TRANSCRIPT November 17, 2015 COMMITTEE HEARING REP. TOM MARINO CHAIRMAN

HOUSE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL, AND ANTITRUST LAW

WASHINGTON, D.C.

REP. TOM MARINO HOLDS A HEARING ON THE STATE OF COMPETITION IN THE PHARMACY BENEFIT MANAGER AND PHARMACY MARKETPLACES

The chair recognizes Mr. Collins, from Georgia. COLLINS: Thank you, Mr. Chairman.

You know, sometimes I think when I fly in here I fly, and I've made this statement to my district before, that we fly into a wonderland of where reality doesn't matter anymore. Case in point, many of the things that I've heard this afternoon give me cause to believe, yes, we're there again.

And this is an issue with community and independent pharmacists that, you know, play a critical role in my district in rural northeast Georgia.

Mr. Chairman, ask unanimous consent to enter into the record a report from the association representing senior-care pharmacies on MAC pricing data, a letter from Blue Cross and Blue Shield on compounding pharmacies, and several statements and examples of PBM interactions from community pharmacists.

MARINO: Without objection, so ordered.

COLLINS: Look, I appreciate our witnesses being here. I appreciate the chance to have a discussion. But to be truthful, I'm very discouraged by what I see in the pharmacy landscape.

Ms. Bricker, you state in your testimony the PBM marketplace is extremely competitive. That's an interesting statement since three companies, Express Scripts, CVS Health and OptumRX, control about 80 percent of the PBM market, which translates into 180 million lives. Not a great deal of competitiveness there.

As Mr. Arthur knows too well, community pharmacists routinely incur losses of approximately $100 or more on many prescriptions because PBMs or insurance middle-men reimburse pharmacies well below their cost to acquire and dispense generic prescription drugs that have skyrocketed in price. This is one of the most pressing areas that I believe demands congressional action.

PBMs can wait weeks and months to update reimbursement benchmarks that they use to compensate pharmacies while drug prices increase virtually overnight.

That's why I introduced H.R. 244 dealing with this issue of transparency and would encourage folks to be a part of that.

Now, one of the things that's been interesting to me today is discussing mail order since PBMs own their own mail-order pharmacies. I've seen information leading me to believe that a real incentive exists for them to steer patients toward mail-order delivery. In fact, I've seen firsthand a fax received by a community pharmacist from OptumRX indicating that he could not mail patients their prescriptions. Less than a month later, a patient gave that pharmacist a letter mailed to them from OptumRX touting savings they could see if they got their prescriptions mailed from the PBM mail- order pharmacy.

While the letter states the patient is free to continue using a retail pharmacy, how sweet, it requires notification to an insurance company and it is likely that many patients won't have time or knowledge to know that the mail order is not mandatory.

This is extremely concerning from an anti-competitive standpoint and a patient care setting. Mr. Chairman, I ask unanimous consent that both these documents be made part of the record. Mr. Chairman, unanimous consent to make these part of the record. MARINO: So admitted. COLLINS: All right.

And recently -- and given that CMS has also recently finalized Medicare Part D requirement that allows PBMs to automatically autoship new prescriptions without express beneficiary consent, this is of particular concern, and especially to one certain gentleman that happens to be very close to me, and that is my father.

Mr. Arthur, can you share your experiences regarding PBMs urging mail-order delivery of medications over filling them in the store? Has this affected your pharmacies and other pharmacies? And regardless of your views about PBMs and their practices, why should we be concerned? And if you can narrow that down.

ARTHUR: I'll take your last question first, if I may. And I think Chairman Conyers mentioned, it was back in the early 2000s, Campbell-Conyers which attempted to provide a limited antitrust exemption for independent community pharmacy, I can assure you that circumstances in the marketplace have deteriorated dramatically since that time.

So this is a very pressing issue and I think, you know, it's interesting. We've spent a lot of time this afternoon talking about one of the primary goals, meaning to drive generic utilization. It's interesting to note that the generic utilization rate in independent community pharmacy far exceeds that in mail order or any other sector.

COLLINS: Well, thank you, Mr. Arthur. I appreciate that. ARTHUR: Thank you, sir.

COLLINS: I want to turn to Ms. Bricker. And you have talked about it in response as well. You talk about teams of people that look at your MAC list, your transparency list, teams of people that do this.

I want to give you a couple of examples on how you actually look at this. And you said within your seven days. If a pharmacy -- this is a recent example released from (inaudible). It says, if a pharmacy filled a prescription of Omeprazole, a common anti-psychotic, on April 16th, 2014, Express Scripts reimbursed that

pharmacy $1.20. If the pharmacy filled the same prescription the next day, the 17th, it reimbursed only 20 cents. On the 18th, you paid another amount, this time 80 cents. Another one was potassium chloride, 45 cents on the 22nd of April, 26th of April 33 cents, and on April 28th 52 cents.

One, I just have a direct question, Ms. Bricker. Do you all have two sets of MAC lists? Are there two sets of lists out there? Do you have two lists for MAC pricing?

BRICKER: We have multiple MAC lists, yes.

COLLINS: OK. What about you, Ms. Pons?

PONS: Yes.

COLLINS: OK. Is that just to keep the ball from being hidden from community pharmacies?

BRICKER: No, we have multiple clients.

COLLINS: You have multiple clients. OK. So you prefer ones over the others?

BRICKER: We make our clients lists match what our...

COLLINS: Never mind. The issue that I have, and I appreciate that, and the question is answered. I hear from pharmacies in my community that reimbursement on MAC appears to be arbitrary and has little connection to actual price. These examples seem to indicate that.

Can you please explain the disparities in MAC pricing you pay to these long-term-care pharmacies, Ms. Bricker?

BRICKER: So I don't actually know the acquisition cost of any given pharmacy. Our policy is to survey the market based on a number of price points that are available, both confidentially to Express Scripts as well as public in an attempt to respond in kind to the market.

And so we make every effort to ensure that we're reimbursing a fair amount for prescription drugs from a generic perspective.

We have an appeals process that if we get it wrong, a pharmacy can file an appeal and provide us additional evidence.

COLLINS: Ms. Bricker, have you ever told a pharmacy that if they appeal any more that they would be cut off from their plan?

BRICKER: No, I have not.

COLLINS: Not you personally, your company?

BRICKER: I am not aware of ever making that statement, no.

COLLINS: Ms. Pons?

PONS: I'm not aware either.

COLLINS: Will you answer the question, long term, that I asked to Ms. Bricker as well on MAC pricing disparities?

PONS: Yeah. I actually have a very similar answer to hers in the sense that we do our best to try to estimate what we think people are buying at and put a reasonable margin on that because we want them to dispense generics.

COLLINS: OK. So would you find -- if I told you that I know of pharmacies who have been told if you appeal we will deal with it, in your contract you cannot appeal this, would you both find that egregiously appalling?

BRICKER: I'm not aware of Express Scripts ever making a statement like that.

COLLINS: Not what I asked. I said, but if they were told that a pharmacy was told that, would you find that appalling that your companies would say that?

BRICKER: Yes, I actually would agree with you. You know, the appeals process is there to ensure that we are responsive to the market.

COLLINS: Well, I think there's a concern because there is a disconnect because this is what's being told.

I think the concern that I have here is all-in-all in this playing field there needs to be a level playing field. There needs to be a playing field for independent pharmacies as well as the other companies involved in this market. Right now it's not.

And you can talk about it all you want and we can go into different pricing and we've already talked about multiple lists and we talk about the appeals process and we also know from pharmacists who have been told if you appeal more we will cut you off.

What is even more appalling to me is when my local pharmacists across this country try to speak out about this they receive letters and discussions from PBMs saying if you make too much noise about this your contract could be in jeopardy. That is not right.

I will continue to fight this. And if you don't believe that it's true, it is true. And when we understand this, here's my concern. In the coming future, because I hear from my pharmacists all across this country and in northeast Georgia, if it continues the way it is they will be closing. And all those wonderful savings that are being donated from PBMs are going to be lost in closed businesses and closed lives.

And I just have a question. Who will my folks in my district of Georgia call when they need someone at night and their local pharmacist is the one they trust?

Ms. Bricker, they're not going to call you. They're not going to find you in St. Louis.

They're not going to find you, Ms. Pons. They're going to try and find their local pharmacist who has been closed because of the anti-competitive nature of this field. This needs to be addressed.

With that, Mr. Chairman, I yield back.