

# Publications

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## A Settlement, Not a Sigh of Relief: What the FTC’s Express Scripts Deal Signals for Enforcement Risk

The FTC’s newly announced settlement with Express Scripts marks a pivotal moment in the government’s campaign against pharmacy benefit manager pricing practices—and it should be read as more than a single-company resolution.

While Express Scripts avoided an adjudicated ruling, the 10-year deal requires extensive operational changes that the FTC has framed as correcting practices it believes have driven artificially high drug prices, particularly for insulin. The agency has labeled the settlement “landmark,” and it offers a clear preview of the compliance standards regulators are likely to demand across the industry.

### What the FTC Is Signaling

The settlement mandates, among other things, that Express Scripts:

1. Stop preferring high wholesale acquisition cost drugs over lower-priced equivalents;
2. Shift patient cost-sharing to reflect net prices rather than list prices;
3. Unwind rebate driven and spread pricing models under standard offerings;
4. Increase transparency to plan sponsors through detailed drug-level reporting; and
5. Submit to long-term monitoring and oversight.

Notably, these commitments come as the FTC continues to litigate against CVS Caremark and OptumRx and amid parallel constitutional challenges to the agency’s administrative process. In other words, enforcement risk in this space is far from resolved.

### Why This Settlement Matters for Your Organization

The Express Scripts agreement effectively functions as a compliance blueprint—one that regulators may expect others to follow even absent a formal settlement. Companies that rely on similar pricing structures, rebate arrangements, or formulary incentives should expect closer scrutiny from federal and state enforcers, as well as from private plaintiffs.

Just as important, the FTC’s public messaging suggests that transparency failures and pricing models tied to list prices will remain core enforcement targets, regardless of who

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formally sets drug prices.

## **Preparing for the Next Phase of Enforcement**

Now is the time for PBMs, insurers, manufacturers and plan sponsors to stress-test their existing models against the standards reflected in this settlement. That includes assessing enforcement exposure, enhancing compliance programs, preparing for potential monitorships and developing response strategies for FTC investigations or settlement negotiations.

*Polsinelli's Government Investigations and Antitrust – Health Care Team regularly advise clients on navigating the evolving enforcement environment and build defensive, regulator-ready compliance frameworks. For questions, please contact Lauren P. DeSantis-Then, Matthew C. Hans, Tessa M. Lancaster, or another member of Polsinelli's Government Investigations or Antitrust – Health Care team.*