

## House Judiciary Subcommittee on Intellectual Property, Competition and the Internet Holds Hearing on the Express Scripts-Medco Merger

LIST OF PANEL MEMBERS AND WITNESSES

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GOODLATTE:

I have an opening statement. This hearing will examine the proposed \$29.1 billion acquisition of Medco Health Solutions by Express Scripts. Express Scripts and Medco are both pharmacy benefit managers or PBMs.

PBMs are probably among the least known and least understood big businesses in America. Essentially PBMs act as middle men between health insurance plans that offer prescription drug benefits and the pharmaceutical companies and pharmacists who manufacture and dispense prescription drugs to the plan's beneficiaries.

But just because most Americans may not have heard of PBMs does not mean that they are anything less than enormous businesses with a significant impact on prices and competition in the market for prescription drugs in America.

When a person with health insurance fills a prescription it is likely that a PBM was involved in setting the co-pay, determining the pharmacist's compensation, negotiating rebates and discounts with the drug manufacturer and billing the health insurance plan for the drugs.

For a growing number of prescriptions the PBM also acts as the pharmacist. PBMs now control a majority of the mail-order pharmacy business. PBMs' position in the center of the American prescription drug market has proven very lucrative. In 2010 Express Scripts and Medco earned a combined profit of about \$2.5 billion with revenue of over \$100 billion.

The proposed merger we examine today would combine two of the three largest PBMs and create a company that would be involved in about a third of all prescription drug sales in America. The combined company would control about 60 percent of the mail-order pharmacy market and a majority of the specialty pharmacy market. The combined company would be the incumbent holding the PBM contract for a majority of the companies on the Fortune 50.

This consolidation would come in a market that has already come under considerable scrutiny for alleged abuses of market power. Small pharmacists have long complained that PBMs leverage market power to force pharmacists into unfavorable and unfair contracts.

My colleague, Mr. Marino of Pennsylvania has led efforts to even bargaining power between PBMs and pharmacies and has introduced H.R.- 1946, the Preserving Our Own Hometown Pharmacies Act to empower small pharmacies to negotiate with PBMs on more even terms.

In addition to pharmacies, PBMs enter contracts with essentially every major player in the supply and payment system for prescription drugs. A PBM with too much market power could demand ever larger rebates and discounts from drug companies, capturing more of their profits and perhaps leading to a decrease in competition and innovation to bring new drugs to market.

A PBM exercising unlawful market power could decrease the reimbursement rates for pharmacies filling prescription drugs to levels that make traditional pharmacies unprofitable and push more pharmacy business to the PBMs' own mail order pharmacy business.

And a PBM unchecked by competition could potentially raise the prices that it charges employers and other health insurance plan sponsors for administering their prescription drug benefits.

If this merger leads to a decrease in the supply of prescription drugs and pharmacy services or raises their prices then America's prescription drug consumers will bear the burden.

It is by no means clear that today's merger will have any of these negative effects. The merging parties argue that far from raising prescription drug prices, PBMs are essential to controlling medical costs by negotiating the best possible deal for health insurance plans and the consumers who are covered by those plans.

There is evidence that PBMs actually do save health care costs and that PBM mergers can help PBMs realize efficiencies and scales that empower them to save even more money for their clients.

One study released just yesterday estimates that PBMs would save their clients almost \$2 trillion of health care cost over the next decade. Another fact to consider is that nearly every major plan sponsor who is responsible for administering a health insurance plan hires a PBM to administer the prescription drug benefit under that plan.

If PBMs did not save money for plan sponsors then presumably plan sponsors would not continue to engage them.

This hearing will examine all of the issues surrounding this merger. I look forward to hearing from our expert witness panel today, but I would like to conclude my opening remarks by raising a larger concern that goes beyond the details of this merger and has to do with our health care economy as a whole.

In the investor call announcing this merger, both Express Scripts CEO George Paz and Medco CEO David Snow who are here today as witnesses mentioned the president's health care reform as a major factor motivating the merger.

Mr. Snow said that quote, "I believe you are going to see all sorts of combinations across the spectrum of health care as everyone realigns to the new imperatives related to health care reform and the demands that the government is making," end quote.

I'm concerned that Mr. Snow may have been right. In the 18 months since the president's health care bill became law we have seen a wave of mergers in various levels of the health care economy. I am concerned that this wave of mergers may be a symptom of a deeper dysfunction in our health care economy created by the ill-conceived health care bill.

I hope that today's hearing sheds light on the continuing debate in Congress over whether last year's government takeover of healthcare will have the effect of favoring regulation over free markets, government mandates over competition and big businesses over small.

And at this time it is my pleasure to yield to the ranking member of the subcommittee, the gentleman from North Carolina Mr. Watt.

WATT:

Thank you, Mr. Chairman and it will come as no surprise to the chairman my attitude about hearings about mergers, I've expressed them before and I wanted to try to be consistent on this occasion, to be clear that the Committee on the Judiciary has jurisdiction over all laws related to antitrust.

Federal antitrust laws concern the functioning of the marketplace and competition, and are enforceable by the antitrust division of the Department of Justice, the Federal Trade Commission and private persons.

The proposed merger between pharmacy benefit managers, Express Scripts and Medco Health Solutions is currently under examination by the Federal Trade Commission which recently requested additional information from the companies signaling that the FTC is paying attention its knitting and that the deal has raised antitrust concerns with the regulators.

The FTC's so-called second request demonstrates that the merger will receive close scrutiny and that the agency stands ready to fulfill its mission to prevent anti-competitive mergers and business practices in the marketplace.

In aid of this investigation the FTC has the authority to compel detailed confidential information to which we, as legislators, simply do not have access, making it far more likely that an appropriate determination will be made based on the facts and not on political pressure.

It should come as no surprise that I believe as I indicated in prior hearings before the committee that our oversight function is best reserved to address legitimate concerns. For example, agency impropriety, incompetence or inexplicable inaction, or, if as is more likely in this budget cutting fiscal environment, the agency is so understaffed or underfunded that it is ill-equipped to discharge its responsibilities at all.

Fortunately no such claims have yet been raised with respect to this merger. In the area of pharmacy benefit managers this committee in prior sessions of Congress has considered whether a limited antitrust exemption is appropriate to permit independent community pharmacies to collectively negotiate the terms and conditions of insurance contracts in order to produce plans that would arguably protect the patient's choice of pharmacy. To the extent that this hearing sheds light on whether we should revisit that question, I believe it could be helpful to the committee.

There are also other legislative issues, for example, the lack of transparency of the PBM call-structures that the Way and Means Committee could appropriately consider.

I look forward to hearing from the experts assembled here today. I know that their testimony will provide the public with a fuller understanding of the issues at hand, but let me be clear, the ultimate determination as to whether this merger impermissibly restrains competition or otherwise violates the antitrust laws lies with the FTC and not with the House of Representatives or the Judiciary Committee on which we sit today.

Mr. Chairman I yield back and thank the chair.

GOODLATTE:

I thank the ranking member.

The chair will now recognize the gentleman from Pennsylvania Mr. Marino for an opening statement.

MARINO:

Thank you, Chairman.

Chairman Goodlatte, Ranking Member Watt, I would like to thank you for holding this hearing today on the proposed merger between Express Scripts and Medco and particularly for inviting my constituent Mr. Joseph Lech to testify.

I believe that this hearing gives us the unique opportunity not just to discuss the merits of this particular merger but to discuss the broader challenges that many community pharmacists are facing.

In the 10th Congressional District of Pennsylvania local pharmacies are the foundation of many communities. People know their pharmacists and have trusted their advising guidance for years.

My daughter takes a great deal of medication on a daily basis. My pharmacist is always there. He knows us on a first name basis. There have been situations when we have gone away and either forgotten or ran out of a prescription. We just call our pharmacist and he makes the arrangements and we are taken care of wherever we are.

It is personal service like this that makes community pharmacies so valuable. In fact nothing has highlighted the importance of local pharmacists and the role they play in the community more than the recent events that occurred in Northeastern Pennsylvania over the past few weeks.

It is my understanding that Mr. Lech is prepared to discuss in more detail a personal story about this but I can tell you that without community pharmacies like Mr. Lech's, a horrible situation for our friends and neighbors could have been much worse.

Community pharmacies are now facing a number of challenges that are threatening their ability to continue to provide personal services to communities and neighborhoods that need them the most. As a result we have seen the number of community pharmacies decline nearly 50 percent since 1980. This is a disturbing trend especially because it is small businesses such as Lech's Pharmacy that will lead us out of these difficult economic times.

As policy makers it is our job to focus on laws and policies that empower small businesses to grow and create jobs right here in the United States.

I have serious questions and concerns that the merger we are discussing today could worsen the climate for independent pharmacies and could lead to less access and higher cost for patients. I am especially concerned about the consolidation this merger would cause in the mail order and specialty drug markets.

According to 2011 Atlantic Information Systems data, the combined mail order facilities would concentrate 59 percent of the mail order market, and in 2009 the combined specialty drug market share for Express Scripts and Medco was 52 percent.

There have already been a number of reports where patients are being directed away from local specialty pharmacies to ones that maybe much further away and are owned by the PBMs.

While I am concerned about the effects of this merger it is important to recognize that regardless of the outcome of the Federal Trade Commission review, independent pharmacies will still face substantial difficulties.

For this reason I have introduced H.R. 1946, the Preserving Our Hometown Independent Pharmacies Act that would be one step towards leveling the playing field for community pharmacies.

This legislation would allow independent pharmacies to join together to negotiate the terms and conditions of insurance contracts, to produce plans designs that would better protect the patients' access to their pharmacy of choice and are fairer to the pharmacists. This legislation would put an end to the take-it-or-leave-it tactics that small pharmacists are currently forced to accept.

Many of my colleagues from the committee and subcommittee have already joined me in these efforts by co-sponsoring this legislation.

In conclusion I would like to enter into the record a letter I received from the Pennsylvania House of Representatives chairman of the Health Committee Matthew Baker in opposition to the merger.

In the letter he stated, "PBMs' record of controlling cost is questionable. And the proposed merger it would limit the ability of both the private and public sector to control health care cost, thus resulting in a significant reduction of competition."

Again I would like to thank the chairman for holding this important hearing and as the FTC commits its review and continues of this proposed merger I would ask that they pay special attention to what

it would do to patient access to the local pharmacies and the personal care these pharmacies provide.

I look forward to working with you, Chairman Goodlatte and Ranking Member Watt to ensure that we are doing everything we can to give hometown pharmacies the opportunity to grow and create jobs while providing the best care for our families.

Thank you.

GOODLATTE:

I thank the gentleman. And without objection the letter from Mr. Baker will be made a part of the record.

And we are pleased to be joined by the ranking member of the full Judiciary Committee, the gentleman from Michigan Mr. Conyers and I am pleased to recognize you (ph).

CONYERS:

Thank you, Chairman Bob Goodlatte and Mel Watt, our ranking member.

I have said before that I rarely met a merger that I liked but this is one that I like more than the ones that I don't like. And so, the biggest problem I have here is that the small pharmacies and independents are urging me not to support it. And I hope I hear persuasive discussion that will lead me to go along with this circumstance.

Now this is a case of a small company taking over a bigger company, isn't it? Which is also quite unusual. So here we come with these intermediaries, these folks that work in between the pharmacy benefit managers.

How did they get into the picture? Where did they come from? What created them?

I understand there are more than 40 floating around and I think and I hope I heard min leader Mel Watt say that we determine what violates antitrust and not the FTC but that's what's in our jurisdiction anyway. So I come here thinking that in the long run somebody is going to go out of business if they don't merge.

I don't want to try to tell you I've looked at the books of anybody but what I'm hearing is that if this merger doesn't take place it's not unlikely that somebody will go out of business so that from a job's perspective this is a strong case for the merger.

And so, I introduced into the record my complete statement and ask that all of you expect me to discuss Chairman Goodlatte's observation that the wave of mergers was the result of the ill-conceived health care bill. I hope that you're all prepared to answer that question.

And I thank you, Chairman Goodlatte.

GOODLATTE:

I thank the gentleman.

And it's now my pleasure to introduce our witnesses. We have a very distinguished panel of witnesses today. And before I introduce them I'd like them to stand and be sworn.

Do you and each of you swear that the testimony that you are about to give is the truth, the whole truth and nothing but the truth so help you God?

Thank you and please be seated.

Each of the witnesses' written statements will be entered into the record in its entirety. I ask that each witness summarize his or her testimony in five minutes or less to help you stay within that time. There is a timing light on your table.

When the light switches from green to yellow you will have one minute to conclude your testimony. When the light turns red that's it, it signals that the witness' five minutes have expired.

Our first witness is George Paz, chairman and CEO of Express Scripts Incorporated. If the merger is approved Mr. Paz will be the chairman and CEO of the new merged company.

Our second witness is David Snow, chairman and CEO of Medco Health Solutions.

Our third witness is Joseph Lech, an independent community pharmacist from Tunkhannock, Pennsylvania.

Our fourth witness is Dennis Wiesner, a senior director of the H- E-B grocery chain with responsibilities for Privacy, Pharmacy and Government Affairs.

Our fifth witness is Dan Gustafson, a founding member of the Minneapolis law firm Gustafson Gluek.

And our sixth and final witness is Stephanie Kanwit, counsel at the law firm of Manatt, Phelps & Phillips.

Mr. Paz, we will begin with you. Welcome

You may want to turn on that microphone and pull it close.

PAZ:

Thank you, Mr. Chairman and members of the subcommittee. Thank you for this opportunity to explain how the combination of these two innovative companies can benefit the nation's patients and its public and private purchasers.

I believe that today's hearing will demonstrate that this merger is one of the best prospects to secure safer and more affordable prescription drugs for tens of millions of Americans.

I would like to begin by addressing a concern on every American's mind -- jobs. Healthcare costs are a worrisome part of running a business. Yesterday, an important new study was released, which I asked to be included in the hearing record.

It concludes that for every one percentage point reduction in prescription drug cost, 20,000 jobs in the United States can be funded. PBMs have a proven track record of generating savings for employers and their workers. There are many proven tools available through PBMs like Express Scripts and Medco that reduce drug cost. And this merger will sharpen and expand the availability of these tools.

Four of us on this panel are part of the same noble mission. Patients in need of medicine rely on us for access to affordable care. Each of us is committed to the highest ideals of the practice of pharmacy; accuracy, safety, affordable care and service.

Mr. Lech's pharmacies are all -- are part of our network. We are the PBM for Blue Cross of Northern Pennsylvania to ensure that covers many of his customers.

We work with literally thousands of independent pharmacies like those of Mr. Lech all across the country, and we value those relationships.

Mr. Wiesner's employer, H-E-B, has been our client for many years. This chains of stores are also an important part of our pharmacy network.

Let me also acknowledge Mr. Wiesner's service on the Tech support of pharmacy where he is developing the next generation of skilled pharmacists to serve patients.

I am proud to report that one of my company's employees was just named the Outstanding Young Pharmacist of the Year by the Texas Pharmacy Association.

Each of us here today should ask ourselves, what is in the best interest of a patient when they are trying to fill a prescription? And who is there to ensure that the American family is getting the best value for their money?

PBMs help American families and their employers get the best possible deal while improving safety. We make the use of prescription drugs safer and more affordable.

After a patient has been seen by their caregiver and has a prescription that needs to be filled, they're hardly in a position to negotiate with the drug company or a pharmacy. They just know they need the prescription filled as their ticket to getting well.

If they are one of our patients, when they walk into a pharmacy, they have all 13,000 Express Scripts employees standing with them. Before they ever receive their medicine over 100 safety checks are conducted by our system, one of the most advanced high-tech systems in the world. In less than two seconds, we determine if there is a clinically appropriate less costly generic drug available. We also make sure the patient is not subject to adverse drug events.

Further, what patients pay is reduced on average by 30 to 40 percent. For Mr. Lech, Mr. Wiesner, and other pharmacies, they receive safety information and they're assured payment, eliminating \$7.3 billion in bad debt to pharmacies each year.

These are all giant leaps forward for patients and pharmacies that companies like ours help create. And we make these benefits available to over 65,000 pharmacies in every corner of the United States.

I believe drug costs are still too high for American families. When the big drug companies charge for their medicines keeps going up. And large retail drugstore chains want to dictate prices, I want a fair deal for our patients and employers.

That mission goes to the core of what our companies are all about. We are fully aligned with our patients and employers. We make money by saving them money. This union of our two companies will strengthen our ability to do just that.

In my formal testimony, I go through many of the tools we have developed to drive down drug costs while improving health outcomes. We have a proven track record.

There are other benefits the health care system by combining our two companies. For example, one, we increase patient adherence and reduce unnecessary medical expenses. Two, we help the FDA monitor drug shortages and identify safety concerns quickly. Three, we empower federal and state responders from public health and respond to natural disasters. And four, we help law enforcement address fraud, waste, and abuse.

In conclusion, the merger of Express Scripts and Medco is the best opportunity to continue to lower drug costs while improving health care today, and for the immediate future.

Mr. Chairman, and members of the subcommittee, I thank you for the opportunity to speak to you today.

GOODLATTE:

Thank you for your testimony Mr. Paz. And without objection, the study you referenced in your testimony will be made a part of the record.

Mr. Snow, welcome, we're pleased to have your testimony.

SNOW:

Chairman Goodlatte, Ranking Member Watt, members of the committee, thank you for this opportunity to discuss the proposed merger of Medco Health Solutions and Express Scripts. My name is David Snow. And I'm the Chairman and CEO of Medco Health Solutions.

Medco is an industry leader in pharmacy that employs over 3,000 skilled pharmacists. We develop innovative solutions that deliver unique value to private, public employers, health plans, labor unions and government agencies of all sizes, as well as individuals served by Medicare Part D Drug Plans.

Everyone recognizes that the ever-rising costs of the health care in America is unsustainable. As the health care industry necessarily focuses on reducing costs without compromising patient care, we all face the irrefutable fact that we must do more with less.

The services that PBMs provide are very much part of the solution. By merging Medco with Express Scripts, we will significantly accelerate our efforts to reduce overall costs in the healthcare system and improve the quality and efficiency of care delivery.

To understand the value of the combination of our two companies, it is critical to recognize the dynamic marketplace in which we operate.

Our competitors include some 40 PBMs, household names like Aetna and Cigna, and CVS Caremark and others who may not be so well-known but continue to make major investments like Prime Therapeutics, Catalyst, SXC, and perhaps, most significantly, UnitedHealth Group, who has announced its plan to take in house the 14 million lives previously served by Medco in order to increase its investment in its own PBM Optum Rx.

As these few quick examples demonstrate, competition for PBM, services is intense and diverse. And new entry remains a very real prospect. That competition will only be enhanced by the Express Scripts-Medco merger.

It was within the context of this competitive marketplace that the merger of our two companies was conceived. The essence of the PBM business is to bring lower drug prices and higher quality care to patients, employers and taxpayers. The combination of Medco and Express Scripts will accelerate our efforts to achieve that goal in a number of ways.

I will just mention two -- volume and improved clinical practices.

First, our combined entity will be able to lower drug and patient-user costs by achieving even greater discounts from drug manufacturers, thereby lowering costs to consumers and employers. And in fact, under the terms of our existing employer contracts, the ones that we have in place today, one billion dollars in savings will be passed back to our clients, guaranteed.

And second, the merger will create synergies by combining the best of our complementary patient-centered clinical care programs. We are particularly proud of Medco specially-trained pharmacists who use clinical protocols and in-depth counseling to help chronically ill Americans to most appropriately and safely manage their highly complex conditions. The result, an estimated \$900 million in savings from reduced hospitalizations and associated costs last year.

But we've only scratched the surface. We, as a nation, could save a total of over \$350 billion a year by addressing medications that are under-prescribed, mis-prescribed or simply not taken as directed by their physician.

Taken together, the merger will help government, businesses and the economy as they jointly confront the necessity to decrease the cost of entitlement programs, thus reducing the overall deficit and increasing job growth. As is the case with the private sector, better management of cost within

the Medicare and Medicaid programs can achieve savings without the need to reduce benefits. And that a 12 percent of -- at 12 percent of payroll, healthcare is the most costly benefit expense for employers.

Improving outcomes while reducing cost is the definition of doing more with less, and it will make our nation's businesses more competitive and successful. We recognize that many have voiced concern about the impact of an Express Scripts-Medco merger on retail pharmacies, particularly on independent pharmacies.

More than 85 percent of Medco customer prescriptions are filled through our network of over 60,000 retail pharmacies nationwide. There is nothing we plan to do that will change this. As our written testimony details, we are proud that our partnership with the community pharmacists has provided technology and information that had helped independent pharmacies protect and grow their business in an environment that favors national chains and big box retailers.

The examples I have provided today clearly demonstrate that our healthcare system does best when many different companies and different models are all working to improve patient health. This diversity of approaches breeds innovation and collaboration. It is a catalyst for experimentation and progress, often leading to breakthrough solutions.

We all know the future belongs to those who deliver more for less. Together, Express Scripts and Medco will build a strong competitive company that helps millions of people to live longer, healthier lives, plus supporting the nation's goal of a sustainable, affordable healthcare system.

Mr. Chairman, Ranking Member Watt, and members of the committee, thank you for listening to my testimony. And I would be happy to answer any questions you may have.

GOODLATTE:  
Thank you, Mr. Snow.

Mr. Lech, welcome, we're pleased to have you here today.

LECH:  
Thank you.

Good afternoon Chairman Goodlatte, Ranking Member Watt and members of the subcommittee. Thank you for conducting this hearing and for the opportunity to share my view regarding the proposed Express Scripts-Medco merger.

My name is Joe Lech of Tunkhannock, Pennsylvania. I'm the owner of five independent retail community pharmacies in rural northeast Pennsylvania and have been a practicing pharmacist for 30 years. I'm a member of the National Community Pharmacists Association, which represents the pharmacist owners, managers and employees of more than 23,000 independent community pharmacies across the United States. These pharmacies dispense nearly half of the nation's retail prescriptions.

I would also like to thank Congressman Marino, my Congressman, for the active role he has taken in trying to level the playing field between community pharmacies and pharmacy benefit managers. In particular, we thank him for introducing the Save Our Independent Hometown Pharmacies Act, which has been endorsed both by NCPA and NACDS, the group representing the chain pharmacies. Thank you.

As a healthcare provider, my primary concern is the health and well-being of my patients and access to prescription medications is essential in maintaining the health of those patients.

As you are aware, Pennsylvania, like many other states, was recently devastated by flooding. Many people in the area where I am from were evacuated from their homes with nothing but the clothes on their back. The morning after the rain started the weather was so bad that my usual 30-minute commute to the pharmacy took almost 2 hours.

As I approached the pharmacy, I saw Mr. Slater, a long-time patron of our pharmacy, standing in front. He and his wife had been plucked from an upstairs window of their home and taken by boat to safety. They were unable to retrieve his 16 medications and her eight that they need on a daily basis. I assured them I would provide them with their prescriptions.

But what would happen in cases such as this, if pharmacies like mine disappeared from the communities that rely on? The fact is community pharmacies are closing.

This is just one story. There are thousands just like mine of community pharmacies stepping up to assist patients in getting their much-needed prescription medications.

During the recent flooding, Congressman Marino's District Office staff got their feet wet, so to say, as they participated with Lech's pharmacy and Red Cross in prescription and supply deliveries from our pharmacy -- our three pharmacies were the only pharmacies open in the county for two days. And they assisted in the delivery of prescriptions and supplies by boat.

The reason I am telling you this is because PBMs or "middlemen" already have so much control over the marketplace that it greatly concerns me about what would happen should this merger occur.

Over my 30 years in pharmacy, I have seen the large pharmacy benefit managers gobble up smaller PBMs to reduce competition. The result is a highly-concentrated, consolidated marketplace.

Currently, there are three PBMs that overwhelmingly dominate the national marketplace -- Express Scripts, Medco and CVS Caremark. As a health care provider, I am aware of the consolidation within the health care industry; specifically consolidation within the PBM industry, which I believe has and will continue to negatively impact not only community pharmacies but more importantly the patients that we serve.

The recently announced proposal of a merger of Medco and Express Scripts will exacerbate problems pharmacies and patients face with respect to PBMs. The merger of these two PBMs would create a "mega PBM", with overwhelming power in markets that are critical to controlling health care costs.

I believe the resulting merger will harm patients by reducing choice, by decreasing access and ultimately leading to higher prescription drug costs paid by plan sponsors and consumers. In fact, the proposed merger is a tipping point in terms of PBM market concentration. The merger will cause a substantial reduction in both price and non-price competition among PBMs. If approved, this "mega PBM" would control over 40 percent of the national prescription drug market.

The size of this consolidation is enhanced by the fact that large national health plans, insurance companies and government-sponsored health plans are already largely limited in their PBM choice. Post-merger, these large national customers will have fewer drug benefit administration alternatives, which will allow the merged PBM entity to dictate plan design and benefit structures at the expense of purchasers.

The merger will force more into mail order. The merger will create the largest mail order operation accounting for over 60 percent of all mail order directed business in the U.S. The merged firm will have the increased ability and incentive to force consumers to utilize the mail order portion of their business.

A misconception put forth by the merging parties is that this switch to mail order will lower drug costs for consumers. Evidence demonstrates the opposite. Mail order push out more brand-name drugs and fewer generic than retail pharmacies, thereby lowering generic dispensing rates.

A dramatic consequence of more and more switch to mail is in too many cases, a pharmacy is unable to stay in business. Pharmacy closures are felt particularly hard in rural areas where these community pharmacies function as healthcare providers on the frontline when a disaster, such as a hurricane, a tornado, or in my case, excessive flooding strikes.

ESI and Medco neglect to tell you that this merger, if approved, will cost our local economies jobs and tax revenues.

Due to the number of pharmacies that will likely be out of business, due to the shift of prescriptions to out-of-state mail order productions, this merger will harm small business and cost jobs, something our economy can least afford at this time.

In conclusion, I would add that I enjoy being a pharmacist. I love what I do. And I believe I am making a difference to all the patients who depend on my pharmacies. However, I am concerned that this merger will reduce patient access, ultimately leading to higher drugs costs due to the reduction in competition.

I thank you for the invitation. I welcome any questions.

And as part of the proceedings, I'd like to enter this document, which I believe all the members have received in packet. But I'd like to introduce this document called Waste Not, Want Not, dealing with waste in prescriptions.

GOODLATTE:

Without objection, the report will be made a part of the record. Thank you, Mr. Lech.

Mr. Wiesner, we are pleased to have you with us today.

WIESNER:

Thank you.

Mr. Chairman and members of the subcommittee, thank you for the opportunity to testify.

My name is Dennis Wiesner. I am a pharmacist and I've worked in community pharmacy for over forty years. I have grave concerns about this proposed merger. It would be a tipping point in PBM market consolidation, harming patients as well as government and private health plans and employer.

(UNKNOWN)

Mr. Chairman, could you ask the witness to speak into the mic more?

GOODLATTE:

Is it turned on? Make sure the green light is on.

WIESNER:

Is that better?

GOODLATTE:

That's much better.

WIESNER:

Thank you.

There's only one stakeholder that would benefit -- the new "mega PBM". Since the merger was announced, many members of Congress, consumer groups, state insurance commissioners, state Attorneys General, and state legislators have expressed concerns to the Federal Trade Commission.

This would be a merger of two of the big three PBMs. If approved, nearly 135 million Americans would rely on this single PBM to manage their prescription benefits. It would control over 40 percent of the national prescription volume, 60 percent of the mail order pharmacy market, and more than 50 percent of specialty pharmacy sales.

Patients, in particular, will be harmed. To reduced our no choice of their pharmacy providers. Decreased our limited access to essential pharmacy services. A separation of their prescription medication records that could result in potential adverse patient health outcomes, disruption to normal timely prescription service, and potentially decrease medication adherence.

Reducing patient choice and access will lead to higher prescription costs, potential adverse patient outcomes, and higher downstream health costs.

Do PBMs actually reduce healthcare costs? There is no proof that they pass along the purported savings through health plans, employers, or consumers. In fact, the PBM industry has been fraught with allegations of extensive, deceptive and fraudulent practices.

In recent years, cases brought by coalition of over 30 state attorneys general have resulted in over \$370 million in penalties. It has been found that PBMs have accepted rebates from manufacturers in return for placing higher-priced medications on prescription drug plan formularies, switched customers to the higher-priced drugs and then benefited from both the rebate received in the higher-priced drug payment without passing along the enrichment to the health plan or employer.

PBMs already operate in an opaque manner. They are middlemen in a unique position that dictate contract terms to health plans and pharmacy providers. The new mega PBM would have even greater ability to dictate one-sided, unfavorable contract terms to pharmacies, health plans and employers ultimately harming consumers. This is one reason we oppose the merger and we seek legislative relief on PBM practices.

Pharmacies that refuse their contract terms would be shut out of the networks that provide pharmacy services to their neighbors and huge portions of American consumers. In addition, more consumers would be forced into using PBM's own mail order facility as opposed to choosing their local pharmacy, depriving consumers access to vital healthcare services and valuable face-to-face counseling.

The Butt family founded HEB 106 years ago with a firm commitment to serve all the citizens and all our communities. That commitment is stronger today than ever. However, being able to continue servicing the prescription and healthcare needs of our customers and neighbors has been threatened by the one-sided nature of pharmacy agreements with PBMs.

We have seen first hand the unilateral nature of these contracts. They are allowed to establish the basis of cost for the prescription medication. They're allowed to change that basis of cost with limited or no notice, especially for generic medications. And they are allowed to second-guess or override a physician's prescription order.

Claims submitted to the PBMs and approved are routinely reviewed retroactively and payment recouped due to inadequacies in the PBM claims adjudication systems. My (Inaudible) company experiences these and other examples each and everyday.

Our internal health benefits team provides healthcare services to over 140,000 individuals. They feel strongly that this merger would limit competitive options and result in total cost, especially administrative fees, increasing.

Pharmacies help to ensure that patients understand their medications and take them as directed. Pharmacies collaborate with doctors and other local healthcare providers to assist in medication decisions.

Community pharmacies also provide critical cost-effective services like immunizations, disease state management, monitoring, health education and screening programs. Together, all these services improve patient's health and reduce outcome (ph).

As I said, the situation with PBM has worsened through consolidation. Because of this, we support legislation to rein in their more egregious actions, including H.R. 1971 and H.R. 1946.

In conclusion, PBMs already use a lack of transparency, failing to pass the rebates from drug manufacturers to consumers and other payers, inflating drug costs for health plans and employers and lowering payments to pharmacies for their own personal financial gain. Patients appear to be an afterthought.

A mega PBM would have an increased stability to engage in similar conduct to the detriment of consumers, payers and pharmacy providers.

Thank you for your time.

GOODLATTE:

Thank you, Mr. Wiesner.

And now we'll hear from Mr. Gustafson. Welcome.

GUSTAFSON:

There we go. Thank you for providing me the opportunity to testify today. My name is Dan Gustafson, and I practice antitrust law at Gustafson Gluek in Minneapolis. I'm also working with a group at the American Antitrust Institute to evaluate the proposed merger.

Although our work is preliminary, we have identified several potential concerns with regard to this merger. But before I identify these concerns, let me emphasize first that the time for careful evaluation of this merger is now.

Although antitrust enforcement can sometimes undo the effects of already concentrated markets or anticompetitive conduct, preventing -- preventing such conduct before it occurs is far more effective antitrust and public policy. For that reason, we applaud the FTC's second request for information as it -- as it continues to evaluate this merger proposal.

PBMs play an important and ever-expanding role in our healthcare system. They touch most American lives in their role as managers of prescription drug benefits through their pharmacy claims processing, formulary management and home delivery pharmacy services. They also negotiate discounts and rebates on purchases from pharmaceutical companies. The market for national PBM services has already concentrated.

CVS Caremark, Express Scripts and Medco control more than 50 percent of the market when measured in terms of prescriptions and over 80 percent of the market when measured in terms of large plan-sponsored contracts.

A merged Express Scripts Medco company will overwhelmingly dominate the PBM services market, covering nearly 150 million prescription drug consumers and over 50 percent of the large plan sponsors. In terms of covered lives, no other PBM would remotely approach Express Scripts Medco.

We -- as a result of our evaluation of this merger, we raised several concerns. First, will the merger reduce competition for the provision of PBM services to large plan sponsors?

Although there are numerous smaller PBMs, many of these smaller entities operate only in regions, some serve only a special niche market such as government services and others offer a limited menu of services in areas such as specialty drugs, mail order, or claims processing.

The smaller PBMs lack the ability to negotiate the same discounts and rebates from drug manufacturers that large PBMs can obtain. As a result, regional PBMs may be unable to constrain potential anticompetitive conduct.

Second, will the proposed merger lead to increased prices or reduced services in the distribution of specialty pharmaceuticals? Significant concerns exist in the market for the distribution of specialty drugs where Express Scripts and Medco will own two largest specialty pharmacy businesses.

The proposed merger will result in a company holding more than a 50 percent share of the specialty pharmacy market segment. Specialty pharmacies provide important service and treatments to consumers with complex, chronic and often life-threatening illnesses.

They often help administer complex treatments, work with physicians to monitor patient therapy and play a role in the medication and compliance issues. Reduced competitions in this market segment could lead to increased costs and reduced services to the consumers who depend on those treatments the most.

Third, will the proposed merger increase the exercise of buyer power to reduce the delivery of traditional pharmaceutical services? We are concerned that the major PBMs already possess the ability and incentive to exercise market power over retail, independent and chain pharmacies.

Reimbursements from the PBMs as a major source of their revenue and the proposed merger could enable the two remaining large PBMs to push compensation to the retail pharmacies below competitive levels, eliminating jobs and leading to reduced and important services for their consumers.

This proposed merger would also create the largest mail order pharmacy in the United States accounting for nearly 60 percent of all mail order scripts because large PBMs could divert prescriptions to their own mail order facilities instead of to their retail traditional pharmacies. They could maximize their own gains if they then select drugs on which they receive superior rebates from manufacturers.

The opportunity for potentially anticompetitive self dealing which harms consumers may be enhanced by the creation of a dominant PBM in the mail order pharmacy market space in elimination of one of its only two competitors.

Finally, we need to be careful to examine the claim deficiencies to determine if the savings that are proposed are specific to this merger and cannot otherwise be obtained by means unrelated to the merger.

A careful analysis made as to whether and to what degree these claimed efficiencies will actually be passed on to plans and therefore consumers is important as well. Past consolidation in this industry provides sufficient data to evaluate the previous efficiency promises that have been made. The recent spike in the profits of the large PBMs suggest less and not more competition and as a result, higher prices for plans and for consumers.

Thank you for providing me the opportunity to testify today. I'm happy to answer any questions that you may have.

GOODLATTE:

Thank you, Mr. Gustafson.

Ms. Kanwit, we're pleased to have your testimony.

KANWIT:

Thank you, Mr. Chairman and members of the subcommittee. I'm honored to be asked to testify here today.

I'm Stephanie Kanwit. And I want to note that I'm not testifying on behalf of either party to this merger, but given my antitrust and Federal Trade Commission background, have been asked to testify about how the agency is likely to view this merger based on both federal merger law as well as its previous and very extensive studies and letters relating to PBMs.

I have great respect for the FTC's expertise here and they're very knowledgeable -- the agency is very knowledgeable about what PBMs do for a living, all the entities they interface with and how competitive the market is. As Mr. Watt likely noted in his introduction, the FTC is going to subject this merger to very close scrutiny.

And here's the ultimate question that the agency has to answer in any trust lingo. Will it substantially lessen competition? And what that means is will there still be aggressive competition in the PBM marketplace that will promote lower prescription drug prices for consumers and result in higher quality and more access to prescription drugs?

As the federal merger guidelines make clear, they were just enacted by the FTC and the Department of Justice last year, anti-trust merger law is about the impact of the merger on cost and quality for consumers. It's not concerned with the impact on individual competitors in that particular market.

So here's how the FTC is going to be looking at this merger. It's going to be looking at both hats that the PBMs wear. They wear many hats, but these particular hats they'll look at.

First question, what's the impact on PBM customers? In a nutshell, my testimony outlines in detail multiple reports and FTC investigations which have found the market competitive and found that PBM customers out there have choices.

The FTC has repeatedly, in letters and studies, et cetera, talked about all the multiple PBMs out there, how they're varied, how they sell in a variety of geographic and product markets and, in fact, some are even buying groups of independent pharmacies. It's a fluid market where entries and exits are frequent.

And, for example -- I'll just give you one example. Recently, the large retail Wall-Mart has entered the PBM space. So the bottom line is that the FTC has found in a very extensive 2005 study where it (inaudible) PBMs for information that customers, both large and small, have multiple choices and frequently can and do switch PBMs if they're unhappy with service or pricing. And that they can negotiate contracts that benefit their members and themselves at both prices and quality, whatever they want in terms of price and quality.

The number -- second question in addition to customers the FTC is going to ask is what's the impact on retail pharmacy? Now, the representatives of retail pharmacy here today have been very eloquent and condemning to this -- this merger. But I just want to make two points, one practical and one legal.

As you've heard from some of the previous testimonies, PBM need retail pharmacies and pharmacists. They need them. They have to assure that their customers can fill prescriptions at various locations.

And I would just note acts or standards in programs like TRICARE for the military and Part D Medicare, they're very, very strict access -- what they call network adequacy standards where, for example, in urban areas, 90 percent of the beneficiaries have to live within two miles of a retail pharmacy. So it's important, as the FTC has found, for PBMs to have extensive pharmacy -- retail pharmacy networks.

Legally, you've also heard some discussion about whether this is going to adversely affect retail pharmacies. But that's not the test under antitrust law. Antitrust law, as I mentioned, is concerned with competition in general, not individual competitors.

So the FTC is going to look -- and this is a long section of the merger guidelines -- at whether it brings efficiencies to the market. And what are those efficiencies? I just cited my testimony in detail.

A past PBM merger case talking about how a merger is pro- competitive if it results simply in a shift in purchases from an existing source to a lower cost more efficient source rather than a reduction in purchases. So in other words, that's important. If you're taking cost out of the system, a merger can be very pro- competitive.

In conclusion, I just want to say the merger guidelines make very clear that the FTC is supposed to look and see whether our proposed merger is competitively harmful. But it's also supposed to avoid interference with what the guidelines call "competitively beneficial mergers" that's right out of the guidelines.

So the FTC is going to look at this merger in light of the prism of its previous conclusions in this area. And it has found, on many different studies, that the market is competitive.

Thank you for your time.

GOODLATTE:

Thank you, Ms. Kanwit.

We'll now proceed with the question for the witnesses.

And I'll start with you, Mr. Paz. Isn't there a great benefit to patients in having a personal relationship with a community pharmacist rather than a detached relationship with a mail order pharmacy? For example, how can Express Script's mail order drug adherence programs be as effective in promoting proper use of prescription drug as a live, in-person consultation with a pharmacist?

(OFF-MIKE)

PAZ:

Thank you, chairman. First of all, just to follow on with what Ms. Kanwit said, it is very important that we have all levels of access to pharmaceuticals, both at the retail level and at the mail order.

If you think about somebody with a severe health condition and they're in a local community, they need to be able to get to that local pharmacist. And we do support local retail pharmacies. The independents are very important to us as that is, again, part of the -- the -- the negotiation between the large drugstore chains and the smaller drugstores. It's very important to have them and to keep all the prices competitive. So we don't selectively choose one versus the other. Most of our clients were very sophisticated. You want access, we supply access.

With respect -- with respect to the actual pharmacists -- I'm sorry?

GOODLATTE:

I just want to interrupt and ask you if -- if your resistance to Walgreens' promoting 90-day prescriptions to its retail customers, is that at least partly motivated by your desire to fill these prescriptions through your own mail order pharmacy?

PAZ:

No, sir. The 90-day prescriptions are set by our -- by plan design. We do not govern with clients' plan design. We show them the cost. Mail order is much cheaper. It makes sense. We can fill over 100,000 prescriptions a day with (inaudible) quality, in other words, less than two defects per million error rate which is -- which is very, very, very low.

The cost of -- of producing an error in prescription is very high. So what ends up happening is the plan ultimately decides what their cost structure wants to be. A company that's in economic trouble, we'd much more can -- can find in one higher level of the mail order. Those clients that -- that don't have economic issues, they may be less -- less -- less forceful in these areas.

For example, setting copay levels. The more the company has to save on this drug cost, the higher the copays. Express Script nor Medco nor CVS Caremark set those levels.

The plan (inaudible) levels, we administer those on behalf of our plans. Ninety-day retail at Walgreens...

GOODLATTE:

Mr. Paz, I'm going to have to interrupt you because I've got a bunch of questions to ask a bunch of people and only got five minutes to do it.

PAZ:

But let me just finish by just telling you that we do not want to stay in front of the community pharmacies serving their member. Many, many pharmacies...

GOODLATTE:

Let me -- let me direct that question to Mr. Snow.

You testified that PBMs are dependent on the continued existence of strong independent retail pharmacies and that PBMs engage in "mutually beneficial collaboration with independent pharmacies." If the PBM pharmacy relationship is mutually beneficial, why is there so much tension, criticism and distrust of PBMs among pharmacies?

You want to hit the...

SNOW:

That's a very good question. And there are number of factors that go into that. And I understand the plight of the independent pharmacist. If you look at the competitive landscape today, new retail pharmacies continue to open each and every year. They are independent pharmacies, they are chain pharmacies, they are grocery store pharmacies. And numbers of pharmacies in this country continue to grow.

When I walked down the street of my home town 10 years ago, there was one pharmacy that served my community.

GOODLATTE:

But why is the tension there? Why when I visit one of these community pharmacies do I hear an earful about you?

SNOW:

Here's why, because now there are two chain stores within 100 yards of that independent pharmacy. So you have intense -- and every grocery store since 10 years ago has opened their own pharmacies as well. So you have enormous competition for that foot traffic.

Patients are making choices. There is this competition for foot traffic. It's a very competitive environment and it does put stress on the economics of an independent pharmacy.

GOODLATTE:

Let me ask you a question about the competition that you're at the PBM level. What is the largest contract that Medco has bid for and lost in recent years that went to anyone other than Express Scripts or CVS Caremark?

SNOW:

Let me think. I won't name the account, but it's a well-known account that was about \$1.5 billion and it went to one of those companies I mentioned in the second tier in terms of good (ph) size Catalyst Rx.

GOODLATTE:

And how long ago was that?

(UNKNOWN)

That as I think 18 months ago, two years ago, approximately.

GOODLATTE:

Thank you.

My time has expired and I'll now recognize the gentleman from North Carolina, Mr. Watt.

WATT:

Thank you, Mr. Chairman.

I think Ms. Kanwit's testimony demonstrates how technical and precise this analysis will have to be and illustrates the point that I made in my opening statement. But we're here and let me see if I can ask a few questions to try to clarify my own thinking.

Mr. Snow, I understand that Medco -- the -- the special niche that Medco has in North Carolina is in the specialty drug area, is that correct?

SNOW:

We are in North Carolina. We have many, many clients in North Carolina. But we're a full service PBM. We don't have a special niche and specialties (inaudible).

WATT:

You said you -- you're denying what some people have told us (inaudible)?

SNOW:

You know, I did not have a special niche and specialty pharmacy in North Carolina.

WATT:

OK. All right. If -- if you do and Mr. Gustafson's testimony is correct, that this combination will give more than 50 percent control over the specialty market, would that be a relevant consideration as far as you're concerned?

SNOW:

Yeah, it -- it would be but the -- the facts on this are in the PBM space broadly there are 40 competitors today. In the specialty space, there are hundreds of competitors and honestly, if you look at the specialty space, you need to look at the disease level, 50...

WATT:

OK. That's all right, I -- I'm not looking for...

SNOW:

OK.

WATT:

... a treatise on the way the industry works.

Ms. Kanwit, let me just pull out the specialty drug area here. Assume that the combination of these two companies ends up with more than 50 percent of the specialty drug market, how is that likely to play itself out before the FTC?

KANWIT:

Well number one, we have to decide if that's -- the FTC has to look at it, Mr. Watt, as a submarket. In other words, if that's an actual market for anti-trust purposes there and that 50 percent is relevant. Second, and it's like caution in my testimony, market shares per se don't really mean very much. What really is interesting is how much market power the companies can exercise and...

WATT:

You're saying a company that has 50 percent of the market then have more market power than...

KANWIT:

Well, here's my point (inaudible).

WATT:

... somebody that has 5 percent of the market?

KANWIT:

Specialty drugs are a -- are of a whole different kettle of fish and as I understand it, manufacturers of specialty drugs drive the distribution process. It's a different process than it is, say, with Lipitor or just (ph) the right footprint.

WATT:

Is that -- is that mail order -- a mail order?

KANWIT:

Well, it can be if they're maintenance drugs. There are very specific administration issues related to specialty drugs which as you know were for cancer and multiple sclerosis and hemophilia, et cetera.

WATT:

So the bottom line is the FTC may segment this whole analysis on specialty drugs and-- and analyze that as a separate impact situation?

KANWIT:

It may -- it may -- it may choose to do so.

WATT:

Yeah. OK.

All right, efficiency -- Mr. Paz and Mr. Snow, you made some claims about it, how do we know that the results of those efficiencies are being passed along to customers?

PAZ:

I'll start and, David, you can certainly chime in. You know, if you look back at Express Scripts' history, it's one of the acquisition, we've done many transactions. If you also look at our contract with the Department of Defense, we're proud to serve our men and women in uniform and their families, over the course of those acquisitions if you look at the pricing, the pricing has stepped down through every one of our acquisitions. We've saved the Department of Defense over \$0.5 billion over our contract terms.

WATT:

OK. All right, that's -- that's fine. Let me -- let me just ask this question. Mr. Snow and Mr. Paz, you all have been competitors for a number of years. What -- what benefits have there been from your being competitors that will go away as a result of -- of the merger?

PAZ (?):

I don't...

WATT:

Did you see -- I'm -- I'm just being honest now.

PAZ (?):

Yeah.

WATT:

That's not a trick question.

PAZ:

I -- I don't see the benefits going away. Actually, Mr. Snow's company, Medco, has a different approach to the administration of the drug benefit than my company. I think they're both very good but together; combining the best of both companies, I believe takes us to a whole new level of clinical expertise and the ability to drive more cost and improve health outcomes like (inaudible).

WATT:

What -- what do you say on that, Mr. Snow? My time is up but I'd like to get your (inaudible).

SNOW:

The reason the companies hire us, Mr. Watt, is that they wasn't...

WATT:

That's -- that's what I asked you but...

SNOW:

They want -- they want...

WATT:

... if you want to answer a different question than -- than the one I asked, I'm asking what benefits were there from the competition between the two -- two companies that will go away as a result of -- of the merger.

SNOW:

As -- as Mr. Paz said, we honestly see no benefits going away. We only see benefits added.

WATT:

OK. My time has expired. Thank you.

I yield back, Mr. Chairman.

GOODLATTE:

I thank you, gentleman,

The chair now recognizes the gentlewoman from Florida, Ms. Adams, for five minutes.

ADAMS:

Thank you, Mr. Chair.

Mr. Paz, we all know the health care costs are on the rise and a lot of us here and my constituents back home want to know what can be done to further lower the cost of prescriptions both in the commercial market, Medicare and Medicaid markets.

PAZ:

Well, one of the -- one of the most important things we can do, congresswoman, is to eliminate fraud, waste and abuse. It's the biggest -- biggest issue we face, everything from -- in Florida is a great example.

You know, we've helped with law enforcement agencies by turning over pharmacies that were pill mills, if you will, where we could see undue uses of -- of C2, you know, of -- of controlled substances -- sorry -- (inaudible) industry jargon.

But controlled substances and getting people to stay on their medication, getting on the right medication and looking for gaps in care are incredibly important for -- for eliminating cost in the equation.

ADAMS:

So we're -- we're here to talk about competition today. So I'm curious as to how many PBMs typically compete with Express Scripts when you bid on a contract and how often do you win, how often lose on these contracts?

PAZ:

Right. From a -- from a competitive perspective, the -- most clients enter into three-year contracts. When they go out for bid, they usually invite anywhere from seven to eight to nine different companies to bid that contract.

They usually take it down to two or three which become the finalists. When you look at the purchasers of our product, these are very sophisticated buyers. They understand the big -- big Fortune 500, the big health plans, they hire people who know prescription drugs, have been in our industry, our pharmacists by education or have a medical background.

There could also be hired consultants. And the consultants are the ones that also help them. They often come out of our industry as well. It's an incredibly competitive process bought very sophisticated buyers.

SNOW (?):

Congresswoman, can I add something?

ADAMS:

Sure.

SNOW (?):

It's an important fact that the Fortune 50, there are 10 different PBMs right now serving the Fortune 50 to give you a sense of how competitive our market is.

ADAMS:

So would you agree that health care cost, it's waste, fraud and abuse, would you believe that it's competition that could add to the lowering of the cost.

SNOW:

I actually -- I actually would focus on something else. George said our companies are different and I think when we pull together we'll, you know, you get more. But I honestly believe and it -- it involves all pharmacies is we as a country need to focus on the better management of patients with diabetes and other chronic diseases because they spend 96 percent of the drug money, 75 percent of the medical money in this country.

It's estimated we waste \$350 billion a year each and every year because of the poor management of chronic and complex disease. Using a wired health care system, seeing gaps in care, helping pharmacists when they're seeing a patient, know there's a gap in care, closing those gaps in care, getting enormous amounts of money that help our system.

And we, in fact, in your state are doing a project with retail pharmacies where we push information about the patient and all the drugs they're taking from all the pharmacies they go to so that they can see up against national based, evidence-based protocols, what that patient's gaps in care are so they have an opportunity to close those gaps in care.

And we have worked with states to help the retail pharmacies get reimbursed that (inaudible) time (ph) patient because that is where -- it isn't what retail pharmacies cost. They are an important part of our system.

It's really how we're wasteful in the way we deliver total health care and we need better systems to support the patient in that care, that's what Medco's been all about. And that's really what we want to continue to do.

ADAMS:

Would you want to add something to that? You -- you looked like you were thinking about what he was saying.

(UNKNOWN)

Me?

ADAMS:

Yes.

(UNKNOWN)

Oh, yeah, I've been (inaudible).

ADAMS:

I could tell.

(UNKNOWN)

I think we're confusing matters here. It is the pharmacy -- the pharmacists who have gone to school to become pharmacists. It is not a PBM. It is not all this technology they talked about that makes that difference. Yes, we need the things that PBMs do. We need that data integration. We need those reports about those DEA (inaudible) situations.

But we've got it twisted by the way these gentlemen to my right are describing it. Somewhere in their -- in their testimony, they mentioned that the pharmacy is complimentary to the PBM industry. Well, I'll tell you what, as a professional, as a pharmacist, they've got that totally backwards.

They are -- they are the complements to us. It is our profession, it is our art, it is our science that, you know, in a sense they're -- they're getting in the way of. They become burdensome and they become fat, to use that word.

And I believe the reason why they're fat is because of the profits that they're extracting by the eloquent way that they've been able to -- to self-aggrandize themselves and do this great marketing thing and release a study the day of the hearing that's funded by them.

So, you know, rather than going on and on about that, I think we need to put this into perspective and put the power into the pharmacist's hand. We have the technology now. We might not have everything he's talking about but we have computers that bring -- bring up interactions and they say there's 100.

The only ones I seem to get are the ones refill (ph) too soon. We don't get these clinical edits (ph), we get them from our software. I get them from the online that I prescribed to for my clinical use and my pharmacy and very pharmacist knows that.

And we also -- we need one -- it'll be ideal if a person had one pharmacy and one pharmacist. You have all this data and yeah, people travel and all that kind of stuff but I think we need to get a health care system that directs persons to a pharmacy home just as they do a medical home.

When a doctor writes a prescription, that's the beginning of my job. You go to a doctor and you get a diagnosis and you get an examination and you some lab test that you want. His job is done to that sense. My job starts. And these guys are there to compliment -- compliment me in doing that and not get in my way.

ADAMS:  
Thank you.

My time has expired. I yield back.

GOODLATTE:  
Thank you, gentlewoman.

The gentleman from Michigan, Mr. Conyers, is recognized for five minutes.

CONYERS:  
Thanks, Chairman.

Mr. Snow, how has the health care bill complicated or made more convenient your life as a pharmacist?

SNOW:  
I -- I would tell you that the health care bill has not necessarily complicated my life other than the fact that underneath the policy Congress passed, the rules are not yet written.

So it's very difficult to manage my company and my 23,000 employees and set direction for that company when I don't know what the administrative rules are underneath the policy because many of the things that were promulgated are not effective until 2014 and 2015, that -- that is hard but I will stay.

I'm a big believer that the things we're trying to do as part of health care reform are important. Chairman Goodlatte mentioned a comment I made on the announcement that in fact health care reform is driving many mergers. It's happening with physicians and hospitals, hospitals are being bought by health plans, health plans are buying physician practices.

I'm not saying these are bad things. I'm saying that what is happening in our environment is people know that this combination in scale drives enormous efficiency that drives cost out of the system which is really at the root of what health care reform is all about so.

CONYERS:  
Who wants to add their view to this discussion? OK, then I'll call on somebody.

(UNKNOWN)  
(inaudible) efficiencies at the system is very important, very important. And people work together in doing that.

CONYERS:

Mr. Snow, you support the bill and its objectives?

SNOW:

I -- I support many elements of the bill and I would also say that the bill is a first step along an evolutionary path we're going to -- to need to do an awful lot more to finish the reform effort.

CONYERS:

Mr. Lech, have you ever heard of a universal health coverage?

LECH:

Certainly, Congressman.

CONYERS:

OK. How -- how does that figure in to your plans for health care for all Americans as an independent pharmacist?

LECH:

If a universal health care coverage means that every American has health care, then I'm 100 percent in favor of it.

CONYERS:

Everybody agree with that? You know, I don't get many volunteers for my questions. I -- I'm -- I'm wondering are you trying to -- see we have a fundamental philosophy here in -- in the lawmaking process.

My good friend, the chairman, thinks that this was an ill- conceived effort in health care. Do you, Ms...

KANWIT:

Sir, Ms. Kanwit. Yes, Mr. Conyers. I think portions of the bill are very, very beneficial. For example, I'm watching closely the portion on accountable care organizations, the Medicare demonstration project to see if that can drive cost out of the system and -- and get more value into the health care system.

CONYERS:

Do you think it's -- the bill is unconstitutional, Mr. Paz?

PAZ:

Sir, I'm not a lawyer. I will tell you that I think part of this -- of the bill, again, is good. Think we are one of the richest countries in the nation. And people should have access to health care. I think that we did not do enough to address the cost side.

I see it in my business every day, a lot of -- of wasted spend. The \$300 billion that Mr. Snow was discussing, we see it every day. We didn't address that, sir.

CONYERS:

Did you guys meet before this hearing -- no, you didn't. But what -- I'm trying to find out -- that's right, you're under oath, too. So you got to tell me the truth. Where -- where does this issue of pharmacy

practice-- we got three people for this bill, we got three people against the bill. How does the ObamaCare health care plan affect your business?

(UNKNOWN)

May I -- may I volunteer?

CONYERS:

Yes.

(UNKNOWN)

OK. The way to think -- I think about the president's health plan bill and Congresses' bill is that health reform is -- is a three-legged stool, it's access, cut (ph) and quality. We've done a good job yet beginning the process of trying to get universal access, fundamentally important.

However, we as a nation need to finance that access. And to -- to Mr. Paz's point I agree with him, we need to do more on the cost quality equation side to pay for the access. So I think that's where more evolution will occur.

And I think that's where the public/private partnership between health care providers and government is going to bring the -- the best result. I think it's under way; it's just going to continue to evolve.

You're already seeing some of the policies evolving as -- as we work with them and we learn that there's even a better way, that's -- that's expected.

CONYERS:

Can -- can I get a half a minute more. Chairman Goodlatte?

GOODLATTE:

Without objection, the gentleman is recognized for additional minute.

CONYERS:

Well now, how does all this saving from fraud, waste and abuse, how will that be affected by whether or not this merger is approved?

(UNKNOWN)

Under this merger, one of our -- our continuing focus is to being the best of both of our tools together to look for those gaps in care to find out where prescriptions aren't being properly written, and -- and contact the doctors, work with the pharmacist, work with the local pharmacies to make sure that, in fact, we can take that waste out of the system.

Many diabetics today are not getting drugs for hypertension and lower their cholesterol. It's a proven fact those are better for them. We're not doing it today.

I didn't find that...

GOODLATTE:

You know, you're the first -- if somebody else agrees with you in the panel, I've never heard of pharmacist that calls up doctors to tell them that they prescribed the wrong thing.

(CROSSTALK)

(UNKNOWN)

Oh, that happens all the time.

(UNKNOWN)

It happens all the time.

(UNKNOWN)

It may happen.

(UNKNOWN)

It happens practically daily.

(UNKNOWN)

Yeah.

GOODLATTE:

Oh, really?

(UNKNOWN)

That is a daily occurrence, sir.

GOODLATTE:

All right. Let me recognize my friend over here.

(UNKNOWN)

OK. Congressman, what I wanted -- I wanted to answer the question about fraud and abuse. I would suggest that the best thing that will combat the fraud, waste, and abuse would be more vigorous competition.

If these companies are forced to fine tune their operations in order to lower their cost so they could lower their bids to the customers that they seek to obtain contract from, that alone will -- will generate the best cost savings through saving fraud, waste, and abuse.

And I was going to respond to Congressman Watt when he asked what would be missing if these two companies combine. What will be missing is a national bidder in each of these accounts. When they have national accounts that they put out to bid every three years, what will be missing from the competitive landscape is a company that's capable of making a bid on those contracts.

(UNKNOWN)

In regard to fraud, waste, and abuse, if I could reference the document I mentioned, "Waste not, whatnot (ph)" it -- it goes on to show at least the waste part of it.

I think we need to differentiate between fraud, waste, and abuse. They're oftentimes lumped together. Fraud is fraud.

If it's criminal, it's criminal. That's pretty black and white. That's got to be dealt with in that way.

Waste can be underuse, overuse, excessive prescribing. So abuse could be narcotics that are taken too much, the dosages that are right for the patient or wrong for the patient.

But if you look at those pictures, these are things that I see -- these are things that every pharmacist where patients bring in bags of things that they have automatically been shipped from the drug (inaudible) firms.

A long ago, when I first started testifying, when I was a young buck, I testified in Pennsylvania in a hearing (ph) with then Senator -- state Senator Peterson. And the mail order companies at that time considered a drug called Accutane which is (inaudible) program, a program that you really need to be careful who gets it and how they take it and what happens to it after they get it.

They regard it and it was desperate (ph). They regarded Accutane as a maintenance medicine. 180 doses were being dispensed. And a teenager was taking these for maybe a week, all this extra medicine with a medicine that could cause -- known to cause fatal birth defects.

So this is pre-telling, I believe, and as far as the waste that happened, I think they could do a better job of fine-tuning that. Maybe a way they can do that is to allow the pharmacist who knows which patients maybe can use a 90-day supply because of their ability to manage their own medicines which medicines, because of cost or danger, might be drugs that shouldn't be 90-day supply.

To me, a pretty common sense thing. Let's take a patient at a time, a drug at a time, and not lump it all into maintenance drugs. And I think there's a problem with that because it's profit (ph) driven.

GOODLATTE:

The time of the gentleman has expired.

The gentleman from Pennsylvania, Mr. Marino, is recognized for five minutes.

MARINO:

Thank you, Chairman.

Mr. Lech, how would my legislation be a positive impact on independent pharmacies if it would be?

LECH:

I believe it would be because the ability for an independent pharmacy with one or two, or not many locations is at a disadvantage when compared to other folks that may be able to -- to negotiate certain prices -- may or may not be able to negotiate prices.

It would give us the ability to have access provided for the patient which I think the Federal Trade Commission needs to consider. I understand from the testimony, they are. I would suggest that a way that that could be done, it was -- is to get out of the office and into the pharmacy and actually go see face-to-face what happens in those pharmacies.

But it would give us the ability to have a fair level of playing field. We're not asking to be -- to be paid more money, paid more money.

MARINO:

OK.

LECH:

We just want to be able to compete and there're non-price issues also that can be addressed.

MARINO:

All right. I'm going to give a couple of more questions in here.

Mr. Paz, Mr. Snow, respectively, do you agree with that statement that -- that Mr. Lech has made?

PAZ:

Well again, Congressman, I am not a lawyer, but I don't believe that allowing anybody in our -- in -- in American business to collude make sense. Effectively, it allows a whole bunch of people to come together and negotiate price against...

MARINO:

Well, isn't that -- isn't that what you're doing? Isn't that what you do with a group of large chains who have more stores? They get a cheaper price?

PAZ:

No. Well, first of all, they don't necessarily get a cheaper price.

MARINO:

OK. Now, are you telling me that the volume business that you do -- I'm an independent individual on the pharmacy and let's just say X, Y, and Z owns a hundred stores. You're telling me that I'm going to get the drugs, generally speaking, at the same price as X, Y, Z pharmacy?

PAZ:

What I'm telling you, Congressman, is that what determines price is the amount of competition in a given area. We have stores in Alaska, North Dakota, and other areas that get paid much, much more than any other pharmacy.

Where there's a lot of competition, competition sets price as it should in our country.

MARINO:

OK, I understand that. You're dodging my question.

PAZ:

I'm not, sir.

MARINO:

Are you telling me that as an independent, I'm going to get the same price as somebody owning the hundred stores in my region?

PAZ:

What I'm telling you is that if you have a hundred stores in a given region and there's a lot of competition, the plan design ultimately determines how many pharmacies...

MARINO:

OK. What if there are a hundred stores with one company and there are three independent pharmacies? Are the independent pharmacies going to get the same price as the hundred stores?

PAZ:

I can't answer the question blank because it's not the same answer...

MARINO:

You know something, as a 18-year prosecutor, you are dodging my question and you do not want to answer it.

Mr. Snow, do you want to answer it?

SNOW:

Sure. I would like to. Thank you.

At Medco, we recognize the plight of the retail pharmacist who's an independent, does not have the scale, does not have the purchasing power of some of the bigger chains. It is not uncommon for our independent retailers to have higher reimbursement rates in our network than the more -- the-- the larger companies who have the ability to negotiate (inaudible) -- number one.

MARINO:

OK.

SNOW:

Number two, one of the things that are in place today and you may be aware of it, but I just want to say it for the record.

MARINO:

OK.

SNOW:

There are group purchasing organizations that many individual retailers join so that they can get purchasing scale relative to buying their drugs, buying the things that they put into their stores so that they can -- can at least begin to create critical mass to drive the kind of price that their competitors do.

MARINO:

OK, so I understand your answer. Thank you.

To either of you, Mr. Paz and Mr. Snow, do you disagree with my legislation?

SNOW:

I would say, sir, that -- as Mr. Paz said -- I'm not a lawyer. I would...

MARINO:

Gentlemen, stop with "I'm not a lawyer," OK?

SNOW:

I -- I would like the independent retailers to survive. I would like them to have the right footing in a way that it doesn't violate antitrust. So whatever the lawyers in the FTC and Congress decides, I

think what you're trying to do for the retail pharmacists is the right thing to do; how to do it, I'm not sure, but that's not my job.

MARINO:  
OK.

SNOW:  
But I agree with what you're trying to do.

MARINO:  
Thank you.

Do either of you own -- your companies own retail pharmacies -- Mr. Paz?

PAZ:  
No, we do not.

MARINO:  
OK.

Mr. Snow?

SNOW:  
No, we do not.

MARINO:  
Do you own mail-order businesses related to pharmaceuticals?

PAZ:  
Yes, we do.

SNOW:  
We are a mail-order pharmacy.

MARINO:  
OK. And am I correct in assuming that you do direct, your customers, to purchase from your mail ordering as opposed to independent pharmacies?

PAZ:  
If the client want to -- and again, I'm not trying to dodge your question, Congressman, but let me fully answer that question.

MARINO:  
Thank you.

PAZ:

Some -- some clients do not allow mail-order. Some clients want mail-order. It's a plan design decision that we administer for our clients.

Mail-order costs less than -- than retail pharmacies. There's better economics of scale.

MARINO:  
OK.

PAZ:  
We can deliver cheaper. So if the client directs us to, then we use mail-order. We don't...

MARINO:  
OK. Thank you.

Chairman, can I have 30 seconds please?

GOODLATTE:  
Without objection (inaudible).

(UNKNOWN)  
We have two at this moment.

MARINO:  
Thank you, sir.

GOODLATTE:  
Without objection -- the very generous motion of the Chairman from North Carolina is agreed to.

MARINO:  
Thank you, sir.

Gentlemen, you're saying that this merger -- in my legislation, (inaudible) with this, has nothing to do really with the merger or no merger. Do you understand that?

My legislation is to give the independent able to form a group to purchase stronger in a power situation where several individuals as opposed to one is purchasing drugs from any company. But are you saying that with this merger, and I'm going to put you both on the spot right now, that you are guaranteeing that you are going to be selling drugs to the consumer at a cheaper price than you're selling it now?

SNOW:  
Total drug cost with our book -- no, not drug by drug -- total drug cost will go down and absolutely will go down.

MARINO:  
OK.

SNOW:

That -- that -- and that really depends on our customers' design what the patient gets and what the payer retains. So we have Fortune 500 companies. As George said, they all specified plan design.

MARINO:

OK. Let me back here a moment. I get your answer.

(CROSSTALK)

MARINO:

I get your answer.

SNOW:

OK.

MARINO:

I do, sir. I understand it.

SNOW:

OK.

MARINO:

I'm on limited time here. But you said total cost -- now, coming from the business sector, I know what total cost means.

It can mean anything from -- it's going to be cheaper to maintain the building. It's going to be -- I'm going to be able to hire somebody less of a cost.

If I purchase drugs from you, if you're merged tomorrow, am I going to get them cheaper tomorrow than I will today from you independently?

SNOW:

Yes, you will.

MARINO:

OK.

SNOW:

And can I just explain my...

MARINO:

Please, go ahead. Yeah.

SNOW:

OK. The reason I said what -- the way I said it is that there are certain drugs where there is no other drug competing against. It's a single type of drug in the class, meaning, you have no leverage to get the price down. Many of the biotech drugs are that way.

But where there is competition and you have leverage, you can get better drug price. You can get better procurement prices for drugs -- absolutely.

MARINO:  
OK. And I think...

GOODLATTE:  
The time of the gentleman has expired.

MARINO:  
Thank you so much.  
Thank you, gentlemen.

GOODLATTE:  
The chair recognizes the gentlewoman from California, Ms. Chu, for five minutes.

CHU:  
Thank you, Mr. Chair.

I'm hearing from my community, pharmacists were very concerned about this merger creating even more buying power for PBMs. They are expressing concern that the large PBMs will leverage their market share to force pharmacies into even more unfavorable contract terms and that they'll have to make the decision to choose between inefficient reimbursement rates or exclusion from the PBM networks, and that they don't have the bargaining power to negotiate at a contract term, so they oftentimes find themselves agreeing to more unfavorable terms.

Mr. Lech, could you comment on that?

LECH:  
Well, I didn't get into the practice of pharmacy to eventually think that I would be forced out whether it would be via a decision of myself or someone else that made that decision.

The last thing I want to do is stop providing what I do to my patients and my customers and my consumers. And when the time comes, I'd like to transfer that perhaps to my sons who are both -- one is a pharmacist and one is about to be a pharmacist or to someone else if my sons don't want to do that.

But if there in a time when because of (inaudible) restrictions, whether it'd be price of non-price -- and when I say non-price, there's many dozens of things I could -- that'd be included in that. I can't deny that there may come a time when the decision to say, "I can't do it anymore" happens and it would be certainly not what I wanted to do, but what I had to do from a business perspective.

CHU:  
How much does your pharmacy do with PBMs?

LECH:  
With PBMs -- third-party, we call that -- probably 90. But these particular PBMs, if the merger were to happen, it would be over 50 -- that counts Medicare Part D and all the different components of (inaudible) processing.

CHU:

Mr. Wiesner, would you want to comment on -- on this issue about the contract terms?

WIESNER:

Sure. Just to go to your last question, currently, about 90 percent of our prescription volume is paid for by a third- party.

The two gentlemen, their particular group combined together would be one-third of our entire volume. From the standpoint when we're talking about unilateral contracts and things of that nature, puts us in a very precarious position.

We're in that position because that's one-third of my customer base. So if I'm presented with what I would say deemed to be an honorees (ph) contract, I don't have much wiggle room. And we are reaching very quickly a tipping point as it relates to our cost to dispense products which hasn't really been discussed today, but there've been quite a few studies, and the ability to us to at least receive that much as an equitable reimbursement for our activities.

So I think not only my company, but many companies have kind of reached the point in the entire process where we are having to take a step back and understand is this a viable activity we continue to engage in. We want to take care of our neighbors in our community, but we have some real concerns along that regard.

One last comment?

CHU:

Yeah.

WIESNER:

There is a little bit of a difference in my world (ph). There's a lot of talk about rebates from manufacturers and getting greater discounts with the rebates from manufacturers.

And what we're talking about are brand products for which there is not a generic. In my world (ph), because these gentlemen may get a rebate, that does not mean my cost to obtain that product is going down. So there're two different scenarios when you're talking about product cost.

CHU:

I see.

I'd also like to ask about the issue of transparency. The -- the merger of Express Scripts and Medco would result in one (inaudible) that PBM controlling one-third or 135 million of all American prescriptions, and so transparency will be a major concern for -- for a company that will be handling such a large amount.

And a concern for PBM transparency was recently raised in the March 2011 officer -- the Inspector General report which cited lack -- concerns about the lack of transparency with regard to PBM rebates in the Medicare Part D program.

And so, Mr. Gustafson, I'd like to know about wouldn't the natural assumption be that this concern would grow if this merger is -- is approved and won't the level of transparency decrease post- merger because employers and health plans would have fewer options and does not be in the position to demand greater transparency?

GUSTAFSON:

I think that's right -- I think that's right, Congresswoman. I think one of the things that competition does in this marketplace, in any marketplace, is it forces the seller to be more transparent because the consumer has more choices or in this case, the plan sponsors or whoever the customer is in that instance.

So I think that concentration to this market will allow the participants who remain to be less transparent and I think that's bad for the competition levels and it's bad ultimately for the consumers.

CHU:

OK. Thank you.

GOODLATTE:

All right, thank you, gentlewoman.

The gentleman from New York, Mr. Nadler is recognized for five minutes.

NADLER:

I thank the -- I thank the Chairman.

Mr. Gustafson, Mr. Watt discussed the issue of product markets. What do you see is the relevant product markets for antitrust purposes that should be analyzed as part of its merger? And in which product markets with concentration under the merger caused the most concern and could (inaudible) in any of these markets alleviate those concerns?

GUSTAFSON:

Congressman, I think that there's probably -- the FTC will ultimately decide there's more than one market here. There certainly seems to be markets that at this stage of our investigation that large plan sponsors is probably a market. The specialty drugs may very well be a market.

So I think that there's -- mail-order may be a market, probably not, but it -- but it's possibly a different marketplace. But ultimately, I think there's more than one market.

The question about whether divestiture would be a solution to this merger, it's probably too early to tell, but there are certainly some things that you could consider in terms of divestiture that would be useful. One is the -- the specialty drug companies that -- that these two merger partners own, another would be the mail-order businesses that they own or a part of that mail-order businesses because both of those instances would lessen their grip on the national accounts.

NADLER:

Thank you.

Mr. Snow, you testified that the merger would give the new combined company greater power to negotiate prices with drug companies and therefore would result in lower drug prices.

SNOW:

Right.

NADLER:

Would you say the same principle would apply if we were to say that Medicare could negotiate drug prices of -- with the pharmaceutical companies and that if we let them negotiate the prices instead of prohibiting them by law, the market power of Medicare would cause a great reduction in drug prices for Medicare?

(UNKNOWN)

The scale does drive better price. It does.

(UNKNOWN)

So that Medicare would have tremendous volume pricing power if the law were changed to enable them to negotiate and use their pricing power to negotiate cheaper drug prices instead of prohibiting them?

(UNKNOWN)

Technically, yes. I will also tell you, though, that it's not uncommon for PBMs in the private sector to bump up against Medicaid best price when they could have done better, had the government not set that floor. So it's a double-edge sword.

(UNKNOWN)

I -- I didn't follow that, you ...

(UNKNOWN)

So, there is already today Medicaid best price legislation that says that no one could -- no negotiated price that's better what -- than Medicaid.

(UNKNOWN)

It's lower?

(UNKNOWN)

And -- yes, so it -- they by definition must always have the best price.

(UNKNOWN)

And the best price is what Medicaid pays?

(UNKNOWN)

Yeah, it's what Medicaid pays. And it's what the -- the government has negotiated with that manufacturer in Medicaid. And all I'm saying is that -- that Medicaid best price legislation has become a floor below which we can't negotiate.

(UNKNOWN)

But we prohibit Medicaid from negotiating that price, do we not?

(UNKNOWN)

Medicaid demands. This is the same -- it's the same issue. They demand that they get best price which means the manufacturers says you can't do better than that. If government negotiates, manufacturers will say, "Well, you know, I'm going to have to keep the prices high because I can't

afford to do this," and they basically create artificial -- artificial floors below which you can't negotiate. It's -- it ...

(CROSSTALK)

(UNKNOWN)

I -- I -- I don't understand what you're saying at all. So let's go back to basics for a moment. I really just don't understand what you're saying.

(UNKNOWN)

OK.

(UNKNOWN)

And I'm -- I'm generally not that in -- incomprehending -- Uncomprehending. We had a major political argument that said Medicare -- I'm don't -- I'm not familiar to the Beta (ph) Medicaid, but Medicare should or should not be able to negotiate prices. And Medicare should negotiate prices because with fair volume pricing, you get better prices. That's the argument.

You're saying that if your two companies merge because you have greater market power, you're able to negotiate lower prices, which seems to be the same argument. And you said a moment ago that that would a valid argument that scale does matter.

Now, you're telling me that Medicaid ...

(CROSSTALK)

(UNKNOWN)

Yeah.

(UNKNOWN)

... has -- that they -- do they negotiate the price?

(UNKNOWN)

No, they have what's called Medicaid (inaudible).

(CROSSTALK)

(UNKNOWN)

OK. So in other words, they can't negotiate the price.

(UNKNOWN)

Right. So ...

(CROSSTALK)

(UNKNOWN)

OK, so that's a separate.

(UNKNOWN)

Yeah.

(UNKNOWN)

So they should be able to negotiate the price would -- would follow from your logic to get better prices.

(UNKNOWN)

Government as a whole, with their scale should.

(UNKNOWN)

OK.

(UNKNOWN)

(Inaudible).

(UNKNOWN)

That was -- that -- and fine. That -- that -- that was my (inaudible) -- my question.

(UNKNOWN)

OK.

(UNKNOWN)

We could save a lot of money if the government could use its scale to negotiate prices as your two companies could save money by combining and using your power skill to negotiate prices. Thank you.

Now, my next question -- let Mr. Lech. And maybe it's the -- I was going to ask this question, maybe it's what Mr. Marino was referring to before, I don't know. But small pharmacies, I understand, are not allowed to combine -- actually, Mr. Snow, small pharmacies are not allowed to combine to negotiate because that's a violation of anti-trust.

Now, we -- it seems to me that maybe we should allow them to do that, maybe that's what Mr. Marino was referring to in his legislation, to allow them to get together because then they could -- they could get presumably a better situation.

But you said a few moments ago, Mr. Snow, that you -- I think it was you who said that -- that -- that small pharmacies get together now in co-ops sort of ...

SNOW:

Yeah. In Group Purchasing Organizations ...

(CROSSTALK)

(UNKNOWN)

And that does not violate the anti-trust laws?

LECH (?):

No. But it doesn't achieve the negotiations that you're referring to because it's not binding on any of the pharmacies and the PSAOs (ph), I guess, a perfect world, what Mr. Snow said would -- would be true, that they're able to negotiate better prices. Reality is that it's not -- what has seen to happen.

(UNKNOWN)

Well, let me ask Mr. Snow one last question as I see my time has expired. It went very fast. Given the -- the -- the greater concentration that would result if these two -- if these merger went through. Would you think it'll be fair and right to allow the -- an anti-trust exemption for independent pharmacies so they could have a reasonable basis for negotiating with you?

SNOW:

I personally don't believe they need it because of us, because as I've mentioned earlier and George has mentioned earlier as well. We need retail pharmacies, they are a central of what we do. So ...

(CROSSTALK)

(UNKNOWN)

But in terms of enabling them to survive?

(UNKNOWN)

... (inaudible) natural competition to occur, you have to believe that companies are not going to do something that is not in their best interest. We need these retail pharmacies. As I mentioned in my oral testimony, 85 percent of all the prescriptions we do for all of our members come from retail pharmacy.

(UNKNOWN)

Right but you -- but you -- but you -- that's very nice but it doesn't -- it's not responsive to my question. My question really is, obviously, you want to get the best price you can from the pharmaceutical companies, and you want to sell the -- the -- the drug to the pharmacies, not to the lowest price possible.

From their point of view, they want the lower price, you're the middle man, right?

SNOW (?):

So, we're not wholesaler, sir. The retail pharmacies buy their own drugs and that we reimburse them for what they buy. We are not the wholesaler. We only buy drugs direct that go through our mail order.

LECH:

Yes, sir. That (inaudible) back to -- at the beginning of this conversation when Congressman Conyers asked who are these people, and where they fit in. I -- we welcome -- I wish to be able to wrap my arms around the PBM (ph) industry and speak with local purchasers of prescription insurance and talk to them as if I could trust everything that they're saying and promoting and marketing is -- is to be true.

But in the 30 years that I've been practicing, it's gone the other way. And that's why we need legislation like Congressman Marino has introduced. I would recommend that you read the legislation first.

What it does is it offers an exemption, but the exemption is defined. It is -- it -- it defines a marketplace. It's not -- it's not a countywide or a region wide or every independent pharmacy in the ...

GOODLATTE:

Mr. Lech, I hate to interrupt you, but the gentleman's time is long expired, and we will get to the (inaudible).

(UNKNOWN)

I -- I thank the chairman for his indulgence.

GOODLATTE:

Thank you.

The gentleman from Florida, Mr. Deutch, recognized for five minutes.

DEUTCH:

Thank you, Mr. Chairman. Mr. Chairman, as I brought up in a letter to the FTC chairman, I heard some real concerns from constituents in my district that the acquisition could result in diminished competition, could have a negative impact on healthcare costs and could jeopardize the overall quality of patient care.

And I'd like to focus on two of those, if I may. The first is cost, Mr. Snow, if I understood you correctly, you said that -- or if -- if you could elaborate, there would a \$1 billion passed back to consumers. I'd like to understand that.

And then, Mr. Gustafson, if you could -- after Mr. Snow explains, if you could respond because I think what you said early in your testimony was that past consolidations suggest that there will be higher prices for consumers.

So, Mr. Snow, could you speak first?

SNOW:

Absolutely, thank you.

So -- so we have contracts with clients today that have 100 percent pass through -- of our pricing of our rebates. So when a merger like this occurs, you actually combine best-of-the-breed contracting that is -- that is -- we currently have as independent companies today.

When you just look best-of-breed contracts between the two companies, post merger, it results in a \$1 billion of savings that by definition under our existing contracts with our clients, they get immediate benefit for. It goes right back. And when I say client, it's our employer customers and our health plan customers and our state government customers.

DEUTCH:

So Mr. Gustafson, could you -- can you help -- help me make some sense of this? It is also why I am concerned about the impact that's going to have in consumers?

GUSTAFSON:

Yeah, yeah. What I -- what I have testified about was that when they claim the \$1 billion in efficiencies, we need to make sure we document it because we've had a lot of consolidation in this

industry, where promises have been made. We have a data set. If we can go back and look when -- when CVS and Caremark merged, they made promises about efficiencies.

And when -- when (inaudible) ...

(CROSSTALK)

DEUTCH:

What -- what -- I'm sorry, Mr. Gustafson, what kind of promises were made and was the result?

GUSTAFSON:

Well, I'm -- I'm not familiar with the specifics of the promises as I sit here. But I -- I know that the -- the mergers were defended on the basis that they would provide cost savings which would be passed on.

And the data that I've seen suggests that the profits of these companies are soaring, which suggests that they're not passing it on, which suggests that they're taking whatever savings they get and putting them through to their bottom line.

DEUTCH:

I -- I appreciate that. I'd like to -- Mr. Lech, if I could turn to you for a moment. In your testimony, you talked about the gradual shift of small or medium size PBMs being bought up, large ones, and you mentioned that reduced competition hurts smaller pharmacies like yours.

Can you speak specifically -- can you -- can you help us understand what that looks like for your customers? How -- how is -- those negotiations with the PBMs that have changed? What impact has it had on -- on the customers -- on the consumers?

LECH:

Well, the -- the reason that we'll have a negative effect is, basically, because it's a take it or leave it contract. The -- the statement was made earlier that, you know, we're -- we're very business minded, savvy people and if we get a contract that -- that doesn't look good, we're going to say, "No." Well, that's hard to do.

And not only hard to do business wise, but hard to do in a humane kind of way. To say, "Congressman, I can fill your prescriptions anymore." So access to the pharmacy of their choice, and I believe also ultimately the price and the cost. What we've seen in all these claims of, we're going to reduce cost, we're going to reduce cut -- the prescription prices keep going up.

The sponsors of the plans keep paying more. The consumers are paying higher copays. The pharmacies are being paid less. So, where is the money going? And I would refer back to Mr. Gustafson's recent answer about those (inaudible) are going into the -- the corporate (inaudible).

DEUTCH:

OK. I'm sorry, can you just walk through that piece step by step. The payments to the pharmacies, the copays -- can you just walk -- take me to that a little slower.

LECH:

Sure. Year after year, we hear claims that the cost of medicine is going to go down. And we're hearing it again. And that was a guarantee. I believe I heard that the price will go down if this merger takes place.

Well, first of all, I can't see how that's going to happen. But as time goes by, year-by-year, prices continue to go up. So that money is going somewhere, OK, maybe the manufacturers because of the cost but look at all the players and what they do.

There's the plan sponsors, let's say the corporate employers of the -- of the world -- of the country. Their cost to ensure their folks for prescriptions are going up. The out-of-pocket expenses in the way of copays are rising for the consumer.

The rates being paid to the providers are less. So where is the -- (inaudible) increase (inaudible)?

DEUTCH:

And finally, if I (inaudible) that's all happened during a period of -- of consolidation?

LECH:

It's happened as consolidation has taken place.

DEUTCH:

Right.

LECH:

I -- I (inaudible) to directly attribute it.

DEUTCH:

Thanks, Mr. Lech.

(UNKNOWN)

Congressman, can I -- I ...

DEUTCH:

I -- unfortunately, I'm out of time. Thank you, Mr. Chairman. I yield back.

(UNKNOWN)

(Inaudible) can I answer some factual points here?

GOODLATTE:

We're going to allow some of the panelists to ask some additional questions, we'll give him the opportunity to do that if he -- if he chooses to.

(UNKNOWN)

(Inaudible).

GOODLATTE:

At this time, we will -- do a second round here, I'm going to ask a couple of questions myself and I yield to Mr. Watt and while I do that, I'll ask Mr. Marino to come up and take the chair, since I'm going to have to go to another meeting myself. And then he can ask his questions and yield to any other members who have questions they'd like to ask.

And I have two, first one to Mr. Lech. Community pharmacies have long complained about allegedly unfair practices by PBMs and PBMs have long had significant influence in the prescription drug markets, why will this merger make this alleged problems worst in your view?

LECH:

Well, it would take -- take it or leave it contracts and make it less people that I have to say take it or leave it to. It now is becoming a bigger percentage of -- of my business which makes it harder for me to negotiate. It gives me less leverage and again, I would love to believe that when they say they want to work with me and they need me, I -- I have not seen that.

It -- it's -- it's just talk. So as the company gets bigger, the ability for me as a provider, as a health care, you know, as a pharmacy, it becomes less of an opportunity or less of an actuality that I will be able to -- I'm discerning against the bigger party.

GOODLATTE:

Mr. Paz, do you want to respond to that based upon your ...

(CROSSTALK)

PAZ:

Yeah. Yes, please. If -- if you go back and look at the releases that have come out to the Department of Defense as one case point (ph).

GOODLATTE (?):

Yes.

PAZ:

We've heard testimony that in fact, are efficiencies through mergers and acquisitions hasn't been felt by our plan sponsors. The prices that we put forth in our Department of Defense contract, we've actually exceeded those. We've delivered a higher savings than was originally promised under the Department of Defense (inaudible) ...

GOODLATTE (?):

What about the small pharmacies like Mr. Lech?

PAZ:

Again, I go back to the same statements, sir. The -- they are a critical component of our offering. We do not want to see, Mr. -- Mr. Lech go out of business nor will we put him in that position.

What he fails to -- to mention is that we have access standards, both under Federal law and under client contract which require a certain length -- a certain period you have to go to be able to find a pharmacy for the health and well-being of our members. We comply with all those rules, under the federal standards and underneath this, you know, our client contracts is an important component of our offering.

GOODLATTE:

Mr. Lech.

LECH:

What Mr. Paz fails to tell you is that the Department of Defense is a special entity because through the mail, they're given larger discounts. Those discounts are not passed on as much to me as an independent pharmacy.

So, this -- this - economies of scale (ph) are different with the Department of Defense because their contracting ability is greater than your average corporate purchaser.

GOODLATTE (?):

The -- the savings are (inaudible) ...

(CROSSTALK)

(UNKNOWN)

(Inaudible).

(UNKNOWN)

(Inaudible).

(UNKNOWN)

I can't go back and forth too many times. Mr. Gustafson, you testified that these Express Scripts - Medco merger reduces the number of viable providers of PDM services to large plan sponsors from three to two. Why aren't Catalyst, OptumRx, and Prime Therapeutics which already handled plans for Fortune 50 companies, viable providers of PBM services to large plan sponsors? Catalyst has won contracts for such large employers as Ford Motor Company, Nike, Sprint, Waste Management, and Southwest Airlines.

GUSTAFSON:

They're not as big. And when these two -- and when these two combine they're going to be bigger yet. And when they take that combination, they're going to be able to extract more discounts on the side of the pharmaceutical companies. They're going to be able direct more to the mail order. They're going to have a bigger control of the specialty pharmacy products. All of that is going to make them more powerful, vis-a-vis the other PBMs.

OptumRx is a good example because they suffer from another, another potential problem. They're United Healthcare, their underlying parent -- I guess it is -- is a competitor of other plan sponsors. And so, there's been a fair amount written about the reluctance of Cigna or Aetna or something like that to use a PBM like OptumRx because of the potential issues with respect to data access, things like that.

But I think, I think the question that we ought to address in this is how big is big enough? I mean if we were talking about a merger of...

(UNKNOWN)

Under the antitrust law, that's not the issue that we address. The issue that you address is do they have market power that would preclude others from being able to enter the marketplace and offer competitive plans that would maintain the competition, that is in the view of, and certainly my view, in view of the law as it's written is a desirable thing to have.

GUSTAFSON:

Sure. I agree with that. What I was suggesting was how big is big enough with respect to the efficiencies they claim they can garner by getting together and being bigger. At some point, you know, there are no more efficiencies that can be gained by getting bigger. They only become able to extract the power that they have is you just...

(UNKNOWN)

Well, that's the underlying issue not how large they have to be and still maintain their efficiency. But let me yield to the gentleman from North Carolina, Mr. Watt, to see if he has any additional questions.

WATT:

Well, I got all kinds of questions. I'm not sure what they have to do with the merger, but I'm just trying to be able to be clear on how this industry fits together.

You got -- somebody help me if I'm leaving out somebody. You got the pharmaceutical companies. You've got plans. Those are the insurers, right? Or self-employed, self-insured employers, right?

(UNKNOWN)

Payers.

WATT:

Payers. You've got independent pharmacies as Mr. Lech. You've got chain pharmacies, that's Mr. Weisner. And CVS and Rite Aid and Walgreen's. You've got PBMs and you've got customers. Am I?

(UNKNOWN)

You haven't said Big Box Pharmacies.

WATT:

Oh, yeah.

(UNKNOWN)

Wal-Mart, Target...

WATT:

Retail, retail stores.

(UNKNOWN)

Right, the grocery stores.

WATT:

All right. Somebody explain to me quickly how all of these things fit together. Or I mean -- or does it vary from case to case? I know that the pharmacies, the pharmacy companies, pharmaceuticals make the drugs, right? I mean they got the patents.

The plans insure people. They cover. They pay for -- they pay somebody for the drugs. And so, between them and the customers, we have independent pharmacies, chain pharmacies, PBMs, retail, Big Box stores...

GUSTAFSON:

You missed a layer. You have the pharmacies. You have the manufacturers. You have the payers. You have the pharmacies and you have the consumers. In between...

WATT:

Well, there are some layers here that within the pharmacies, independent pharmacies, chain pharmacies, retail stores, PBMs, and I don't know how PBMs relate to independent pharmacies, chain pharmacies, retail stores. Somebody explain to me the role that the PBMs play in this.

(UNKNOWN)

Congressman, I'd be happy to do that. The PBM is a consultant to the plan sponsor. Companies are constantly looking at their cost and their offering of their drugs. There's drug manufacturers that make the drugs and there's pharmacies that dispense the drugs. There's doctors who write for the prescription.

Our job...

WATT:

I forgot about the doctors.

(UNKNOWN)

Yes. It's a very complicated process and we can even get a little more if we're going throw the wholesalers itself into the pharmacies. We'll leave them up for now.

WATT:

OK.

(UNKNOWN)

So what our job is to do, our main job is to help a plan sponsor meet the needs that it has to meet the healthcare requirements for its employee base. So, for example, a company that's in dire economic straits that has to cut out cost has to take some fairly tough measures in order to...

WATT:

So, you work for the plans.

(UNKNOWN)

We work for the plans.

WATT:

You're not, you're not in the space except that you own specialty pharmacy and mail order. Well, maybe, maybe I should ask this question. What jeopardy? Would this, would this merger still be viable if FDC required divestiture of your mail order and specialty drug? I mean, would this still be a desirable merger?

(UNKNOWN)

It depends to what degree that takes place.

WATT:

All of it. I mean, you say you work for the -- right.

(UNKNOWN)

Well, if I didn't...

WATT:

I don't have -- I don't have any agenda here.

(UNKNOWN)

Sure. If I didn't have...

WATT:

I know. When I used to practice law -- I say this quite often in this committee -- when I practiced law, I never asked a question that I didn't know the answer to. I have the freedom now to ask questions that I don't, that I don't know the answer to. I don't know the answer to this.

(UNKNOWN)

Yes. Well, mail order is a very important component to our offering as it helps us to strive down cost to those clients that need that type of an offering. There's also...

WATT:

So this would not be a desirable merger if -- if FTC says you've got to get rid of your mail order.

(UNKNOWN)

That's correct.

WATT:

And would it be a desirable merger if FTC says you've got to get rid of your -- what's the other thing?

(UNKNOWN)

Specialty.

WATT:

Specialty.

(UNKNOWN)

It would not, sir.

WATT:

OK. All right. That's all I've got. That wasn't a trick question. I wouldn't try and trip anybody up. I'm just trying to figure out where or how this fit together.

(UNKNOWN)

Thank you.

WATT:

I think I understand it better unless somebody got, got some other angle that they need...

(UNKNOWN)

Well, not really a different angle, just a couple of comments to take you back on some of your comments. When you're referring to chain pharmacy, NACDS, of course, the National Association of Chain Drug Pharmacies has a large membership. Overwhelmingly, that membership consists of very small regional chains, so they're not the large national chains that people...

WATT:

You're not CVS and Walgreen's?

(UNKNOWN)

They are members of NACDS, but if you look at my company we are a regional chain located in one state. And I believe in your state, there is a small chain that's located only in your state.

WATT:

What was that?

(UNKNOWN)

Kerr Drug.

WATT:

OK. I know...

(UNKNOWN)

So, if you think of it in that term, we are faced many, many times with the exact same challenges that Mr. Lech and the independent pharmacies are. We do not necessarily have that large scale, but we are an important part of those communities in that particular regard.

(UNKNOWN)

(Inaudible).

WATT:

My time has expired. Is it Karr or is it Kerr? K-A-R-R?

(UNKNOWN)

R.

WATT:

Kerr is correct. They pronounce it Karr?

(UNKNOWN)

Yes, Kerr.

WATT:

OK. All right. That's right. I thought -- I thought I have seen it, K-E-R-R, but then you said Karr, and I've never, never associated that with K-E-R-R.

(UNKNOWN)

Is it possible to make one last comment?

GOODLATTE:

Surely.

(UNKNOWN)

Sure. I think it's really important to understand the different channels for drug distribution. We're talking a lot about retail pharmacy. We're talking about mail order pharmacy. We're also talking about specialty drugs.

Specialty, we need to really keep on the radar screen per cost. The new products that are coming forth in the future, the vast majority of those are going to be specialty drugs. They may or may not be available in your community pharmacy. So that's an important ingredient to the success of any PBM as to how they manage the specialty program and it's also a great revenue source. So, I don't want specialty drugs to go unnoticed in this particular conversation.

And each of those different channels, whether they be retail community pharmacy, the mail order which they own, or specialty, which they own, exist under different contractual agreements. So, what I receive at my level versus their stuff (ph).

I -- just ask one.

GOODLATTE:

(inaudible).

WATT:

I know he wants all the time. It's the ulterior motive here, but that's all right. That's good. We all understand.

Ms. Kanwit, FTC has the authority I presume under this statute to require divestiture, right?

KANWIT:

They have remedies, sir. They have a guideline, not only merger guidelines but a remedies guideline along with the Department of Justice. And so, they can look at some divestiture issues in appropriate context but its very, very detailed about when they can look in and what the implications of divestiture might be.

WATT:

Mr. Gustafson, what's your take on the divestiture question I raised before (inaudible).

GUSTAFSON:

I think it's certainly something that the FTC should look at. I mean what makes this potential combination, a concern, is the fact that they do have the mail order operation and the specialty pharmaceuticals because, you know, increase the leverage they have in the marketplace.

And so, I think it's certainly an option that the FTC ought to explore. But I think that you heard that they're not interested in this merger if they have -- (inaudible) of those products.

WATT:

Can they explore, Ms. Kanwit?

KANWIT:

I have to response to that. Specialty is really critical as you just heard Mr. Paz's and Mr. Snow's comment. I mean, (inaudible) just came out with the multiple sclerosis drugs which cost upwards of \$42,000 (ph), \$45,000 a year. We're talking very, very expensive drugs. And one of the things PBMs do that the FDC has found is drive down costs by negotiating with pharmaceutical companies.

So, if you want a PBM to go and negotiate for a lower cost, you certainly want them negotiating on things like specialty drugs which, by the way, many of which are coming down the pipeline right now as they're really going to be critical on the decade coming ahead.

WATT:

But can they do that if they don't own the specialty? I mean, can they do that as an independent PBM as opposed to an owner of a specialty drug?

KANWIT:

Well, there are PBMs out there that do nothing but specialty...

WATT:

OK.

KANWIT:

...specialty companies.

WATT:

I yield back. The more questions I ask, the more questions I have, so I'm going to stop.

GOODLATTE:

Thanks, Mr. Watt. I'm going to yield myself for a couple of minutes.

Mr. Wiesner, what type of transparency would you, as a pharmacist, like to see concerning clarity from PBMs?

WIESNER:

Transparency is a large issue. If we look back on past history and past behavior, as I indicated in my testimony, there have been lots of allegations; lots of states attorney generals have brought charges against various PBMs. And that all stem from the fact that they are not transparent in their explanation of what their true costs are. They are not transparent in the rebate process. They basically have two contracts. One is with buyer, the payer of their sources; the other is with the provider retail pharmacy.

In each of those cases, those are all hidden costs in their particular organization. The allegations, of course, were not allegation. The assumption is that they are driving down cost. If they are driving down cost, as the gentleman said a little bit earlier, they would be able to return \$1 billion based on 100 percent transparency.

I guess my question is why can't we have a 100 transparency at all times? Why do we have to have 80 percent at a times and a 100 percent at others?

GOODLATTE:  
(inaudible).

SNOW:  
Can I respond to that?

GOODLATTE:  
Yes, sir. Mr. Snow, go ahead.

SNOW:  
I offer clients when we go market. They have choices. They can get the price discounts and we keep portions of rebate. Or they get a 100 percent of rebate. It's equal to the same net cost to them. It is their choice.

In our business, benefit design, contract structure is 100 percent always our client's choice. And by the way, everything they choose is auditable, so there is transparency. Some of the things that are being talked about, our history from a long time ago that has since been rectified because of the actions that occurred 10 years ago.

GOODLATTE:  
Mr. Snow, what I ask, does the consumer have that ability to obtain any information and to explore that transparency?

SNOW:  
At a consumer level, what we do today, we have taken this very far. We have smart phone technology and you can download the app for free where you, in fact, can, with your technology, look at the cost of your drugs at the various locations of those drugs.

You can look at the cheaper alternatives. You can discuss it with your doctor at the time of prescribing. We show them their co-pay, their co-insurance, what the net savings would be on an annual basis if they ask their physician to use an equivalent drug that was a generic.

We are making every step we possibly can to lever technology to create a well-informed consumer because we believe that also helps to help care system perform itself is, in fact, the consumer can become a prudent buyer of care and committed (ph) to that.

GOODLATTE:  
I have a question concerning, and I'm going to be fair on this. Mr. Snow, you, I think it was you that said you wanted to -- did you enter a document into the record a report of some nature? Or was it Mr. Paz? What was it? Could you explain to me what that document is and who prepared it?

SNOW (?):

Yes. It's a document that basically looked at the cost -- cost of drugs and if in fact, probably what percent of ways we can take out of the system. We can -- it equates to 20,000 reserves (ph).

GOODLATTE:  
Who prepared it?

SNOW (?):  
A group called PCMA, Pharmaceutical Care Management Association.

GOODLATTE:  
OK. Is that in any way linked with your organizations or is it a representative?

SNOW (?):  
We belong to that just like they belong to any CDF (ph).

GOODLATTE:  
OK. Now, Mr. Lech, being fair. You entered something into the record, correct?

LECH:  
I did.

GOODLATTE:  
What was that?

LECH:  
I entered in pictures that were sent in, actual pictures of medication that were in consumer's houses, of medication that was sent to them at times not requested.

GOODLATTE:  
OK. Who prepared that report?

LECH:  
The report was put -- the pictures were put together by NCPA from their members, but the information came from consumers.

GOODLATTE:  
OK. Thank you. Mr. Paz, as a consumer, would I have a choice in purchasing from PBMs your company that's consolidated specialty drugs and mail ordered drugs from where they, where they are purchased from or where they're sent from? Do I have that choice? Or is it your mail order company that I have to purchase those drugs from?

PAZ:  
In the majority of the cases, there's a few that you would not have a choice. But the majority of the cases, you would have that choice.

GOODLATTE:  
Is that offered to the consumer?

PAZ:  
Yes. The consumer decides which pharmacy to go to.

GOODLATTE:  
OK.

PAZ:  
And the consumer decided whether or not they want to use mail order. That's all of consumer choice.

GOODLATTE:  
Thank you. That is all. Mr. Lech, what's going up there?

LECH:  
You know what the option is that they don't use the mail order?

GOODLATTE:  
What was that?

LECH:  
They'll pay for a price.

PAZ:  
No, sir. That is not correct. The discount -- they pay at co-pay. They pay a co-pay at Mr. Lech's pharmacy or they pay a co-pay at my pharmacy and mail order. There is no difference.

GOODLATTE:  
OK. I don't want to get into a debate here, but it's noted. I have no further questions. Mr. Watt?

WATT:  
I have no...

GOODLATTE:  
No further question. I see no one else sitting here. Lady and gentlemen, I want to thank you very much for being here. It was little longer than we anticipated. I have some housekeeping to take care of.

Without objection, all members will have five legislative days to submit to the chair additional written questions for the witnesses which we will forward to ask the witnesses to respond as promptly as they can do so that their answer may be made part of the record.

Without objection, all members will have five legislative days to submit any additional materials for inclusion in the record. With that again, I thank the witnesses, and the hearing is adjourned.

List of Panel Members and Witnesses

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WITNESSES:

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DAVID SNOW JR., CHAIRMAN AND CEO, MEDCO HEALTH SOLUTIONS, INC.

JOSEPH LECH, OWNER OF LEACH'S PHARMACY, NATIONAL COMMUNITY PHARMACISTS ASSOCIATION

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