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Statement of

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on behalf of

National Community Pharmacists Association (NCPA)

Hearing on

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

United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Federal Workforce, Postal Service, and the District of Columbia

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Chairman Lynch, Ranking Member Chaffetz and Members of the Subcommittee. My name is Richard Beck and I am testifying here before you on behalf of the National Community Pharmacists Association (NCPA) in support of H.R. 4489. NCPA represents the interests of pharmacist owners, managers and employees of more than 22,700 independent community pharmacies across the United States and we appreciate the opportunity to address the topic of Pharmacy Benefits Management (PBM) regulation.

NCPA has long championed the need for both federal and state oversight of pharmacy benefit managers (PBMs) due to the problems our members and their patients continue to face in dealing with these unregulated entities. PBMs have been permitted to operate virtually unchecked since their inception—slowed only by the increasing amount of litigation alleging fraudulent and deceptive business practices filed against the PBMs each year.

I am also the Executive Director of the Texas Pharmacy Business Council. This is a new organization that is a collaborative effort between American Pharmacies, an independent buying co-op and the Academy of Independent Pharmacists--Texas and we represent approximately 1700 community pharmacies in Texas. As an organization, we have been strong advocates for PBM transparency legislation in our state legislature, and I will share with you in my testimony today, some of our experiences and lessons learned from our advocacy activities.

First I would like to speak in support of H.R. 4489, a crucial piece of legislation that would provide the Office of Personnel Management (OPM) greater insight into the inner workings of the various PBMs that currently manage the prescription drug benefits for the 270 different FEHBP health plans. Armed with this vital information, the federal government would be able to make more informed decisions about the services—and the true costs of such services—that are being provided by the PBMs to the FEHBP, and in turn, federal employees.

The state of Texas has conducted two studies examining the value of transparency in PBM contracts and has concluded that the disclosure of the business practices of PBMs in their dealings with government entities is essential to ensuring that the agency—be it state or federal—is receiving high quality, cost effective services from their PBM.

We strongly support the following highlights of the bill:

Requiring Reporting and Pass Through of Manufacturer Rebates: This bill would grant OPM access to crucial data including reports on the rebates collected from manufacturers. It would require that PBMs disclose and pass through 99% of rebates and other compensation earned on behalf of plan members. This will prohibit PBMs from amassing excessive profits at the expense of patients, federal employees and the Federal government, while retaining market incentives for PBMs to negotiate the highest rebates possible.

Exposes PBM Mail Order "Gaming": We also support the provisions of the bill that would expose the games that PBMs play by using different reimbursement bases for prescriptions dispensed by mail order pharmacies compared to retail pharmacies. Using repackaged drugs in many cases, PBMs assign their own price to these mail order drugs.

This enables the PBMs to "play the spread" to the detriment of plan sponsors and patients alike. This practice gives the illusion that they are giving better discounts to FEHBP plans, when, in fact, the base price may be artificially inflated. Because of undisclosed lucrative manufacturer rebates, PBMs have strong incentives to push higher-cost brand drugs through their own mail facilities, rather than lower-cost generics.

Assures Patients Receive Necessary Medications: The bill will also ensure that beneficiaries receive the prescription drugs actually prescribed to them by their physician. It would prohibit the PBM from "drug switching"-- requiring patients to take an alternate drug for which the PBM receives a significant rebate -- unless the change is approved by the provider and results in actual savings to the plan and ultimate consumer.

Prohibits PBM Ownership of Retail Pharmacies: This bill would eliminate the conflicts of interest that are inherent when a manufacturer exerts a controlling interest in a PBM or when a PBM owns a controlling interest in a retail pharmacy. Nowhere is the need for a prohibition on this type of ownership more apparent than in the recent CVS Caremark merger.

This PBM monolith is a primary provider of pharmacy benefits to the FEHBP program. The Federal Trade Commission (FTC) recently opened an investigation of the anti-competitive and anti-consumer practices of this PBM, which have been well documented through hundreds of examples collected by pharmacists and patients. The bill would also prohibit the PBM from forcing participating pharmacies into certain contract terms as a condition of participating in a particular pharmacy network.

Texas PBM Studies Indicate Need for Transparency and Oversight

In the past few years, the state of Texas conducted two separate studies that have examined PBM business practices and the need for transparency and accountability in PBM contracts. In December 2006, Lieutenant Governor David Dewhurst called for an interim study of PBM issues by a joint committee made up of members of the State Affairs and Health and Human Services Committees in the Texas Senate.

This body issued a report detailing many of the questionable drug pricing practices used by the PBMs and recommended that the state take steps to ensure that they were getting "the most bang for their buck" with regard to their pharmacy benefit management services. The joint committee specifically recommended a closer examination of state PBM contracts to ensure they were truly delivering the cost savings promised to the state. The joint committee also recommended the consideration of legislation that would prohibit unnecessary delays in dispensing prescription medications to consumers and prohibit abusive auditing of pharmacies by the PBMs.

In response, the Texas State Auditor's Office conducted a study of state PBM contracts and issued a report in 2008 entitled, *Pharmacy Benefit Manager Contracts at Selected State Agencies and Higher Education Institutions*. This report looked at the PBM contract agreements entered into by the Teacher Retirement System, the Employees Retirement System, the University of Texas System and the Texas A&M system.

The results of this study clearly indicated that the state agencies needed to ensure that their PBM contracts did not unduly restrict their rights to audit the PBM and that the contracts needed to clearly specify costs, discounts and other fees associated with the services provided by the PBM to ensure that the agencies clearly understood the true costs and discounts associated with their plans. This report also went on to specify that state PBM contracts should clearly specify whether any "drug switching" would be permissible, the steps that would be taken to protect the personal data of plan members and whether the PBM would be permitted to sell any form of plan data. The report indicated that the PBM should disclose any policies, practices or business relationships that could conflict with their obligations to the plan sponsor.

Texas PBM Legislation Had Significant Positive Effects on Patients and Generated Savings

During the 2007 Texas legislative session, H.B. 3454, a PBM transparency bill that bears a striking resemblance to H.R. 4489-- currently under consideration before you-- passed both House and Senate Committees and the full Senate but ultimately failed due to time constraints.

This bill would have required 100% pass through of manufacturers rebates to state plan sponsors, the disclosure of any conflicts of interest, the protection of confidential plan member information and full audit rights for plan sponsors. This bill enjoyed bipartisan support but was vigorously opposed by the PBM industry who claimed that such transparency would surely raise costs.

Building on the concepts enumerated under the 2008 Report, and the legwork that had gone into the 2007 legislation, the Texas Pharmacy Business Council worked with a Texas Representative to introduce H.B. 4596 in 2009. This bill would have implemented the Texas State Auditor's recommendations by establishing uniform contracting criteria for PBM services, thereby significantly improving the negotiating position of the state and benefitting taxpayers.

This bill was poised to pass the House easily but was derailed due to a constitutionally mandated end of session. When it became apparent that the bill would not have sufficient time to pass, the Texas State Business Council turned to SB 704, a limited PBM transparency bill that sprang from the same 2008 Texas State Auditors Report. We were able to amend some elements from H.B. 4596 into this bill which ultimately did pass. This bill allows Texas state agencies to share the terms and conditions of their PBM contract with other state agencies as well as grants the agencies full audit rights.

In Texas, we plan to pursue follow-up legislation to build upon the transparency bill that we were able to pass in 2009. Specifically, we hope to pass legislation with many of the same provisions that you have before you in H.R. 4489. In addition, we plan to include provisions that would protect pharmacies from unfair auditing practices by the PBMs and that is something that we would recommend could also be added to H.R. 4489. We are hopeful that H.R. 4489 could set a standard and serve as an example for all future state PBM transparency legislation.

The two PBM studies conducted by the state and the various pieces of related legislation that have been considered have had a positive impact on content and terms of subsequent PBM contracts in the state of Texas and have provided an invaluable education to state legislators and decision makers about the critical need for PBM regulation. The Texas State Employees Retirement System (ERS), who initially along with CVS Caremark opposed the 2007 PBM legislation, has reported that they have incorporated the elements of that legislation (including the 100% pass through of rebates) in their PBM contract with CVS Caremark and were projecting a $260 million savings over four years. Curiously, although CVS Caremark has apparently agreed to these contract provisions, they and the other large PBMs continue to oppose state and federal legislation to recognize these fundamental principles in state and federal law.

The measures included in H.R. 4489 are all ones that have been recognized by the Texas state agencies and legislators that we have worked with as critical to ensuring that the government entity, and in turn the taxpayers, are receiving a fair return on their investment.

Also, passage of this bill would ensure a degree of consistency in all of the PBM contracts that fall beneath the FEHBP. This is a concept that was recommended by the Inspector General's Office of OPM in their testimony before this committee in June of 2009. In addition, the Texas bill that recently passed the state legislature promotes this same contract coordination in that it permits state agencies to share details of their PBM contracts with other state agencies.

Areas for Further Discussion

The current language in the bill establishes that the amount that the carrier plan may pay a PBM for a prescription drug may not exceed the drug's average manufacturer price (AMP). The use of AMP as a pricing benchmark for the carrier, and in turn the pharmacy provider, is problematic for community pharmacies. If AMP were to be used it would need to be significantly redefined and increased in such a way that truly reflects the retail pharmacy acquisition cost of a prescription drug, as well as updated to be a more real-time benchmark. However, we understand the Committee is willing to discuss this aspect of the bill and we remain confident that a compromise benchmark can be reached that will satisfy the needs of all parties. Also, we suggest that the committee consider including some provisions to protect pharmacies from the egregious and aggressive auditing practice of PBMs.

Conclusion

In conclusion, I strongly urge you to pass the bill before you today. The PBM industry—as they have done in Texas-- is likely to use scare tactics and attempt to convince you and the American taxpayers that transparency could be harmful and expensive and that they "need" secrecy to administer the drug benefits for the federal government. There is simply no credible evidence that transparency has increased costs. In fact, evidence suggests to the contrary. I urge you to reject this paradoxical reasoning and insist that OPM be granted the disclosures and necessary terms to ensure a fair contract to curb unnecessary prescription drug spending. Thank you for your leadership and for the opportunity to testify at today's important hearing.