



Testimony of

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**House Subcommittee on Federal Workforce, Postal Service
and the District of Columbia**

House Oversight and Government Reform Committee

On

**H.R. 4489, the FEHBP Prescription Drug Integrity,
Transparency, and Cost Savings Act**

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Chairman Lynch, Ranking Member Chaffetz, and members of the Subcommittee, I appreciate the opportunity to appear before this distinguished subcommittee on the important issue of prescription drug pricing in the Federal Employees Health Benefits Program (FEHBP). As president of the National Treasury Employees Union (NTEU), representing more than 150,000 federal employees in over 31 different agencies and departments throughout the government, I am here to say we have a direct interest in ensuring that enrollees in FEHBP – whether currently working or retired – continue to have access to the prescription drugs and health care coverage they need, at affordable prices. I hear from NTEU members on a regular basis who diligently pay their ever-rising premiums for health insurance, only to receive reduced coverage and higher co-pays and co-insurance costs for their prescription drugs.

Chairman Lynch, I want to commend you for introducing H.R. 4489, along with Representatives Cummings and Connolly. Your bill addresses one of the root causes of the rising costs of insurance premiums – skyrocketing prescription drug prices – and the accompanying out-of-control process for obtaining drugs in the FEHBP program. The Subcommittee's June 24th hearing, and the subsequent Drug Pricing Forum last September, aptly highlighted the incongruity of having one of the largest enrollee pools – 8 million people – yet obtaining the worst prescription drug prices in government. FEHBP falls behind Medicare, Medicaid, DOD, the VA and others. NTEU was pleased to participate in last September's forum to help find innovative solutions to this dilemma and we are here today to pledge our continuing commitment to work with the subcommittee.

H.R. 4489 takes a giant first step toward containing costs in FEHBP. The transparency and controls proposed by your bill show enormous promise in bringing openness and sense to a process that is surrounded by secrecy and needless confusion, a process I will discuss later in this testimony. Similar transparency language was approved in both the House and Senate comprehensive health reform bills that are pending before Congress.

We were happy to see language in the Administration's FY 2011 budget calling for continued audits of FEHBP's prescription drug component by OPM's Office of the Inspector General (OIG), including oversight of pharmacy benefits managers. OPM estimates that approximately \$11 billion will be attributable to prescription drugs in the FEHBP program in 2011. (*FY 2011 proposed budget Appendix, p. 1189*). Continued OIG oversight should continue to be a force against fraud and for program improvement.

It is no secret that there is great controversy surrounding the pharmacy benefits managers (PBMs), and the way they operate. Coalitions of labor and consumer groups along with independent pharmacies have taken on this industry, and understandably so. Some PBMs have been investigated or sued because of their hidden negotiations and rebate policies. Some PBMs have been dropped by state programs for not opening up their contracts for review.

While we agree with many others who have a stake in seeing this industry called to account, I want to make clear that NTEU, as the largest independent federal government union, has one goal – to reduce costs in FEHBP for federal employees and retirees, and correspondingly to lower premiums. According to OPM's testimony, nearly 30 percent of its total claims

expenditures are attributable to prescription drugs. (*Kichak, June 24, 2009*) With a pool of 8 million people, FEHBP must ensure that it gets the best prices possible and ensure that savings are directed to the program. It is clear that something is radically wrong with the system when FEHBP faces the worst drug prices in government despite its huge pool of participants. OPM has been unable, thus far, to better leverage what should be a significant advantage.

The pharmacy benefits managers (PBMs) – who negotiate drugs for FEHBP carriers – are essentially middlemen in a complicated pricing process. In addition to retaining rebates and discounts from drug manufacturers, PBMs can pay pharmacies a different price for those drugs and are able to keep the difference. OPM’s own Inspector General testified before this subcommittee that an investigation of PBMs was initiated originally in 2003 because of concerns for enrollees’ health and safety by PBM practices. (*McFarland, June 24, 2009*) These included unauthorized switching of drugs, manipulation of receipt dates, use of non-pharmacy personnel, and dispensing violations.

While these specific issues appear to have been resolved, they stand as a reminder of the critical importance of vigilantly overseeing these private sector interests who play a direct role in enrollees’ pharmaceutical needs. The 2003 investigation underscores the underlying tenet of the problem in drug pricing. That is, OPM is not aware – and does not have access to -- the contractual arrangements between the PBMs and their customers. According to the Inspector General, “...the single most important issue which OPM must resolve is the fact that it is dealing with PBMs—which handle claims representing over 25 percent of fee-for-service health benefits costs—from a perspective in which the cost structures of the PBMs are utterly

nontransparent.” According to the testimony of Susan Hayes of Pharmacy Outcomes Specialists, who testified at the subcommittee’s June 24 hearing , “...even when the federal government does negotiate a fair contract with a PBM, PBMs paralyze the ability of the Federal Government to audit and make sure contracted provisions are truly met.”(*Hayes, June 24, 2009*)

FEHBP is a government run program made up of private sector plans. If part of the program – in this case the prescription drug component—cannot be audited, it is indeed not transparent. Common sense dictates that U.S. taxpayers, and especially FEHBP enrollees who saw their premiums rise by nearly 9 percent on average this year, or 15 percent if they were a single enrollee in the popular Blue Cross/Blue Shield standard plan, deserve better.

1. Increased Disclosure of Information.

By amending Title 5, H.R. 4489 essentially says if a PBM and carrier want to participate in FEHBP, certain conditions need to be met. NTEU supports this approach.

How can OPM to do its job and be a good steward for the public when it does not have access to the very information that will enable it to do so? NTEU supports requiring greater disclosure from the PBMs to safeguard against the kinds of secrecy highlighted by OPM’s IG and others.

Disclosure and the accompanying transparency are not new phenomena. The current Administration has required greater disclosure in government in general. The President’s FY

2011 budget proposes information and data sharing by federal agencies and individuals. It is only fitting for these billion dollar private companies who make a profit from government business to become more transparent. If PBMs want to participate in FEHBP, they should be held accountable, as H.R. 4489 proposes to do.

NTEU supports Sec. 2(h) of the bill entitled ACCESS TO PBM CONTRACT INFORMATION.

This section of H.R. 4489 will enable OPM to obtain the information it needs from the PBMs to determine why prescription drugs are unduly costly in FEHBP. Under Sec. 2(h) PBMs would be required to provide full access to their contracts with health insurance companies and plans. OPM could access information on arrangements the PBMs have with manufacturers and pharmacies. The plethora of information that OPM would have available through these kinds of disclosures—including corporate-wide rebate reports; rebate allocation methodology; benchmark pricing and various fees at different stages—will put the agency in a position to better do its job. We are not advocating public dissemination of proprietary information, but we are advocating for disclosure to OPM, as needed, so it can monitor the federal program.

2. Prescription Drug Rebates

On the issue of rebates, Mr. Chairman, your hearing brought out the fact that rebates on the purchase of drugs can be as high as 50 percent of the manufacturer's cost, yet rebates often go to the PBMs, rather than to the insurance plans or FEHBP. PBMs were originally intended to

handle administrative functions and perform duties associated with drug claims. In today's world, however, PBMs negotiate for drugs at discounted rates, and then receive hidden payments and rebates from manufacturers in addition to other fees and payments from health insurance carriers.

Other government-run health programs do not rely on various PBMs in the way that FEHBP does. It is our understanding that the Department of Defense TRICARE program which serves 9.6 million enrollees, including 7 million who use the prescription program, receives 100 percent of the rebates. TRICARE uses one PBM, and pays an administrative fee for its services. The rebate money is essentially recycled into the operations of the program. Under Medicaid, manufacturers are required by law to return certain rebates, and those who wish to have their drugs available for Medicaid enrollees are required to enter into rebate agreements with the federal government on behalf of the states. (*GAO-10-201 p.20*) We believe the current rebate arrangement under FEHBP needs to be adjusted.

NTEU's views on Sec. 2 (c) REIMBURSEMENT OF CARRIERS.

Under H.R. 4489, 99 percent of the monies received by the PBMs from pharmaceutical manufacturers for FEHBP business would be returned to the carriers. This includes rebates, market share incentives, drug switching programs, educational support, commissions, administrative or management fees, mail service purchase discounts, and the sale of utilization and claims data.

Mr. Chairman, this certainly is an improvement over the existing murky world of rebates and discounts on the part of PBMs. While Sec. 2 (c) will require the rebates to be returned to the insurance companies, NTEU would recommend additional clarifying language to ensure that funds recaptured will be dedicated to the FEHBP program to be used to keep enrollee costs down. NTEU will be happy to work with you on language to ensure that the funds which are now slated to be returned to the carriers are, in fact, funneled back into FEHBP, and that OPM has authority to monitor the process.

3. Consumer Protections in FEHBP

Many FEHBP participants are simply unaware of practices that affect the drugs they take, and the claims that have their names on them. While the field of health care is continually changing and technology is constantly advancing, consumers of health care deserve certain information and should not be in a situation where a large company that is buying drugs on their carrier's behalf is determining whether they get the drug their doctor prescribed, or making other health related decisions without their knowledge. NTEU supports several sections of H.R. 4489 that are consumer friendly.

NTEU supports the following provisions: Sec. 2(b) on drug switching; Sec. 2(d) on selling claims data; and Sec. 2(f) on timely explanation of benefits.

Drug switching – Provisions under this section prohibit a PBM's ability to require a switch to another drug without the prescriber's involvement, and unless a net savings to the carrier,

government, and patient is realized. We acknowledge that sometimes less costly drugs are available and can be appropriate. However, the PBM does not know what is best for the patient, and should not be switching drugs without the appropriate medical input. We support an end to that practice.

Selling claims data—OPM needs a stronger role in overseeing the sale of utilization and claims data by PBMs. While we question the practice of selling FEHBP claims data at all, at minimum, OPM’s concurrence should certainly be a part of the process before information is sold by private companies.

Explanations of benefits—Many FEHBP enrollees are used to seeing EOBs from their insurance carriers, but not from PBMs about their prescription drug prices. In addition to information about the specific drug, the section’s requirements concerning the drug’s price at various points in the process could enhance an enrollee’s comparative shopping for health insurance under FEHBP during the annual open season period.

4. NTEU Proposal

NTEU has long believed that OPM should investigate the possibility of buying prescription drugs off the Federal Supply Schedule (FSS), as the Veterans Administration (VA) and Department of Defense do. Their drugs prices are substantially lower than FEHBP’s.

Ten years ago, I testified before Congress in favor of a small pilot that OPM had approved, for the Special Agents Mutual Benefits Association (SAMBA) health care plan which would have allowed the small plan of 17,000 members access to the FSS for its mail order prescription drug program. SAMBA argued it could save 3 percent annually in enrollees' premium share by buying directly from the government as the VA was doing. Overall savings would have been \$2.4 million annually for the plan in 2000 dollars.

NTEU supported it, OPM approved it and it was ready to go ... until the pharmaceutical industry – whose profits 12 years ago were estimated at \$26 billion -- pulled out, and refused to participate in the plan.

NTEU is interested in revisiting this issue and finding a way to require a pilot or demonstration project to take another look at statutory pricing. NTEU would support such a demonstration project to examine hard numbers associated with the direct purchase of drugs from the FSS through FEHBP, and we would support adding a provision on this to H.R. 4489. I believe this approach shows cost-savings promise.

Conclusion

In summary, we have a long way to go to bring prescription drug prices under control and reduce FEHBP's costs to the taxpayers, and enrollees.

However, NTEU believes that H.R. 4489 takes a giant step forward in addressing underlying contributing factors to FEHBP's rising health insurance costs. With better

transparency, accountability, standards, and increased OPM oversight, the legislation is on track to reduce cost and deliver a better deal for our federal employees and retirees. We stand ready to work with the subcommittee on this.