United States House of Representatives Committee on the Judiciary Subcommittee on Intellectual Property, Competition, and the Internet

Hearing on the Proposed Merger Between Express Scripts and Medco

Testimony of Joseph Lech, Independent Pharmacist and Member of the National Community Pharmacists Association September 20, 2011

Chairman Goodlatte, Ranking Member Watt, and Members of the Subcommittee:

Thank you for conducting this hearing and for providing me the opportunity to share my views regarding the Express Scripts-Medco merger. My name is Joe Lech of Tunkhannock, PA. I am the owner of 5 independent pharmacies in northeast Pennsylvania and have been a practicing pharmacist for 30 years. I am 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 prescription medicines.

I would also like to thank Congressman Tom Marino, my Congressman, for the active role he has taken in trying to level the playing field between community pharmacies and pharmacy benefit managers or PBMs. In particular, we thank him for introducing the "Preserving Our Hometown Independent Pharmacies Act of 2011" (H.R. 1946), which has been endorsed by NCPA.

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 backs. 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 soon as I drove up to the pharmacy, I saw a gentleman standing out in front. He had been evacuated from his house by boat and was unable to retrieve the 16 prescription medications he took on a daily basis. Thankfully, I was able to refill his medications. But what would happen in cases such as this if pharmacies like mine disappeared from the communities that rely on them? Unfortunately, pharmacy closings are happening on a regular basis.

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This is just one story. There are thousands of stories just like mine of community pharmacies stepping up and assisting patients in getting their much-needed prescription medications. The reason I am telling you this story is because these PBMs or “middlemen” already have so much control over the marketplace that it greatly concerns me about what could happen should this merger take place.

Over my 25 years in pharmacy, I have seen the large pharmacy benefit managers relentlessly gobble up smaller and medium sized PBMs to reduce competition. The result is a highly-concentrated, consolidated marketplace. Yet, drug spending continues to go up, not down. Currently, there are three PBMs that overwhelmingly dominate the national marketplace– Express Scripts, Medco and CVS-Caremark. As a health care provider, I am keenly aware of recent efforts toward consolidation within the health care marketplace; specifically consolidation within the PBM industry. I believe this will continue to negatively impact not only community pharmacies but more importantly the patients we serve. The recently announced proposed merger of Medco and Express Scripts will likely exacerbate the problems pharmacies face with respect to PBMs.

The merger of these two PBMs would create a “mega PBM”, specialty pharmacy provider and mail-order pharmacy with overwhelming power in markets that are critical to controlling health care costs. I believe the resulting merger will harm patients by reducing choice, decreasing access to pharmacy services 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, especially in certain defined customer segments. If approved, the “mega PBM” would control over 40% of the national prescription drug volume.[1]

The overwhelming size of this consolidation is enhanced by the fact that large national employers, unions, large health plans, insurance companies and government-sponsored health plans are already largely limited in their PBM choices. Moreover, smaller regional, captive, and niche PBMs are simply not viable alternatives when it comes to the size and scope necessary to manage and administer the complex prescription drug benefits for these large national customers. Post-merger, these large national customers will have even fewer drug benefit administration alternatives, which will allow the merged PBM entity to dictate plan design and benefit structures at the expense of purchasers.

Beyond the impact of the merger on the overall pharmacy marketplace, the merger would also create a dominant PBM with substantial market power in two specific submarkets: specialty pharmacy and mail-order services. The merger will combine two of the three largest suppliers of specialty pharmacy services, creating an entity with more than a 50% share of all specialty pharmaceutical sales.[2] This entity will have both the incentive and ability to reduce competition and prevent new competition in specialty pharmacy, an increasingly lucrative market.

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[1] Atlantic Information Services (“AIS”), 2010 data; J.P. Morgan, Healthcare Technology & Distribution, Gill’s Guide to Rx Channel – An Investor Handbook, May 10, 2011.
[2] Based on 2009 reported market shares of CuraScript and Accredo to AIS and estimates from Pembroke Consulting.

Also, the merger would likely force more customers into mail-order. The merger will create the largest mail-order pharmacy accounting for close to 60% of all mail-order prescriptions processed in the U.S.[3] The merged firm will have an increased incentive to force consumers to utilize their mail order business. One misconception perpetuated by the merging parties is that this switch to mail order will lower drug costs for consumers. Evidence demonstrates that mail order pharmacies consistently dispense more costly brand-name drugs and fewer generics than retail pharmacies. Mail order firms also play games with pricing benchmarks that are designed to deceive payers into thinking they get a better price by moving to mail order.

At the end of the day, the shift to more mail order will lower the rate of generic dispensing, ultimately raising drug costs. Another consequence of patients being switched to mail order from their local pharmacy is that in many cases that pharmacy will be unable to stay in business. Pharmacy closures are felt particularly hard in rural areas, where these community pharmacies also are the health care providers on the frontline when a natural disaster, such as a hurricane, tornado or in my case, excessive flooding, strikes.

Myths vs. Truth of the Proposed Merger

- ESI and Medco will say that this merger will drive out so-called "waste" in the health care system. Frankly, these are just code words for squeezing my pharmacy reimbursement as far down as they can and trying to shift as many of my patients as they can to their own mail order facilities. My pharmacy has no leverage with these PBMs which are able to exploit their vertical power over community pharmacies to the benefit of their own competitor mail order pharmacies. Imagine what this will mean for the 23,000 independent pharmacies when there are only two PBMs and one of them pays for 40 percent of all prescriptions. In my pharmacy, this merged company will pay for more than half of the prescriptions filled!

  Fewer pharmacies mean less competition. For your constituents in rural and urban areas where most independents operate, fewer pharmacies will result in poorer quality health care and higher costs to consumers. ESI and Medco have not said that they will pass on these alleged savings, and I'm skeptical given the enormous profits both companies have seen in recent years.

- ESI Medco will tell you that this will lead to greater efficiencies in the supply chain. Yet, past consolidation in the industry has not borne this out. These are empty promises that do not match reality once these mergers are approved. PBMs routinely deny patients the choice of where they fill their prescriptions by aggressively pushing them to their own mail order facilities. This merger is likely to make these types of anticompetitive actions and unfair business practices worse, particularly since a combined ESI Medco will be able to exert even more power over pharmacies.

- ESI and Medco will tell you that this merger will lead to patients more often taking their medications as prescribed – often referred to as "adherence." To the contrary, the evidence tells us that face-to-face interaction with their community pharmacist is the best way to modify patient behavior and increase medication adherence, not putting large quantities of drugs through the mail, hoping that they get to the patient, and then hoping that the patient takes them properly. Time and again our patients turn to us when their medications don't come on time through the mail, and they need our help in managing their medications.

[3] AIS 2011 data.

- ESI and Medco will tell you that this will be good for lowering costs, but there's reason to doubt them here, too. Everyone knows the fastest way to reduce drug costs is to maximize the proper utilization less-expensive generic drugs. Yet, community pharmacies dispense generics at a much higher rate than the PBM-owned mail order outlets because we do not have incentives, such as kickbacks from manufacturers, to dispense brand name drugs. For example, the generic dispensing rate at the ESI mail facility is 60%. It is 62% at the Medco facility. By contrast, community pharmacies dispense generics on average 72% of the time.

- ESI and Medco neglects to tell you that this merger, if approved, will cost our economy jobs and tax revenues due to the number of pharmacies that will likely be out of business because of the shift of prescriptions to out of state mail order operations. For each pharmacy clerk laid off, there is $3,000 in reduced tax revenue. For each pharmacy technician laid off, there is $4,041 in reduced tax revenue. For each pharmacist laid off, there is $15,900 in reduced tax revenue. This merger will harm small businesses, cost jobs, and hurt local economies, something our economy can least afford at this time.

In conclusion, I would add that I enjoy being a pharmacist and I believe I am making a difference for all the patients who come in to my pharmacy. However, I am very concerned that this merger could reduce patient access while ultimately leading to higher drugs costs due to the reduction in competition.

Thank you again for inviting me to testify before you today. I would be happy to answer any questions from the Subcommittee.