Big Pharma's 'Rampant Corporate Lawlessness' Cost Americans $40 Billion in 2019: Report

"Big Pharma is manipulating and breaking the law to expand corporate profits at the expense of patients and taxpayers."

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The U.S. pharmaceutical industry's aggressive and often unlawful efforts to prevent competition and keep drug prices elevated cost American patients, insurers, and federal health programs more than $40 billion in 2019 alone, according to a report released Tuesday.

The new report—put out by the American Economic Liberties Project and the Initiative for Medicines, Access, and Knowledge (I-MAK)—focuses specifically on pharmaceutical companies' antitrust law violations, which the groups say are a key reason why U.S. drug prices are astonishingly high compared to those of other rich nations.

Examining the 100 top-selling drug products in Medicare Part D—which covers prescription medicines—and Medicaid, the report estimates that Big Pharma's antitrust violations "increased Part D gross spending by 14.15%, or $14.82 billion, and increased Medicaid gross drug spending by 9.05%, or $3.15 billion, in 2019 for the top 100 drugs in each."

Assuming that pharmaceutical companies' antitrust violations similarly affected retail brand drug spending, the report estimates that "U.S. patients and payers spent an additional $40.07 billion on pharmaceuticals in 2019."

"American families are paying far too much for prescription drugs, in large part due to rampant corporate lawlessness," said Erik Peinert, research manager and editor at the American Economic Liberties Project.

The report highlights 10 illegal anticompetitive schemes that U.S. pharmaceutical companies deploy to juice their profits and keep prices high, including horizontal collusion, patent fraud, no-generics agreements, and sham citizen petitions aimed at convincing regulators to delay approval of potential competitor drugs.

"This report documents the many ways Big Pharma is manipulating and breaking the law to expand corporate profits at the expense of patients and taxpayers," said Peinert. "The Federal Trade Commission has begun fighting back, but it needs more assistance from Congress and other agencies to crack down on these illegal practices and deliver for patients."

Shortly following the new report's release, the FTC sued to stop the biopharmaceutical giant Amgen from acquiring Horizon Therapeutics, warning that "rampant consolidation in the pharmaceutical industry has given powerful companies a pass to exorbitantly hike prescription drug prices."

> BIG: Our new report with @IMAKglobal finds Big Pharma's antitrust violations cost Americans a whopping $40 BILLION on branded pharmaceuticals in 2019.
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> You can read the report below, but here's some additional context and policy solutions. https://t.co/FfsRoYm4QM pic.twitter.com/RKwqx4WA5z
>
> — American Economic Liberties Project (@econliberties) May 16, 2023

The researchers behind the report offer several specific examples of how large pharmaceutical companies have used their power and dominance of certain markets to push up prices.

The nation's insulin market, they argue, "has been distorted by multiple overlapping anticompetitive schemes in recent years," including the "illegal listing" of products and "collusion" among top manufacturers in violation of RICO law, as well as "exclusionary rebates to drive patients toward brand products and away from substantially cheaper authorized generic versions."

The groups estimate that Medicare Part D and Medicaid "would have spent approximately 50% less on three of the four major insulin brands (Levemir, Novolog, Lantus) in 2019 but for the anticompetitive strategies used by the major insulin manufacturers."

The report also accuses AbbVie and Allergan—which the former acquired in 2020—of engaging in a "sustained, consistent pattern of illegally blocking generic and biosimilar competition in violation of the antitrust laws."

In the case of Bystolic, a blood pressure medicine, "Allergan entered illegal pay-for-delay agreements to prevent and delay generic competition" for the drug before 2019.

The groups estimate that Part D and Medicaid would have spent 90% less on Bystolic and its generic equivalents in 2019 had Allergan not entered the pay-for-delay agreement, which the FTC says cost U.S. consumers and taxpayers $3.5 billion a year in the form of higher drug prices.

The report also points to a whistleblower lawsuit alleging that Janssen Pharmaceuticals—which is owned by Johnson & Johnson—committed patent fraud to prolong its monopoly on Zytiga, a prostate cancer drug.

"The patent system is at the root of enabling many of the antitrust violations we identified and which are leading to higher drug prices," said Tahir Amin, an executive director of I-MAK.

To combat the pharmaceutical industry's abuses and lower costs for patients, the American Economic Liberties Project and I-MAK recommended that lawmakers and regulators act to completely ban pay-for-delay agreements, modify patent laws to "ensure that drug companies cannot use bad-faith patent strategies to perpetually extend monopolies," and ramp up penalties for antitrust violations, among other changes.

"Until Congress and the United States Patent and Trademark Office ensure stricter standards that would prevent the granting of many of the types of patents that are leading to these violations in the first place," Amin said, "Americans can expect to see their drug prices continue to rise."

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Jake Johnson is a staff writer for Common Dreams.

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