



ASOCIACION
FARMACIAS DE
COMUNIDAD DE
PUERTO RICO

CONFIDENTIAL

October 12, 2018

Office of Policy and Coordination
Room CC-5422
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Violations to the Sherman Act, Clayton Acts, and Act No. 77 known as "Puerto Rico Monopoly and Restraint of Trade Act" by Abarca Health LLC a Pharmacy benefit Managers in Puerto Rico

We bring to your attention a highly worrisome and delicate situation for the health services on our Island. It concerns more than one market for health care providers, and if neglected, it can have baleful effects on the stability of the health services provided to Puerto Rico residents.

Health care providers usually hire with third-party payers to establish price and other terms and conditions under which they will provide services to subscribers of health plans. To negotiate for pharmacy services, payers often use pharmacy benefit managers (PBMs) to create networks of pharmacies and administer pharmacy benefit programs.

The PBM market in Puerto Rico, as you may already know, is highly concentrated. There are very few PBMs in Puerto Rico. Some of them outside the scope of the competition, as they exist to serve and provide services only to a parent company. Thus, the members of the market that really incur in the competitive feat is really limited to a handful of firms. Of these, Abarca Health LLC (hereinafter "Abarca") maintains a sufficiently large and comprehensive participation to control the market, its prices and to

establish an effective practice of exclusion. This accumulated power by Abarca can easily be defined as monopolistic, according to the jurisprudence and the current economic doctrine.

Abarca recently presented to its pharmacy network a new contract with the intention of establishing the pharmacy networks. This contract constitutes an "accession" contract in which the pharmacies have absolutely no negotiating power. It constitutes an absolute imposition. The pharmacy that does not sign the contract as drafted and established by Abarca is excluded from the pharmacy network and therefore prevented from providing or accepting the medical plans to which the PBM provides its network. This means that the pharmacy that does not embrace Abarca's requirements loses access to the services of a significant percentage (monopolistic) of the medical plan market in Puerto Rico.

The new contract imposed by Abarca has reduced, unilaterally, pharmacy service fees up to 20%, which means that a significant number of pharmacies in the network would incur spinal losses and others simply will not be able to maintain its operation.

Either, being kept out of the pharmacy network or signing and submitting to the draconian demands of Abarca would have dire consequences for the small pharmacies of Puerto Rico. And, not only for the pharmacies individually but for the consumer drug market and thus for the medical services in general.

Although the Abarca contract may claim the formation of efficiencies and better prices to its insurance network, its practices will jeopardize the stability of the other market spectrum. Any efficiency or reduction in prices or refunds that may be invoked, will be pretended and/or reached through unilateral and exclusionary acts that affect competition in the PBM market and, specially, at the expense of the businesses that integrate the pharmacy market in Puerto Rico.

In other words, through its monopolistic power, Abarca is forcing pharmacies to sell below their cost, to the detriment of competition, to the effect of unreasonably restraining trade and hindering competition in the health providers market in Puerto Rico.

We understand that these encompassing requirements violate Act No. 77 of 25 June 1964, as Amended, as well as the

Sherman and Clayton Acts. And, thus, we urge you to investigate and stop them.

Abarca has imposed the deadline on October 20, 2018 to sign the contract. The pharmacy who does not sign by that date is effectively out of the network, and for all practical effect, off the market. Consequently, the expeditious action of the Federal Trade Commission is essential in stopping the anti-competitive effects of this contract. Hence, we request that you consider this a formal complaint to investigate and address the situation.

The Puerto Rico Association of Community Pharmacies and its members are prepared to cooperate in any initiative that agency may be willing to commence.

We are at your disposal to answer any questions you may have regarding the aforementioned situation.

Cordially

Linda Ayala Bousson
Executive Director

