹ Id.

Therapeutics' chief executive projects that the acquisition of Magellan Rx would increase Prime Therapeutics' footprint by about 50%.³²

While the sixth largest PBM increasing its footprint by 50% via acquisition should be cause enough for concern, particularly in light of the impact past horizontal mergers have had on the prescription drug market, Prime Therapeutics' relationship with Express Scripts and Prime Therapeutics' PBM services on behalf of several BCBS clients who have dominant market share make this proposed acquisition particularly concerning regarding potential anti-competitive effects.

Prime Therapeutics' relationship with Express Scripts must be scrutinized.

Express Scripts, owned by Cigna, is the second largest PBM in the nation.³³ According to its website Express Scripts currently administers benefits to more than one hundred million Americans.³⁴

As noted above, Prime Therapeutics contracts with Express Scripts, a competitor, in connection with, amongst other things, network management and pharmaceutical manufacturer contracts/rebates.³⁵ Thus, there are horizontal implications between not only Prime Therapeutics and Magellan Rx, but also, potentially, Express Scripts and Magellan Rx.

While details regarding the "collaboration," between Prime Therapeutics and Express Scripts are scarce, scrutiny of the arrangement is necessary in order to fully assess the potential anticompetitive effects of Prime's acquisition of Magellan Rx. Particular attention should be paid to the details of the "collaboration," with regard to rebates, the role Ascent Health Services plays in rebate negotiation and aggregation, as well as the impact the Ascent, Prime Therapeutics, and Express Scripts relationship may have on overall drug prices, brand mandates, formulary design, access to drugs, and other impact to competition.³⁶

³² Christopher Snowbeck, "Prime Therapeutics paying \$1.35 billion for Magellan Health's pharmacy business," Star Tribune. May 5, 2022, available online at <https://www.startribune.com/prime-therapeutics-paying-1-35-billion-for-magellan-healths-pharmacy-business/600170728/>.

³³ Adam J. Fein, Ph. D., "The Top Pharmacy Benefit Managers of 2020: Vertical Integration Drives Consolidation," Drug Channels. April 6, 2021, available online at <https://www.drugchannels.net/2021/04/the-top-pharmacy-benefit-managers-pbms.html>.

³⁴ <https://www.express-scripts.com/corporate/about>.

³⁵ <https://www.express-scripts.com/corporate/articles/express-scripts-and-prime-therapeutics-collaborate-deliver-more-affordable-care-more-100>.

³⁶ Adam J. Fein, Ph. D., "Express Scripts + Prime Therapeutics: Our Four Takeaways From This Market Changing Deal," Drug Channels. January 7, 2020, available online at <https://www.drugchannels.net/2020/01/express-scripts-prime-therapeutics-our.html>.

Prime Therapeutics provides PBM services on behalf of several BCBS clients that enjoy already dominant market positions.

That Prime Therapeutics provides PBM services to several client-owners who enjoy already dominant market positions also raises anti-competitive concerns.

Prime Therapeutics is owned directly or indirectly by nineteen BCBS companies and its clients include an array of BCBS companies throughout the nation.³⁷ Many of the BCBS companies on whose behalf Prime Therapeutics administers prescription drug benefits enjoy significant market share and in many cases command dominant market share. Set forth below are just a few examples:

Individual Market

- Blue Cross Blue Shield of Alabama: 97% market share
- Blue Cross Blue Shield of North Carolina: 97%
- Blue Cross Blue Shield of North Dakota: 81% market share
- Blue Cross Blue Shield of Wyoming: 98% market share
- Blue Cross Blue Shield of Oklahoma (via HSC): 95% market share³⁸

Large Group Market

- Blue Cross Blue Shield of Alabama: 94% market share
- Blue Cross Blue Shield of North Carolina: 71%
- Blue Cross Blue Shield of North Dakota: 51% market share
- Blue Cross Blue Shield of Wyoming: 91% market share
- Blue Cross Blue Shield of Oklahoma (via HSC): 64% market share³⁹

Small Group Market

- Blue Cross Blue Shield of Alabama: 97% market share
- Blue Cross Blue Shield of North Dakota: 83% market share
- Blue Cross Blue Shield of Wyoming: 86% market share
- Blue Cross Blue Shield of Oklahoma (via HSCS): 77% market share⁴⁰

³⁷ <https://www.primetherapeutics.com/news/company-information/>.

³⁸ Dan Grunebaum, "Top Individual Health Insurance Companies, Mapped," HealthCareInsider. January 5, 2022, available online at <https://healthcareinsider.com/top-individual-health-insurance-companies-mapped-367121>.

³⁹ Kaiser Family Foundation, Market Share and Enrollment of Largest Three Insurers – Large Group Market, 2019 Timeframe, available online at: <https://www.kff.org/other/state-indicator/market-share-and-enrollment-of-largest-three-insurers-large-group-market/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

⁴⁰ Kaiser Family Foundation, Market Share and Enrollment of Largest Three Insurers – Small Group Market, 2019 Timeframe, available online at <https://www.kff.org/other/state-indicator/market-share-and-enrollment-of-largest->

The foregoing demonstrates the significant market share and market concentration several of Prime Therapeutics' BCBS client-owners enjoy. The implications to market share and head-to-head competition resulting from this acquisition must be assessed on a state by state and market by market basis to identify potential anti-competitive effects.

In light of the sheer size of this merger, the number of lives for whom Prime Therapeutics and Magellan administer benefits for, Prime Therapeutics' relationship with Express Scripts, and the market concentration/dominance several of Prime Therapeutics' customer-owners enjoy in the individual, large group, and small group markets, Prime Therapeutics' proposed acquisition of Magellan raises serious horizontal anti-competitive concerns.

The proposed acquisition of Magellan Rx raises vertical anti-competitive concerns.

Because Prime Therapeutics is owned by 19 BCBS companies, either directly or through affiliates, this merger also raises anti-competitive concerns from a vertical integration perspective. Prime Therapeutics owner-clients include:

- BCBS of Alabama;
- BCBS of Kansas;
- BCBS of Minnesota;
- BCBS of Nebraska;
- BCBS of North Carolina;
- BCBS of North Dakota;
- BCBS of Rhode Island;
- BCBS of Wyoming;
- Capital BlueCross;
- Florida Blue;
- Health Care Services Corporation (HSCS); and
 - BCBS Illinois
 - BCBS Montana
 - BCBS New Mexico
 - BCBS Oklahoma
 - BCBS Texas
- Regence Health Plans
 - Regence Blue Cross Idaho;

- Regence BCBS of Oregon;
- Regence BCBS of Utah;
- Regence Blue Shield Washington.⁴¹

As noted above, some of the companies enjoy significant market share in their respective markets. While Prime Therapeutics emphasizes channel independence in some of its materials⁴², a review of several different BCBS plans reveals the use of narrow specialty pharmacy networks in which independent community pharmacies are not included.⁴³

More problematic still, it appears Prime Therapeutics is taking a particular interest in the vertical integration Magellan Rx can bring from a pharmacy perspective, with Prime looking to “return to operating its own mail-order pharmacies and specialty pharmacies.”⁴⁴ To the extent this signals a move toward more steering, self-dealing, and limited choice for Prime Therapeutics and BCBS patients when it comes to obtaining specialty medications and maintenance medications, this represents a significant risk to competition, patient choice, and access to care.

Conclusion

Centene’s attempt to sell Magellan Rx so quickly after its acquisition and on the heels of so many settlements for Centene’s behavior in administering prescription drugs in state Medicaid managed care plans warrants retrospective scrutiny of Centene’s acquisition of Magellan Health.

As to Prime Therapeutics proposed acquisition of Magellan Rx, the proposed acquisition raises serious anti-competitive concerns. Taking into account (1) the negative impact to competition previous PBM horizontal and vertical integration has had on drug prices, access to care, and patient choice; (2) the size of the acquisition; (3) Prime Therapeutics’ contractual arrangements with Express Scripts and Ascent Health Services; (4) horizontal integration concerns; (5) vertical integration concerns; and (6) the FTC’s current examination of PBM practices of the largest PBMs in the

⁴¹ <https://pharmacy.primetherapeutics.com/en/news/Resources/clients.html>.

⁴² Prime Therapeutics, May 5, 2022, Prime Therapeutics is acquiring Magellan Rx . . . [press release], available online at <https://www.primetherapeutics.com/news/prime-therapeutics-is-acquiring-magellan-rx-to-advance-integrated-specialty-drug-management-accelerating-efforts-to-lower-the-cost-of-drugs-and-improve-health-outcomes/>.

⁴³ <https://www.bcbsks.com/prescription-drugs/specialty>; see also <https://www.nebraskablue.com/Providers/Pharmacy-Management> (specialty pharmacy brochure featuring Accredio); see also <https://www.floridablue.com/providers/medical-pharmacy-info/specialty-pharmacy-information>; see also <https://www.regence.com/producer/knowledge-center/producer-news/pharmacy-vendors>.

⁴⁴ Christopher Snowbeck, “Prime Therapeutics paying \$1.35 billion for Magellan Health’s pharmacy business,” Star Tribune. May 5, 2022, available online at <https://www.startribune.com/prime-therapeutics-paying-1-35-billion-for-magellan-healths-pharmacy-business/600170728/>.

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country including Prime Therapeutics, this acquisition should not be allowed to proceed.

Should you have any questions, or if you would like to discuss the above issues in more detail, please do not hesitate to contact us. Thank you for the opportunity to comment and for your important work protecting competition.

Sincerely,

S/ Greg Reybold

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CC: FTC Chair Lina Khan, Esq.