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

Senator Grassley's Written Questions for Mr. Mitchell

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

Yes. While the headwaters of our drug pricing problems are the list prices set by drug corporations, there are other reforms needed downstream in the supply chain. Pharmacy benefit managers (PBMs) are black boxes that cut secret, mutually beneficial rebate deals with manufacturers, and none of it is transparent. We need to increase transparency and curb anticompetitive practices by PBMs.

It is simply wrong that patients like me don't know if the preferred drug on a PBM formulary is there because it is the best drug, because it is the least expensive drug among equally effective options, or because the PBM got a big, legal kickback from the manufacturer. Without transparency, it is impossible to know how much of a rebate is going to the PBM, to the insurer, to lower my premiums, or to reduce my out-of-pocket costs at the pharmacy counter. With the Big Three PBMs–Cigna, Optum Rx, and CVS Health–in control of 80 percent of the $633 billion in U.S. spending on drugs, that is more than half a trillion dollars flowing through just those three entities annually. Vertical integration also unites all three major PBMs with insurers which only increases their market power. Opaque practices with that kind of money involved are a bad way to run a railroad. It's time for transparency to ensure PBMs are operating in the best interests of patients and consumers.

It's not just about transparency either. Drug companies and PBMs also enter into rebate arrangements that are designed to thwart lower-cost competition. These are commonly called "rebate walls," defined as:

> "Exclusionary contracting practices that a drug manufacturer deploys to limit the ability of rivals from gaining preferred access to the formulary, or any access at all. Branded manufacturers leverage their position as market leaders by offering financial incentives to pharmacy benefit managers and health insurers in the form of 'all or nothing' conditional volume-based rebates, in exchange for virtually exclusive positioning on the formulary. ...If the payer does not accept the rebate agreement for a particular indication, it may lose all rebates for its product on all covered indications."

Let's be clear: These rebate deals are designed to benefit both the manufacturer seeking to block competition and the PBM that gets a bigger rebate. These deals are not designed to help patients like me by lowering prices or increasing patient choice. They are emblematic of our

drug pricing system which has been built to benefit those who profit from it at the expense of those it is supposed to serve.

P4ADNOW supports reforming the practices of PBMs, including transparency requirements in order to determine how rebates are actually working — how much is going to reduce premiums and out-of-pocket for patients and consumers and how much is going to increase profits for the PBMs or insurer plan managers. In our ideal world, PBMs would have a fiduciary responsibility to patients and all beneficiaries, and all reforms would put patients at the center. While none of the PBM bills go as far as we would like, each takes important steps in the right direction and would make meaningful and important progress in the regulation and oversight of PBMs. We support key provisions of bills that have cleared the Finance Committee on unanimous or near-unanimous bipartisan votes:

- Modernizing and Ensuring PBM Accountability Act - S. 2973. We especially support the transparency and disclosure requirements, and the provisions de-linking PBM compensation from prices.

- Better Mental Health Care, Lower-Cost Drugs, and Extenders Act - S 3430. We think the required reports to Congress are of particular importance. We support the concept of the rebate pass-through provisions, but we need to see CBO scoring for this provision, and we are concerned about the impact on premiums.

The House Energy and Commerce Committee has also advanced legislation addressing PBM practices. We support provisions in the Lower Cost, More Transparency Act, H.R. 5378, that improve transparency and reporting requirements. We were also pleased to see the House Ways and Means Committee include reform delinking PBM compensation from prices in legislation it *advanced earlier this month* – H.R. 8261, the "Preserving Telehealth, Hospital, and Ambulance Access Act. In our view, however, none of the provisions in House legislation go far enough in reforming PBMs and ensuring they are putting patients and consumers first.

We are also following closely and supporting the Federal Trade Commission (FTC) investigation into PBMs as well. We look forward to the first interim report on that investigation expected this summer. We hope Congress uses the report to inform future legislation, and that Congress gives strong backing for the FTC to take action it may recommend.

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 believe S. 127 would address competition concerns and could help lower the prices of drugs for patients, but it would do the most good for pharmacies which have been subjected to unfair practices by PBMs. We would like to see additional reforms to ensure PBM practices and business models will directly benefit patients and consumers, first and foremost.

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?

Drug companies don't want to draw attention to the high prices of drugs which will remind people each time they see an ad how outrageous drug prices are in the U.S. Drug companies argue that list prices will mislead people "because no one pays list." To the contrary, list price is extremely important and highly relevant to U.S. patients and consumers—roughly 67 percent of whom pay for some or all of the cost of their drugs based on list price. That includes people on Medicare, many people with high deductible plans, and those without insurance. The "no one pays list" argument that drug companies continue to use is a red herring.