Senator Mike Lee
Questions for the Record
Michael J. Bettiga, National Association of Chain Drug Stores

1. In your written testimony, you state that "[t]he ability of PBMs to drive prescriptions to their own mail order facilities is inherently anticompetitive." In a 2005 report, the Federal Trade Commission concluded: "[T]he prices for a common basket of prescription drugs dispensed by PBM-owned mail order pharmacies were typically lower than the prices charged by retail pharmacies. The study also found competition affords health plans substantial tools with which to safeguard their interests. Consumers benefit as a result."

    a. Do you dispute the FTC's findings?

    Response: We believe that some of the FTC's conclusions are flawed because PBMs set the prices that are paid at both mail order and retail pharmacies that participate in their network. They steer patients to their own mail order pharmacies by misappropriating patient information and setting the prices higher at retail pharmacies.

    PBMs often boast that discounts for mail order drugs are greater than retail. In practice, however, they may not be cheaper. PBMs limit competition by (a) refusing to allow other mail order pharmacies to fill prescriptions for their client plans, (b) refusing to allow community pharmacies to dispense the same 90-day supplies dispensed by PBM-owned mail order facilities, (c) making retail pharmacies appear more expensive to *consumers* by charging higher patient co-pays that are incommensurate to any alleged difference in the true costs of mail and retail, and (d) making retail pharmacies appear more expensive to *plans* by charging a large spread for drugs dispensed by retail pharmacies and using that spread to subsidize lower prices for the PBM-owned mail order pharmacy, thus making the mail order pharmacy *appear* less expensive. PBMs with their own mail order facilities also increase their profits through practices such as repackaging medications into smaller packages, but charging the same or more for the drugs under a custom, PBM-established National Drug Code (NDC).

    With respect to competition, PBMs claim that there is plenty of competition in their industry. In reality, most large employers and health plans rely on the Big 3 PBMs to manage their prescription benefits. For example, 42 of the Fortune 50 are serviced by the Big 3 PBMs. It is unrealistic to think that the regional smaller PBMs have the size and scale to effectively compete for this business now or in the future.

b. On what is your opinion based that PBMs drive prescriptions to mail-order?

Response: We base our opinion on the interactions we have with PBMs. We see on a daily basis the plan designs that economically coerce patients to use their own mail order pharmacies. PBMs design the benefits so that patients and plans have lower costs when they use the PBM's own mail order pharmacy because they do not allow retail pharmacies to meet this pricing.

2. In your written testimony, you state that "there is no proof that PBMs pass along any savings to plans, employers, or patients."

a. Do you dispute the assertion of PBMs that many of their contracts specifically provide for a certain percentage of pass through of savings?

Response: PBMs play games with the meaning of "rebates" and "savings." Since PBM operations are opaque, it is impossible to determine exactly how much savings they actually generate. PBMs generate revenue, and keep a substantial portion for themselves. They use excessively complicated accounting schemes that make it impossible to objectively determine what portion of their revenue can be attributed to "rebates" or "savings."

b. What data or other information would be necessary for PBMs to establish the portion of costs that they are passing through?

Response: PBMs receive significant revenue from drug manufacturers that they define as other types of revenue besides rebates, and thus can avoid disclosing such revenue to health plans and employers and still claim to be "100% transparent" about rebates. This unreported revenue is often characterized as: "cost effectiveness rebates," "grants," "loans," "therapeutic switching fees," or "data selling." "Transparency" should mean that a health plan or employer has a right to review rebates and that no unreported monies are retained by the PBM. Unfortunately, this is not the definition by which most PBMs abide.