consumeraction

June 12, 2017

Chairman Lamar Alexander
Senate Committee on Health, Education, Labor & Pensions
United States Senate
455 Dirksen Senate Office Building
Washington, D.C. 20510

Ranking Member Patty Murray
Senate Committee on Health, Education, Labor & Pensions
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510

Dear Senators:

We, the undersigned consumer groups, are writing in support of the Health, Education, Labor & Pensions (HELP) Committee's focus on the rising cost of prescription medications in its hearing "The Cost of Prescription Drugs: How the Drug Delivery System Affects What Patients Pay." We represent consumer groups who are deeply concerned about the cost of medication and whether they can afford proper treatment.

Rising prescription drug prices are one of the most serious challenges facing American consumers. Last year Americans spent $424 billion on prescription drugs, almost 20% of all health care spending. Drug prices are projected to continue to rise, and this trend is placing increasing stress on patient finances and state and federal government programs. Almost three fourths of Americans think prescription drug costs are unreasonable, and one in four patients report that they have not filled a prescription because of its costs.

In the face of escalating prices, it is important that Congress look at the whole market to determine where problems and market place failures occur. In this respect, we encourage the HELP Committee to take a careful look at the effect that Pharmacy Benefit Managers (PBMs) have on rising drug costs.

The fundamental elements for a competitive market are transparency, choice, and a lack of conflicts of interest. This is especially true when dealing with health care intermediaries, such as PBMs, where information may be difficult to access, there are agency relationships, and securing adequate information may be difficult.

Why are choice, transparency, and a lack of conflicts of interest important? It should seem obvious. Consumers need meaningful alternatives to force competitors to vie for their loyalty by offering lower prices and better services. Transparency is necessary for consumers to evaluate products carefully, to make informed choices, and to secure the full range of services they desire.

When dealing with intermediaries, it is particularly critical that there are no conflicts of interest. An intermediary such as a PBM is fundamentally acting as a fiduciary to the plan it serves. The service a PBM provides is supposed to be that of an "honest broker" bargaining to secure the lowest price for drugs and drug dispensing services. When a PBM has a relationship with either a drug company or a pharmacy chain, or has its own pharmacy dispensing operations, it is effectively serving two masters.

Only where these three elements—choice, transparency, and lack of conflicts of interest—are present can we expect free market forces to lead to the best products, with the greatest services at the lowest cost. Where these factors are absent, consumers suffer from higher prices, less service, and less choice.

Unfortunately, in all three respects, PBM markets do not function as effectively as they could. Few markets are as concentrated, opaque and complex, and subject to rampant anticompetitive and deceptive conduct as PBM markets. Regulation is necessary to ensure that PBMs cannot exploit consumers, health plans, employers and the state.

There is a rising body of evidence that PBMs are an acute cause of rising drug costs. Just last month, the Pacific Research Institute conducted a review on the literature concerning PBMs and concluded that PBMs:

- Create pricing uncertainty by incentivizing higher list prices for medicines that enable large rebates and discounts (which are particularly valuable for PBMs);
- The large discrepancy between list prices and transaction prices causes higher patient co-pays than necessary (co-pays typically depend on list prices);
- For Medicare Part D patients, the higher list prices and higher co-pays can push patients into the coverage gap (donut hole) faster;
- Impose large, and often unknown, fees that create substantial revenue uncertainty and volatility, which are particularly problematic for small, long-term care, and specialty pharmacies;
- Increase PBMs' share of the gross expenditures at the expense of pharmacies and manufacturers; and,
- Through control of the drug formularies, impose undue influence on the medicines patients can access.[1]

The ways that PBMs drive profits to the detriment of consumers do not end at rebates and discounts. For example, CNN reported that certain patients were paying copays higher than the actual costs of the medication.[2] PBMs would then clawback – and generally keep – a portion of the copay. Many contracts between pharmacists and PBMs prevent the pharmacists from telling their customers that they could save money by paying in cash. In another example, reported by The New York Times, the PBM Express Scripts charged a drug manufacturer an increasingly larger administrative fee – rising as the drug's price rose – that went from $25,000 to $130,000 a month.[3] It is unclear how much of these administrative fees are passed on to Express Scripts' clients.

---

[1] Wayne Winegarden, *The Economic Costs of Pharmacy Benefit Managers: A Review of the Literature* at 9 (May 2017), http://www.pacificresearch.org/fileadmin/images/Studies_2017/PBM_Lit_Final.pdf.
[2] Julie Appleby, Filling a prescription? You might be better off paying cash, CNN (June 23, 2016), http://www.cnn.com/2016/06/23/health/prescription-drug-prices-pbm/.
[3] Katie Thomas and Charles Ornstein, *Express Scripts Sues Maker of Overdose Drug, Intensifying Feud*, The New York Times (May 31, 2017), https://www.nytimes.com/2017/05/31/health/express-scripts-sues-maker-of-overdose-drug-intensifying-feud.html.

The lack of transparency, choice, and conflict of interests in the PBM market make it clear that further examination (and potentially regulatory oversight) is needed. As The Institute for Policy Innovation remarked, “Express Scripts took in about twice the money as the largest drug manufacturer and yet it doesn’t cure any diseases.”[4]

If you went to a doctor for a checkup and the doctor said we found the early stages of a tumor, a micro-fracture in your arm, and an allergy to pollen – but don’t worry I will give you something for your allergies, then you would seriously question the priorities of the doctor. Likewise, we must seriously question the priorities of a healthcare system that enables middlemen to suck money out of the system without having much incentive to provide real value. We hope that the HELP Committee will work towards a comprehensive solution to this problem so that competition and transparency can be restored to the market to enable consumer choice and savings.

Sincerely,

Consumer Action

[4] Merrill Matthews and Peter J. Pitts, *Selective Transparency: Transparency Efforts Obscure Real Health Care Pricing Issues*, Institute for Policy Innovation, http://www.ipi.org/docLib/20170522_SelectiveTransparency.pdf.