



Federal Trade Commission Protecting America's

Consumers

FTC Sues to Block Omnicare's Bid to Buy Rival Pharmacy Provider PharMerica

Deal Would Lead to Higher Costs for Medicare Patients and Taxpayers, Agency Alleges

The Federal Trade Commission issued a complaint to block Omnicare, Inc.'s hostile acquisition of rival long-term care pharmacy provider PharMerica Corporation, alleging that the combination of the two largest U.S. long-term care pharmacies would harm competition and enable Omnicare to raise the price of drugs for Medicare Part D consumers and others.

In its complaint, the FTC charges that a deal combining Omnicare and PharMerica would significantly increase Omnicare's already substantial bargaining leverage by dramatically increasing the number of skilled nursing facilities, known as SNFs, that receive long-term care pharmacy services from the company. Due to its substantial market share, the FTC alleges that the combined firm likely would be a "must have" for Medicare Part D prescription drug plans, which are responsible for providing subsidized prescription drug benefit coverage for most SNF residents and other Medicare beneficiaries.

According to the Centers for Medicare & Medicaid Services (CMS) of the Department of Health and Human Services, the proposed acquisition "appears likely to result in higher reimbursement rates . . . and thereby to increase the cost to CMS (and therefore the U.S. government and U.S. taxpayers) as well as any individuals who pay out-of-pocket costs in connection with such services."

"If Omnicare is allowed to purchase its biggest and only national competitor, it will diminish competition and raise health care costs – leaving taxpayers and patients to foot the bill," said Richard Feinstein, Director of the FTC's Bureau of Competition. "The Bureau will continue to be vigilant in our efforts to prevent these sorts of anticompetitive deals."

The FTC's administrative complaint is part of the agency's ongoing efforts to maintain competition in the U.S. health care sector, which benefits consumers by keeping prices low and quality and choice of products and services high. This year, more than 1.6 million Part D Medicare beneficiaries are expected to require long-term care while living in an SNF, and about 1.1 billion prescriptions per year are processed under Part D on behalf of approximately 29 million beneficiaries.

Long-term Care Pharmacies. Unlike traditional retail pharmacies, long-term care pharmacies do not provide medications directly to "walk-in" consumers from nearby homes. Instead, long-term pharmacies work with SNFs and other institutional providers to arrange for the delivery and administration of prescription medications to the SNF's residents. Most SNF residents need help with the ordering, delivery, and administration of their drugs, and a majority of them get prescription drug coverage from a Part D prescription drug plan.

To protect this fragile population and ensure they receive the Part D benefits they are entitled to, CMS requires Part D plans to provide SNF residents with "convenient access" to a network of long-term care pharmacies, such as Omnicare and PharMerica. This ensures that SNF residents can get their prescription drugs from a long-term care pharmacy that contracts with the residents' chosen Part D health plan. Health plans that cannot provide their beneficiaries with "convenient access" to long-term care pharmacies risk being barred from offering Medicare Part D health plans.

Omnicare, headquartered in Covington, Kentucky, owns and operates approximately 204 long-term care pharmacies in 44 states. In 2010, Omnicare had revenues totaling about \$6.1 billion. PharMerica, headquartered in Louisville, Kentucky, owns and operates approximately 97 long-term pharmacies in 43 states. In 2010, PharMerica had revenues of approximately \$1.8 billion.

The FTC's Complaint. According to the FTC's complaint, Omnicare's proposed acquisition of PharMerica, the second-largest long-term care pharmacy in the United States, would be illegal and in violation of Section 5 of the FTC Act and Section 7 of the Clayton Act. The acquisition would combine the largest and only two national long-term care pharmacies in the country. The FTC alleges that the combined firm would serve approximately 57 percent of all licensed SNF beds in the United States. Under the Merger Guidelines used by the FTC and Department of Justice, a transaction that leads to that much market concentration would be presumed illegal. After the acquisition, the merged firm's only competition for inclusion in Part D plans' long-term care pharmacy networks would come from small, regional and local long-term care pharmacies, none of which currently operates in more than a few states.

The FTC charges that, even before the transaction, Omnicare has been able to use its size to exert bargaining leverage over Part D health plans, by threatening to terminate contracts if its terms are not met. A firm that combines the largest and second-largest long-term care pharmacies in the country would have the unique ability to exert even greater bargaining power to raise the price of drugs to Part D health plans.

Due to its substantial market share, the combined firm likely would be a "must have" for Part D health plans, the FTC contends. Losing contracts with a combined Omnicare/PharMerica would put the Part D health plans at serious risk of failing to meet CMS's "convenient access" standard. This increased risk would provide the combined firm with an anticompetitive advantage in negotiating prices it charges Part D health plans for long-term care pharmacy services.

The Commission vote to issue the administrative complaint against Omnicare was 3-1, with Commissioner J. Thomas Rosch voting no. The case will be heard before an administrative law judge at the FTC in June 2012.

NOTE: The Commission issues an administrative complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The complaint is not a finding or ruling that the respondent has actually

violated the law. The issuance of the administrative complaint marks the beginning of a proceeding in which the allegations will be tried in a formal hearing before an administrative law judge.

The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to antitrust@ftc.gov, or write to the Office of Policy and Coordination, Bureau of Competition, Federal Trade Commission, 601 New Jersey Ave., Room 7117, Washington, DC 20580. To learn more about the Bureau of Competition, read [Competition Counts](#). Like the FTC on [Facebook](#) and follow us on [Twitter](#).

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Related Items:**[In the Matter of Omnicare, Inc., a corporation](#)**

Docket No. 9352
FTC File No. 111 0239

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