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Settlement Dominoes: The FTC's PBM Playbook Is Going Industrywide

The FTC's insulin/pharmacy benefit managers (PBM) enforcement matter is starting to look less like a single case—and more like a regulatory reset executed through settlement.

On March 3, 2026, the FTC extended the stay in its administrative proceeding against OptumRx and Caremark Rx (and affiliated entities) to allow additional time for settlement negotiations, with the parties disclosing that they are making "significant progress."

This development comes on the heels of the FTC's Feb. 4, 2026 "landmark" settlement with Express Scripts, Inc., which imposes a 10-year set of operational commitments and compliance oversight tied directly to formulary, pricing, transparency and compensation structures.

Why This Matters: Policy by Consent Order

The FTC's original theory—focused on PBM rebate-driven incentives and formulary design affecting insulin access and patient out-of-pocket costs—has now produced a detailed, enforceable template in the Express Scripts consent order. If OptumRx and Caremark reach comparable settlements, the practical outcome could be an industry-wide shift in what regulators (and plaintiffs) treat as the "baseline" PBM model. Further, Express Scripts, under the FTC's proposed consent order, agreed to incorporate the TrumpRx platform into its standard offering to plan sponsors, subject to any necessary legal and regulatory changes.

In other words: the industry may be on the verge of moving from a debate about how PBMs *should* operate to a world where the FTC has effectively defined how PBMs *must* operate—through negotiated orders with the largest market participants.

The Industry Big Picture: What Could Change If Settlements "Harmonize"

If the FTC secures parallel commitments across the "Big Three" PBMs, expect pressure—commercially and legally—for PBMs and their partners to align to these themes

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1. **Net-price-based benefit design will become the expectation rather than the exception.** A central feature of the Express Scripts settlement is shifting member out-of-pocket costs away from list prices and toward net pricing. If replicated, plan sponsors and payers may begin demanding similar "net cost" constructs in renewals and RFPs—raising implementation and data/reporting expectations across the ecosystem.
2. **Settlements are likely to reshape contract norms across the supply chain.** Manufacturers, plan sponsors, brokers/consultants and pharmacies may see second-order impacts: renegotiated contracting terms, revised disclosure regimes and new disputes over measurement and audit rights.
3. **Pharmacy reimbursement and "spread" issues will remain in the crosshairs.** The FTC's framing is not limited to insulin pricing; it connects PBM economics, formulary placement and downstream reimbursement impacts. That broad narrative increases exposure to parallel scrutiny by state regulators and private plaintiffs.
4. **Transparency will stop being a selling point and become an enforcement benchmark.** The Express Scripts deal contemplates drug-level reporting and broader transparency measures. If similar obligations become standard across major PBMs, auditability and data integrity become compliance issues—not just commercial features.
5. **List-price-linked compensation and "rebate-driven" incentives will face structural headwinds.** One of the FTC's clearest signals is that business models tied to list prices (directly or indirectly) will remain a focal point for scrutiny. Even companies that believe their models are defensible should assume regulators will ask difficult questions about incentive design, not just outcomes.

What Companies Should Do Now: Compliance and Investigation Readiness

Regardless of whether your organization is a PBM, plan sponsor, payer, manufacturer, pharmacy, broker/consultant or vendor, the immediate risk is not just "final liability" in one case—it's becoming the next inquiry measured against a rapidly emerging FTC playbook.

Practical next steps we recommend include:

- **Map list-price touchpoints:** Identify every revenue stream, fee, guarantee or benchmark that is directly or indirectly tied to WAC/list price and document the business rationale and guardrails.
- **Pressure-test formulary governance:** Ensure decision pathways are documented, consistent and defensible—especially where rebate economics could be alleged to influence access.
- **Audit transparency and reporting capabilities:** Confirm what can be produced at the drug level, how quickly and with what controls (and whether communications match reality).
- **Review contracting and disclosures:** Evaluate sponsor/manufacturer/pharmacy agreements for audit rights, reporting obligations, definitions and "change control" provisions that will be important if market norms shift quickly.
- **Update investigation response protocols:** Refresh document retention, privilege processes and regulator-facing messaging so your organization can respond coherently and efficiently to FTC inquiries, state AG requests or follow-on civil litigation.

How We Can Help

We regularly advise clients on FTC and state enforcement readiness, including proactive risk assessments, compliance program enhancements, contracting and transparency

audits and investigation response planning. We also assist in responding to FTC process (including negotiation strategy where settlement discussions are in play) and managing long-tail obligations that can follow consent orders (reporting, monitoring and operational compliance).

Should you have questions regarding the information discussed, please reach out to Lauren DeSantis-Then, Tessa Lancaster or your preferred Polsinelli attorney.