

**Dennis Wiesner, Senior Director of Privacy, Pharmacy and Government Affairs,  
H-E-B  
Oral Testimony, House Judiciary Subcommittee on Intellectual Property,  
Competition and the Internet  
September 20, 2011**

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify. My name is Dennis Wiesner. I am a pharmacist and have 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 employers. There is 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 mega PBM to manage their prescription benefits. It would control over 40 per-cent of the national prescription volume, 60 per-cent of the mail order pharmacy market and more than 50 per-cent of specialty pharmacy sales.

Patients in particular will be harmed, through reduced or no choice of their pharmacy providers, decreased or limited access to essential pharmacy services, separation of their prescription medication records that could result in potential adverse patient health outcomes, disruption to normal timely prescription service to the patients, and potentially decreased medication adherence. Reducing patient choice and access will lead to higher prescription drug costs, potential adverse patient outcomes, and higher downstream health costs.

Do PBMs actually reduce healthcare costs? There is no proof that they pass along their purported savings to 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 a coalition of over 30 State Attorneys

General, have resulted in over 370 million dollars in penalties. It has been found that PBMs have accepted rebates from manufacturers in return for placing higher priced medications on prescription drug plans' formularies, switched customers to the higher priced drugs and benefited from both the rebate received and 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 to 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. That is one reason we oppose the merger, and seek legislative relief on PBM practices.

Pharmacies would be powerless to negotiate equitable reimbursement terms.

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

The Butt family founded H-E-B 106 years ago with a firm commitment to serve all the citizens in our communities. That commitment is stronger today than ever. However, being able to continue serving 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 firsthand the unilateral nature of these contracts. They are allowed to establish the basis of cost for the prescription medication; to change that basis of cost with limited or no notice, especially for generic medications; and to second guess or override a physician's prescription order. Claims submitted to the PBM and approved are routinely reviewed retroactively and payment recouped due to inadequacies in the PBM claims adjudication systems. My company experiences these and other examples each and every day.

Our H-E-B health benefits team provides healthcare services to over 140,000 individuals. They feel strongly this merger would further limit competitive options and result in increased total costs, especially administrative fees.

Pharmacists help to ensure that patients understand their medications and take them as directed. Pharmacists 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 and monitoring, and health education and screening programs. Together, these services improve patients' health, and reduce costs.

As I said, the situation with PBMs has worsened through consolidation. Because of that, we support legislation to reign 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 through 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 ability to engage in similar egregious conduct to the detriment of consumers, payers, and pharmacy providers.