"The Express Scripts/Medco Merger: Cost Savings for Consumers or More Profits for the Middlemen?"
Questions for the Record submitted by Senator Charles E. Grassley

Questions for Mr. David Snow:

1. **Brick and mortar pharmacies offer important on-site services to customers in the form of reliable direction on dosage and proper use. Some are concerned that the merger will result in more prescriptions being delivered to patients via mail-order. This means consumers may be deprived of face-to-face interaction with their pharmacist. Alternatively, mail order patients may still reach out to local pharmacists who give time and expertise, yet derive no income from the transaction.**

   a. **Do you agree with those that say the merger will lead to increased mail-order delivery of prescription medications?**

   Medco, as a PBM, does not have the power or the ability to direct members to use mail service. The decision to use mail order delivery is made solely by plan sponsors. PBMs offer plan sponsors different benefit design options, and the plan sponsor chooses and implements the benefit designs that best meet their objectives. It is the plan sponsors that select whether, or to what extent, they provide financial incentives to encourage members to use mail order pharmacies.

   Members always have the option of filling prescriptions at any pharmacy they select. However, their plan determines the level of reimbursement provided based on the conditions outlined in the plan's benefit design. This is why, to encourage members to use a lower cost and more efficient delivery channel, many plan sponsors offer a lower co-payment for mail order – just as they may choose to lower co-payments for generics, compared to brands. This reduces costs and ensures plan sponsors can continue to provide access to affordable benefits. In some cases using a retail pharmacy for a prescription that falls under a mandatory mail order plan design could require the patient to pay the full, albeit discounted, retail cost of that prescription.

   Also, there are certain types of prescriptions that are not appropriate for mail order pharmacies to dispense, such as acute antibiotics and short-term pain medications. A merger would not alter those circumstances.

   Medicines shipped via mail order are largely "maintenance" medications. These are taken by members with chronic or complex conditions to manage their care on a long-term basis. Currently, 70 percent of all maintenance prescriptions (90-day supply) are

dispensed at retail pharmacies; only 30 percent are dispensed through mail order pharmacies.[1]

We would also emphasize that our mail order pharmacies provide comprehensive patient counseling by trained pharmacists. Medco employs more than 3,000 pharmacists who assure our clinical quality standards remain the industry standard. They are available around the clock, every day of the year to answer member questions and address concerns – even if those members are using a retail pharmacy. We also offer our members the opportunity to speak with pharmacists who are specifically trained in specialized areas related to chronic and complex conditions – ranging from heart health and cancer care to asthma and diabetes – a capability that is unrivaled in the mainstream retail environment.

b. How can an individual, who receives mail order drugs, ensure that there are no conflicts with other medicines he or she is taking? How does a machine processing prescriptions in another state know this kind of information?

As background, PBMs form the backbone of the safety net that ensures that regardless of where a member may obtain a prescription, through retail or mail order, in Washington, D.C., or Bloomington, Indiana, those prescriptions are reviewed for potential harmful interactions. Specifically, Medco provides the same comprehensive member-safety service alert to the pharmacist when there is a conflict between a newly prescribed medicine and others that the individual is already taking – thereby avoiding adverse drug interactions – regardless of whether the member obtained the prescription at retail or at mail. When a member frequents a retail pharmacy, as part of the process of confirming for the retail pharmacy that a requested medicine is covered under the member's plan and the amount of copay to collect, Medco conducts a safety review of the drug. If a conflict – what we call a drug interaction – is detected, our system sends a message to the pharmacy. This process is called Drug Utilization Review (DUR), and it enables the PBM to provide a safety net even if a member is receiving prescriptions from multiple physicians and filling them at multiple pharmacies including receiving different prescriptions at retail or mail order.

To conduct DUR, pharmacies – including retail pharmacies – can purchase computer programs that check for these drug interactions. A PBM such as Medco operates "behind the scenes" and conducts an instantaneous review on every retail claim that is dispensed by a retail pharmacy and sends this message back to the retail pharmacy so that it can act on it prior to dispensing the drug to the patient. In some instances, the pharmacist may exercise their professional judgment unilaterally to investigate and resolve the conflict, or they may decide to further consult with the patient and/or physician. This review is also conducted on every mail claim.

[1] NACDS Chain Pharmacy Industry Profile 2010-2011.

As noted above, Medco employs more than 3,000 registered pharmacists. For every prescription that our mail order pharmacies receives, a pharmacist reviews the prescription, in addition to checking for any other discrepancies or inconsistencies (*e.g.*, questions about the dosage prescribed or illegible handwriting). A pharmacist personally addresses any safety or other concerns with the prescriber before dispensing a prescription.

This extensive system of checks and balances ensures the medication dispensed is safe to use. In fact, Medco's system is so advanced that we were retained by the government of Sweden to establish a similar capability for that country's national pharmacy infrastructure.

2. I'm told about 15% of prescriptions are disbursed by mail order. This means about 85% of prescriptions are filled by a pharmacist.

As noted above, 100 percent of mail order prescriptions involve review by duly licensed pharmacists**.** Medco employs more than 3,000 registered pharmacists. For every prescription that our mail order pharmacies receives, a pharmacist reviews the prescription, in addition to checking for any other discrepancies or inconsistencies (*e.g.*, questions about the dosage prescribed or illegible handwriting). A pharmacist personally addresses any safety or other concerns with the prescriber before dispensing a prescription.

a. Has there been an overall increase in medications delivered by mail-order or has the number, or percentage, stayed the same over the years?

There has not been an increase in the percentage of prescriptions delivered by mail order. Data recently released from the National Association of Chain Drug Stores (NACDS) shows that even though all pharmacy segments are filling more prescriptions year over year, the relative share of mail order pharmacy has remained flat, while the share of chain and big-box retail pharmacies, such as CVS and Walgreens or Walmart and Sam's Club, has increased at the expense of the community-based independent pharmacies.[2] And the basis of that growth for chain and big-box retailers has been fueled in part by the growth of 90-day maintenance prescriptions being filled at those stores and not at mail order. In other words, mail and retail pharmacies are direct competitors for those 90-day prescriptions. As the Federal Trade Commission (FTC) noted last year in a letter stating their concerns with a bill then pending before the Mississippi legislature:

> *Plan sponsors sometimes encourage patients with chronic conditions who require repeated refills to seek the discounts that 90-day prescriptions and high-volume*

[2] NACDS Chain Pharmacy Industry Profile 2011-2012.

mail-order pharmacies can offer. Mail-order pharmacies, including those owned by PBMs, compete directly with retail pharmacies.[3]

We have attached a chart in Appendix A that illustrates this pattern.

In fact, Medco data shows that on average, an independent pharmacy loses 64 prescriptions to a chain pharmacy for every single prescription lost to a mail order pharmacy. Nearly half (47 percent) of members who fill prescriptions in an independent pharmacy use more than one pharmacy, including chain and big-box retail pharmacies. If independent pharmacies consolidated these prescriptions they would increase their share by 44 percent.

Although as the acquired company we are not in a position to comment specifically on operations post-merger, we believe our merger will help retail pharmacies compete more effectively and stem these losses to chain pharmacies.

Moreover, highlighting the importance that Medco places on the continued viability of independent retail pharmacies, Medco has partnered with independent pharmacies in Illinois and New Mexico as part of pilot programs to provide additional reimbursement to independent pharmacies. This reimbursement is for providing clinical counseling to members and closing gaps in care that members may have related to the appropriate use of medication.

Interestingly, based on data presented by their own trade association, traditional community-based independent pharmacies continue to grow in number and increase their top-line revenue and bottom-line profits. Between 2009 and 2010, the number of independent pharmacies grew by almost 400 to more than 23,000, representing a $93 billion industry. Average independent pharmacy sales increased by 3.7 percent in 2009, from $3.88 million to $4.03 million.[4] Pharmacy profits have doubled since 1999, with average profits per pharmacy of almost $1 million.[5] In the context of one of the most difficult economic environments in generations, that is an enviable position for any industry.

b. What types of medications are disbursed via mail order?

Medications dispensed via mail order are typically used by patients with chronic and complex conditions such as high cholesterol, cardiovascular disease or diabetes. These patients require medicines on an ongoing basis (i.e., doctor-prescribed medications used for 90 days or longer) to manage their care.

[3] FTC letter to The Hon. Mark Formby, Mississippi House of Representatives, March 22, 2011, regarding MS SB 2245, p. 4; accessible at http://www.ftc.gov/os/2011/03/110322mississippipbm.pdf.
[4] National Community Pharmacists Association, 2010 NCPA Digest, October 2010.
[5] Drug Channels, "Owning a Pharmacy: Still Pretty Profitable", January 25, 2011 (Analysis of 2010 NCPA Digest Data).

c. Are all prescriptions appropriate for mail-order delivery? If not, is this expected to change in the future?

No. Not all prescriptions are appropriate for mail order. Prescriptions for acute therapies such as antibiotics and short-term pain medicines are typically not appropriate for mail order; these are dispensed at retail pharmacies. Mail order delivery is typically used for "maintenance" drugs required by patients with chronic or complex conditions – such as high cholesterol. These patients need to take these medications on a long-term basis to manage their condition. This is not expected to change in the future.

It is important to remember that plan design distinctions between mail and retail are diminishing, not increasing. More plan designs are offering 90-day prescriptions for maintenance medications that can be picked up at retail pharmacies. In fact, CVS Caremark in its business model promotes its belief that this line between mail and retail has been erased completely, as it offers 90-day prescriptions with no distinction between whether they are picked up at the retail store or received by mail. As noted above in our response to Question 2, the FTC has recognized that mail pharmacies "compete directly with retail pharmacies" for this business.[6]

d. Has the industry reached a point where all drugs suitable for mail-order are now shipped via the mail?

No, not all drugs suitable for mail order are currently shipped via the mail. Medications shipped via mail order are typically for "maintenance" medications used by patients with chronic or complex conditions to manage their care on a long-term basis. As mentioned above, 70 percent of all maintenance prescriptions (90-day supply) are currently dispensed by retail pharmacies; only 30 percent are dispensed through mail order.[7] With growing numbers of retail pharmacies now offering 90-day maintenance plans, we believe there is robust and growing competition from retail pharmacies.

As referenced above, according to recently released NACDS data, all pharmacy segments are filling more prescriptions year over year; however, the relative share of mail order pharmacy has remained flat.

[6] FTC letter to The Hon. Mark Formby, Mississippi House of Representatives, March 22, 2011, regarding MS SB 2245, p. 4; accessible at http://www.ftc.gov/os/2011/03/110322mississippipbm.pdf.
[7] NACDS Chain Pharmacy Industry Profile 2010-2011

3. **Specialty pharmaceuticals are a rapidly expanding industry segment. It is my understanding that there are pharmacies that operate solely to provide specialty drugs. The pharmacists there play an important role in the proper administration of these drugs, such as fertility drugs and medications for cancer. These drugs require much closer monitoring of dosage and administration than common maintenance medications. A pharmacist is able to counsel patients and provide important information required for these drugs. In addition to the existing specialty pharmacies, the PBMs have expanded their growing mail-order business with their own specialty drug programs. Now, it seems some PBMs are creating networks that exclude the other pharmacies. At first glance, it seems this is an attempt to drive all beneficiaries into the PBM's specialty program.**

   a. **Currently as separate companies, how many specialty pharmacies are in your respective networks?**

   b. **Has that number increased or declined over the past 5 or 10 years?**

   Clients have the ability to decide the number of "specialty pharmacies" that are in their network. On the pharmacy benefit side, for most drugs that are considered specialty, pharmaceutical manufacturers do not limit the number of pharmacies that dispense the drugs; any retail pharmacy can dispense specialty drugs to Medco members, and many do. As a result, there are literally thousands of retail pharmacies in Medco's networks that fill prescriptions for specialty products, including self-administered injectables. There are also pharmacies that dispense only specialty products (along with, perhaps, ancillary drugs). These pharmacies focusing on specialty drugs have been growing in size and number.

   When assessing the specialty drug marketplace, it is important to remember that a large amount of drug spend for specialty drugs is not adjudicated by PBMs; specialty drugs are also dispensed by medical providers, such as doctors, hospitals and clinics, as well as pharmacies. Additionally, pharmaceutical manufacturers, not PBMs, control whether their drug is dispensed on an exclusive or semi-exclusive basis, and manufacturers retain the ability to revoke the arrangements at their discretion. Moreover, the competition in the specialty drug space is robust and growing.

   It is also important to underscore that a large amount of the dispensing of specialty products is not managed by a PBM. As well as being dispensed by pharmacies, specialty drugs can also be dispensed by doctors, and in clinics and hospitals. Depending on the situation, specialty drugs may be paid for under members' medical benefit or under their pharmacy benefit. Medco, as a PBM, only manages the pharmacy benefit. Thus, by considering only the number of pharmacies that dispense specialty products, or a PBM's network, one would exclude a large volume of dispensing of specialty products to individual members, which is a key consideration in examining the overall specialty drug marketplace.

c. If a Plan Sponsor wanted access to more specialty drug providers are they prohibited from making such a request?

Absolutely not. The plan sponsor specifies which specialty drug pharmacies are included in the network for their members.

4. The merger will result in a combined company having control of over 50% of the specialty pharmaceutical market. When the Federal Trade Commission performs its antitrust review, one of its most important duties will be to define the market at issue.

a. Are specialty drug services considered different and separate from traditional pharmacy services?

For a variety of reasons, we do not believe that the specialty pharmacies of the combined company will dispense more than 50 percent of specialty pharmaceuticals. First, as previously discussed, this number does not take into account the numerous ways specialty products are dispensed. As well as being dispensed by pharmacies, specialty drugs can also be dispensed by doctors, and in clinics and hospitals. Depending on the situation, specialty drugs may be paid for under members' medical benefit or under their pharmacy benefit. Medco, as a PBM, only manages the pharmacy benefit. Thus, by considering only the number of pharmacies that dispense specialty products, or a PBM's network, one would exclude a large volume of dispensing of specialty products to individual patients, which is a key consideration in examining the overall specialty drug marketplace.

Many specialty drugs are dispensed by what would be considered traditional retail pharmacies. These are pharmacies that have demonstrated the necessary support for helping patients in the administration of these specialty products. Specialty drugs are often bio-tech medicines defined by one or more characteristics that include: high cost; a higher risk profile or toxicity; and requirements for advanced handling, patient training and drug administration. In the cases where the specialty medicine must be injected or infused and may require the patient to use the services of a hospital, doctor, outpatient clinic or a visiting nurse, those services can be provided through the medical portion of the member's benefit by either the pharmacy or by a medical provider.

Moreover, we believe even lower estimates have been overstated. As you may know, a recent report issued by Adam Fein of Pembroke Consulting has estimated that in 2010 the specialty pharmacies operated by Express Scripts and Medco handled 31 percent of specialty drugs dispensed by specialty pharmacies in the U.S. However, because this figure does not take into account specialty drugs dispensed by physician offices, clinics, hospitals and the like, it necessarily overstates the role played by Medco and Express Scripts in the overall dispensing of specialty drugs.

b. If so, could it be possible there is not enough competition in specialty drug services, even if there is adequate competition in the standard pharmaceutical market?

We believe there is sufficient competition for specialty drugs. As noted above in the answer to subpart (a), depending on the situation, specialty drugs may be paid for under members' medical benefit or under their pharmacy benefit. Medco, as a PBM, only manages the pharmacy benefit. As well as being dispensed by pharmacies, specialty drugs can also be dispensed by doctors, and in clinics and hospitals. The fact that specialty drugs can be covered on either benefit and are dispensed in a variety of practice settings other than a pharmacy helps to ensure robust competition.

Moreover, there are hundreds of specialty drugs (Accredo, the specialty pharmacy owned by Medco counts about 250 specialty drugs) and thousands of pharmacies dispensing the majority of those drugs. All PBMs manage the expenditure on at least some of these drugs, although many specialty drugs are managed as a medical benefit rather than a pharmacy benefit.

As mentioned above, per Adam Fein's recent report, in 2010 the specialty pharmacies operated by Express Scripts and Medco handled 31 percent of specialty drugs dispensed by specialty pharmacies in the U.S. And, again, because this figure does not take into account specialty drugs dispensed by physician offices, clinics, hospitals and the like, it necessarily overstates the role played by Medco and Express Scripts in the overall dispensing of specialty drugs.

c. Will the merger still go through if the FTC requires divestiture of the specialty pharmacy services?

Since this transaction is currently being considered by the FTC, it wouldn't be appropriate for us to comment at this time.

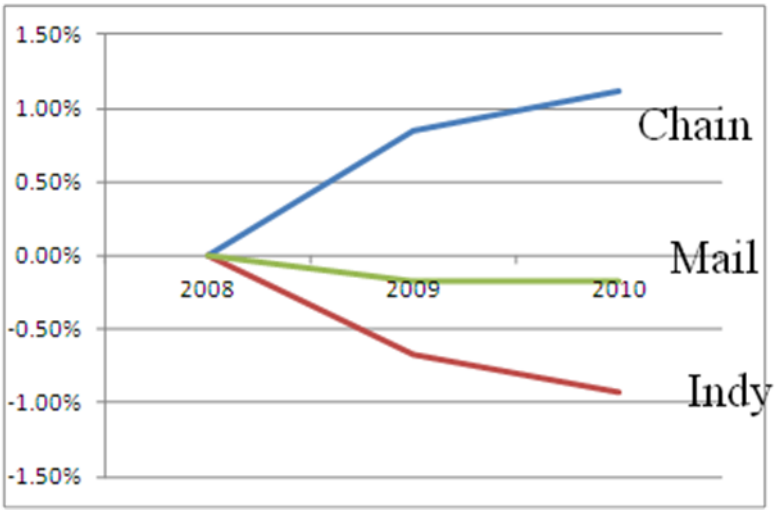
Appendix A

Independent Pharmacies are Losing Share to Chains, Not to Mail

According to NACDS data:[8]

- For several years mail share in the industry has been relatively flat
- While chain share has been growing at the expense of the independent pharmacy

Change in Share



Share calculated by % of total Rx volume

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Mail	5.1%	5.4%	5.5%	5.9%	6.5%	6.8%	6.8%	7.3%	7.4%	7.2%	7.2%
Indy	24.4%	23.6%	22.9%	23.0%	22.7%	21.9%	21.6%	21.3%	20.8%	20.1%	19.8%
Chain	70.6%	71.0%	71.5%	71.1%	70.7%	71.3%	71.6%	71.4%	71.9%	72.7%	73.0%

[8] NACDS 2011-2012 Chain Pharmacy Industry Profile: Calculated from table 37 "Pharmacy Prescriptions by Type of Store."