Questions for the Record from Senator Charles E. Schumer

for witnesses at Senator Judiciary Committee Hearing on

"The Express Scripts/Medco Merger:

Cost Savings for Consumers or More Profits for the Middlemen"

December 6, 2011

1. **How would the merger of Express Scripts and Medco affect community pharmacists' ability to provide quality care and services to their patients—particularly in rural communities, inner cities and other underserved areas?**

   It is important to understand that PBMs such as Medco respond to the demands of clients, and that clients demand that their PBMs provide both a retail and mail network for their members. Retail pharmacies are an integral part of health care in America, and Medco recognizes its obligation to provide a comprehensive, convenient and cost-competitive retail option as part of its core suite of services.

   Even if this were not Medco's desire, it is a market requirement. Retail dispensing of prescriptions remains the dominant method by which members receive their pharmaceuticals, and our clients demand that we provide robust retail networks. Mail order services represent only about 15 percent of prescriptions dispensed today in the United States; the other 85 percent are dispensed through retail channels. Moreover, there are vast numbers of prescriptions that are not suitable for mail order, such as acute antibiotics and 30-day prescriptions. Medco's client contracts, as well as regulations, require Medco to provide certain access levels to retail pharmacies for our members.[1] Client demand and these regulatory requirements ensure that we work collaboratively with retail pharmacies to ensure they remain in our networks.

   Moreover, the perception that independent pharmacies have been losing prescriptions to mail order pharmacies is simply unsupported by the relevant data; however, independents have been losing significant prescription volume to chain pharmacies and big-box retailers, including supermarkets and mass merchants. 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

[1] It is important to note that Medco, as a Medicare Part D Prescription Drug Plan, is required by law to ensure that beneficiaries have "convenient access to network pharmacies" – meaning they live within a certain distance of a pharmacy. In addition, under the terms of its client agreements, Medco is contractually obligated to ensure that its retail pharmacy network meets exacting proximity requirements so all plan members can readily access a retail pharmacy, e.g., generally speaking, members in urban areas must live within one mile of a pharmacy, suburban members must live within three miles and those living in rural areas must live within five miles of a retail pharmacy.

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 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.

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.

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

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

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.

2. How would this merger impact patients and pharmacies in the Medicare Part D program?

As the acquired company, we are not in a position to comment specifically on operations post-merger. However, generally speaking, given the success of the Medco Medicare Prescription Drug Plan (PDP), including the services offered through both mail order and participating retail pharmacies, we believe the merger will further benefit members and these retail pharmacies.

As background, since 2006, Medco has offered an individual PDP. Our PDP was the first and only national plan to be awarded a 5-star rating from the Centers for Medicare and Medicaid Services (CMS). For 2011, Medco currently offers two Medicare drug benefit plan options for beneficiaries, including a low premium, basic benefit plan as mandated by statute and a benefit plan with enhanced coverage that exceeds the standard Part D benefit plan, available for an additional premium. We also offer numerous customized benefit plan designs to employer-sponsored group retiree plans under the Medicare Part D prescription drug benefit, and we serve as the PBM inside of other large, national and regional Part D plans. As with our own PDP, Medco's focus is on ensuring a positive beneficiary experience and offering fully compliant, Medicare Part D operations.

Moreover, as a recent study by Jonathan Orszag has underscored, PBMs control drug spending by making prescription management more efficient. PBMs do this by driving higher use of generics and other lower-cost medications, negotiating favorable drug prices from manufacturers and retail pharmacies, and dispensing prescriptions via lower cost channels, such as mail order pharmacies.[6] In the context of Medicare Part D, the savings delivered by Medco, Express Scripts and other PBMs are passed on to the federal government as a result of lower Medicare Part D costs and, ultimately, passed on to beneficiaries.

[6] Jonathan Orszag, Kevin Green, "The Economic Benefits of Pharmacy Benefit Managers," December 2011.

3. Two recent reports from the Health & Human Services Office of Inspector General have found that PBMs are not adequately sharing savings with Medicare patients and that PBMs underestimate the rebates they receive from manufacturers—ultimately resulting in higher Medicare costs for both beneficiaries and taxpayers. Based on the findings of the OIG reports, how can we be assured that this merger will drive the best bargain for patients, for public and private payers, and for taxpayers?

While we cannot vouch for the actions and performance of all PBMs, we can speak to our own policies and practices. Our Part D contracts with plan sponsors are transparent. Our plans are aware of all the rebates that are received by Medco and pay Medco the same amount for a retail prescription as Medco has reimbursed the retail pharmacy. Medco's Medicare offerings have been thoroughly evaluated and are in compliance with all CMS regulations. All rebates, whether retained by Medco or passed back to the plan sponsor, are fully reported to the plan and to CMS as required under CMS regulations. We believe this ensures that rebate benefits are flowing through the system to help mitigate costs for beneficiaries and taxpayers. Medco's rebate arrangements have been audited directly by the government several times.

With respect to the issue of estimating the rebates that PBMs receive from manufacturers, we have reviewed what we believe to be the relevant OIG reports. We understand that OIG specifically noted that it was plan sponsors – and not PBMs – who are believed to underestimate rebates in their bids, which has led to higher beneficiary premiums. Further to this issue, OIG recommended that CMS should take additional steps to enhance plan sponsors' audit rights and access to rebate information so that plans can accurately report their rebates to CMS.

As a point of fact, CMS did not concur with the OIG's recommendations with respect to the need for more transparency related to rebate information. CMS regulations already require plan sponsors to include provisions in their contracts with PBMs specifying that plans can monitor PBMs' performance on an ongoing basis. Additionally, CMS guidance informs Part D plans that they should audit PBM rebate information to identify waste, fraud and abuse. CMS maintains that this existing regulatory framework strikes an appropriate balance – encouraging contract negotiations between plan sponsors and PBMs that provide for sufficient disclosure to enable plan sponsors to comply with CMS reporting requirements – while recognizing that PBMs view certain information as confidential due to the extremely competitive nature of their industry.

CMS also indicated that it has already imposed sufficient requirements on Part D sponsors with respect to contracts with PBMs in order to address the government's need for transparency. For example, existing regulations require that in their PBM contracts all Part D sponsors include provisions that the entities allow HHS (including CMS and the OIG) to access, audit, evaluate and inspect any information related to the plan's Part D operations. This includes information concerning rebate arrangements between the sponsor and its PBM.

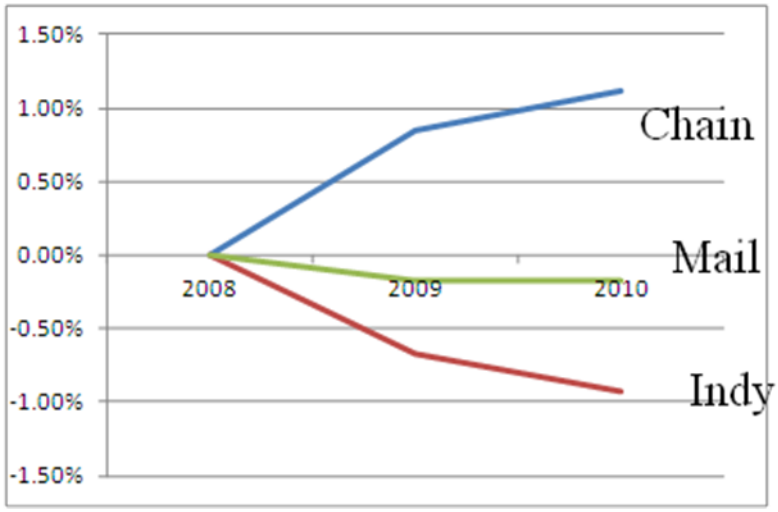
Appendix A

Independent Pharmacies are Losing Share to Chains, Not to Mail

According to NACDS data:[7]

- 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%

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