



**Senate Judiciary Committee Hearing “Ensuring Affordable
& Accessible Medications: Examining Competition in the
Prescription Drug Market, May 21, 2024**

Senator Grassley’s Written Questions for Dr. Feldman

Testimony of:

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RESPONSES

1. Do you believe there is anti-competitive conduct occurring in the PBM marketplace that leads to higher drug costs for consumers? Please explain.

I believe that anticompetitive conduct is occurring in the PBM industry. The magnitude of the problem remains difficult to discern given the secrecy of PBM payment structures, but several practices raise concern. One is the preference for drugs with high rebates. Brand-name pharmaceutical firms set list prices and then negotiate with payers and their PBMs for confidential discounts that lower net prices. Because some PBM compensation is based on the magnitude of negotiated discounts rather than flat fees, PBMs may have incentives to favor high-priced drugs (with high rebates) on formularies over lower priced drugs. This can ultimately raise healthcare costs and increase patient cost-sharing since out-of-pocket costs are frequently tied to pre-rebate list prices.

A second problem in the PBM industry is “spread pricing”—where PBMs charge payers more than they reimburse pharmacies and retain the difference. One recent study found that spread pricing increased costs for generic drugs in Medicaid by \$208 million in 2017-2018 in Ohio.¹ The 3 largest PBMs now control 79% of the US market and are vertically integrated with insurers and pharmacies, giving them substantial leverage to extract revenue from the pharmaceutical supply chain.²

Legislation aimed at reducing anticompetitive PBM behavior could help lower pharmaceutical costs, even if the size of the effect may be less than other interventions focused directly on pharmaceutical firms. I applaud the investigations now under way into PBMs led by the Federal Trade Commission,³ the Department of Justice,⁴ the Department of Health and Human Services Office of the Inspector General,⁵ and others. A deeper understanding of PBM behavior is vital as lawmakers and regulators continue the important work of developing solutions to strengthen our pharmaceutical system.

¹ Ohio Auditor of State. Auditor’s report: pharmacy benefit managers take fees of 31% on generic drugs worth \$208M in one-year period. August 16, 2018. Available from: <https://ohioauditor.gov/news/pressreleases/Details/5042>. Accessed June 10, 2024.

² Fiedler M, Adler L, Frank RG. A brief look at debates about pharmacy benefit managers. Available online from: <https://www.brookings.edu/articles/a-brief-look-at-current-debates-about-pharmacy-benefit-managers/>. Accessed June 10, 2024.

³ Federal Trade Commission, FTC Deepens Inquiry into Prescription Drug Middlemen. May 17, 2023. Available online from: <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-deepens-inquiry-prescription-drug-middlemen>. Accessed June 10, 2024.

⁴ Matthews AW, Michaels D. US Opens UnitedHealth Antitrust Probe. Wall Street Journal. February 27, 2024. Available online from: <https://www.wsj.com/health/healthcare/u-s-launches-antitrust-investigation-of-healthcare-giant-unitedhealth-ff5a00d2>. Accessed June 10, 2024.

⁵ US Department of Health and Human Services. Effects of Vertical Integration on Medicare Part D. Available online from: <https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000843.asp>. Accessed June 10, 2024.

2. Senator Cantwell and I have a bill, the Pharmacy Benefit Manager Transparency Act, to prevent unfair, anti-competitive practices by PBMs and to bring about greater transparency. Do you believe that this bill would help address competition concerns and lower the price of drugs for patients?

I think that this bill could help improve competition and lower prescription drug costs. The bill would eliminate spread pricing and certain retroactive fees charged to pharmacies unless PBMs passed 100% of negotiated rebates through to payers and disclosed an array of costs in the pharmaceutical supply chain. The bill would also require disclosures by PBMs to the Federal Trade Commission (FTC) and would give the FTC further enforcement authority to address anticompetitive PBM behavior. The Congressional Budget Office projected that the bill would save \$740 million over 10 years.⁶

Whether these efforts would reduce out-of-pocket costs for patients is less clear. Because out-of-pocket costs are often tied to pre-rebate list prices, eliminating spread pricing and/or requiring 100% rebate pass-through to payers may not necessarily reduce these costs in the absence of further reform.⁷ Still, I believe that the legislation represents a valuable step forward. There is no silver bullet to address every problem in the pharmaceutical system at once. I applaud the recent approach taken by the Senate Judiciary Committee targeting a variety of anticompetitive practices in the pharmaceutical supply chain—from PBM spread pricing to pay-for-delay settlements, sham citizen petitions, and patent thickets. This multipronged approach is precisely the sort of action we need to address high prescription drug prices. I would only encourage the Committee to continue and expand upon these efforts.

3. Chairman Durbin and I have attempted to pass our bill, the Drug Price Transparency for Consumers (DTC) Act, to require drug companies to list the price of a drug in their ads to empower consumers. The Trump Administration attempted to require it through rule-making, but Big Pharma opposed it. Why do you think Big Pharma opposes this policy?

I suspect that the pharmaceutical industry opposes this bill, because they prefer that patients not be told (or reminded) about the high prices of prescription drugs in the US. Median launch prices on new drugs are now well over \$100,000 per year.⁸ If disclosures were required, every advertisement about a prescription drug would also serve as a reminder about the dysfunction of the pharmaceutical industry. As it stands, companies spend large sums on these advertisements—with disproportionate amounts spent on drugs with lower therapeutic

⁶ Senator Chuck Grassley. PBM Transparency Act Saves \$740 Million: CBO. Available from: <https://www.grassley.senate.gov/news/news-releases/pbm-transparency-act-saves-740-million-cbo>. Accessed June 10, 2024.

⁷ Cai C, Rome BN. Reforming Pharmacy Benefit Managers - A Review of Bipartisan Legislation. *N Engl J Med*. 2023 Nov 2;389(18):1640-1643.

⁸ Rome BN, Egilman AC, Kesselheim AS. Trends in Prescription Drug Launch Prices, 2008-2021. *JAMA*. 2022;327(21):2145-2147.

value⁹—and patients (and often physicians) may have little idea about the high prices charged by pharmaceutical firms.

The Pharmaceutical Research and Manufacturers of America (PhRMA) has argued that such disclosures would be confusing for patients and could dissuade use of medically recommended therapies.¹⁰ The potential source of confusion stems from differences between list prices (wholesale acquisition costs), net prices (after application of confidential rebates), and out-of-pocket costs; list prices are often substantially higher than payer-negotiated net prices, and, for those with insurance, out-of-pocket costs may be a small fraction of list prices. However, I am confident that pharmaceutical firms could make the appropriate disclaimers in their advertisements when disclosing list prices. In addition, they could always choose to forgo advertisements if they felt that the requirements were too onerous.

⁹ DiStefano MJ, Markell JM, Doherty CC, Alexander GC, Anderson GF. Association Between Drug Characteristics and Manufacturer Spending on Direct-to-Consumer Advertising. *JAMA*. 2023;329(5):386–392. Patel NG, Hwang TJ, Woloshin S, Kesselheim AS. Therapeutic Value of Drugs Frequently Marketed Using Direct-to-Consumer Television Advertising, 2015 to 2021. *JAMA Netw Open*. 2023;6(1):e2250991.

¹⁰ Pharmaceutical Research and Manufacturers of America, “PhRMA Responds to HHS DTC Rule, Launches Website Providing Patients with Cost Information.” Available online at <https://phrma.org/resource-center/Topics/Access-to-Medicines/PhRMA-Responds-to-HHS-DTC-Rule-Launches-Website-Providing-Patients-with-Cost-Information>. Accessed June 10, 2024.