

June 21, 2023

House Education and the Workforce Health Subcommittee Hearing on Competition and Transparency

On Wednesday (June 21), the House Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions held a hearing entitled, "Competition and Transparency: The Pathway Forward for a Stronger Health Care Market." During the hearing, lawmakers heard from a panel of five witnesses representing employers, patients, pharmacy benefit managers (PBMs), and academics.

Topics discussed at the hearing largely focused on hospital consolidation and vertically integrated PBMs. During the hearing, lawmakers and witnesses spoke favorably about policies such as site-neutral payment reform, which they argued can prevent patients and payers from paying hospital-level prices for non-hospital care, as well as "honest billing" practices, to increase transparency into hospital billing and the site of service. Lawmakers and witnesses also criticized anti-competitive PBM practices and discussed ways to increase transparency into their business, including giving plan sponsors access to more granular data.

- For more information: <https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=409276>

Opening statements

Subcommittee Chair Bob Good (R-VA): In his opening statement, Chair Goodman spoke critically about "finger-pointing" among all health care industry stakeholders for the high cost of health care. "All sectors of our health care system are plagued by market consolidation and a lack of transparency," Goodman said. In particular, he spoke about the role hospital consolidation plays in rising health care prices and spoke favorably about policies, such as honest billing and site-neutral payments, to increase transparency into the hospital billing process and protect patients from paying "hospital fees for services occurring in doctors' offices miles away." Chair Goodman also spoke about the need to standardize price transparency data and codify the Trump administration's transparency-in-coverage rule, as well as increase transparency into PBM practices. [Full statement](#).

Subcommittee Ranking Member Mark DeSaulnier (D-CA): In his opening statement, Ranking Member DeSaulnier praised the bipartisan nature of the hearing and the discussion on "ways to lower health care costs for workers, families, and businesses by promoting transparency and competition." He spoke about the need to address certain provisions of the bipartisan Consolidated Appropriations Act that "may not be working as intended," noting that PBMs and third-party administrators are failing to disclose their compensation to plan fiduciaries and preventing plan fiduciaries from using information to lower costs and improve plans. Ranking Member DeSaulnier also about addressing PBM incentives and finding ways to improve hospital billing policy. [Full statement](#)

Witness Testimony

Gloria Sachdev, President and CEO, Employers' Forum of Indiana. In her testimony, Dr. Sachdev cited data that show "employers are paying about 2.5 times what Medicare pays for the exact same service at the same hospital." She said employers and workers need more transparency to address health care costs and encouraged lawmakers to codify the transparency in coverage rules and add new requirements to make the data more robust

and usable. Dr. Sachdev said there is bipartisan interest in addressing high hospital prices at both the state and federal level. She noted that in 2023 Indiana enacted bipartisan legislation to bar hospitals from billing facility fees for services provided at off-campus facilities, with similar legislation enacted in Colorado and being considered in legislatures in Texas, Connecticut, Maine, Massachusetts, and North Carolina. In addition to addressing high hospital prices, Dr. Sachdev noted drug price transparency is “desperately needed” throughout the whole supply chain, but particularly among PBMs. [Full Testimony](#).

Christine Monahan, Assistant Research Professor, Georgetown University Center on Health Insurance Reforms. In her testimony, Ms. Monahan said, “Consolidation in health care markets is growing, to the detriment of everyone who uses and pays for health care.” As an example, she cited hospital facility fee charges being applied to services that can be “safely and effectively provided outside of a hospital.” She noted that states and some health plans have taken steps to address these additional costs, but said more transparency is needed to correctly identify where services are being provided. She encouraged Congress to require hospitals to include a unique national provider identifier on claims, codify and strengthen federal price transparency rules, revisit the CAA’s ban on gag clauses and clarify and expand upon service provider disclosure requirements. She also encouraged Congress to explore “what additional information TPAs, PBMs, and other service providers should disclose to current and potential plan sponsors to ensure plan sponsors have adequate information to fulfill their fiduciary duties.” [Full Testimony](#).

Sophia Tripoli, Director of Health Care Innovation, Families USA. In her testimony, Ms. Tripoli said Americans pay too much for poor quality care. She said rising health care costs are driven by a “misalignment between the business interests of the health care sector and the health and financial security of our nation’s families.” She said health care consolidation has “eliminated competition and allowed monopolistic pricing to flourish,” citing hospital and drug price growth as key examples. She urged the committee to consider “well-vetted, bipartisan solutions to increase price transparency, address hospital billing practices and payment differentials that drive consolidation and increase costs and limit anti-competitive behaviors” in contracts. [Full Testimony](#).

JC Scott, President and CEO, Pharmaceutical Care Management Association (PCMA). In his testimony, Mr. Scott defended PBMs, saying they harness competition to put downward pressure on drug costs, while promoting a variety of clinical programs to support medication adherence and health care outcomes. He said employers and plan sponsors choose PBMs because they deliver savings and noted that it is up to the employer to determine how those savings will be used. He defended PBMs’ competitive bidding process and cautioned against policies that would add requirements to business contracts and narrow how PBMs can achieve lower costs for employers. Instead, Mr. Scott urged the committee to ensure that the misuse of the patent protections originally put in place to balance rewarding innovation and ensuring affordable access for patients are not blocking competition in the pharmaceutical drug market. [Full Testimony](#).

Greg Baker, CEO, Affirmed Rx. In his testimony, Mr. Baker said his PBM is not a member of PCMA and is a founding member of a new not-for-profit organization called Transparency Rx that supports bipartisan proposals gaining ground in Congress. Mr. Baker criticized the business practices of the big three PBMs, saying it is common in the PBM industry to place brand name drugs on formularies over generics and choose higher cost biosimilars. Mr. Baker said more competition and transparency is needed in the industry to lower costs for patients and improve medication adherence. [Full Testimony](#).

Q&A

Subcommittee Chair Good (R-VA) spoke about independent pharmacy closures and asked Mr. Scott about discrepancies between data the Subcommittee has seen that shows those pharmacies are closing and the data

Ms. Scott cited showing the market is stable. Mr. Scott said there should be a focus on rural pharmacies, which can serve as the single point of care for communities, and ensuring they have a sustainable business model. Chair Good also asked about the impact of Express Scripts' Tricare reimbursement on independent pharmacies. In response to a question, Mr. Baker said the lack of transparency is driving high costs and poor outcomes. Mr. Baker said his clients have seen costs decline and adopted policies to support provider-prescribed drugs.

Ranking Member DeSaulnier (D-CA) asked witnesses about the impact of a policy that would treat a plan's data as an asset under ERISA. Ms. Monahan said that would flip the current system and give employers control over the data instead of the PBMs, but warned there would need to be appropriate privacy protections to protect workers' data. Dr. Sachdev said Congress should set a timeline for when PBMs must provide cost and quality data when plan sponsors request. Ranking member DeSaulnier also asked about the shift in outpatient services to hospital-based settings, where providers can collect higher reimbursement, and the impact on patients. Ms. Monahan said it increases out-of-pocket costs for patients.

Rep. Tim Walberg (R-MI) spoke about how employers, including small employers, are concerned about rising health care costs and struggle to access quality and cost information. Mr. Scott defended the contract bidding process and the terms negotiated between PBMs and employers to ensure access to data, but Mr. Baker and Dr. Sachdev disagreed and said no employer has access to PBM data that shows the rebates received at the claim level. Dr. Sachdev said employers get information in aggregate, and often have restrictions in place on how they can audit their data.

Rep. Susan Wild (D-PA) spoke about the shortage of drugs in the United States and asked about instances in which patients can access those drugs through the PBM's mail-order pharmacy but not their local pharmacy. Mr. Baker and Mr. Scott said the bigger pharmacies could get more access to drugs. Rep. Wild spoke about how these practices can force patients toward mail-order pharmacies and push independent pharmacies out of business. When asked whether PBMs comply with the CAA's reporting requirements, Mr. Scott said yes, all PBMs comply, but Mr. Baker noted they are complying by aggregating the data.

Rep. Rick Allen (R-GA) asked about consolidation in the PBM industry and the impact on independent pharmacies. Dr. Sachdev said self-funded employers today have limited options due to consolidation, particularly vertical consolidation. Rep. Allen also spoke about addressing hospital consolidation through policies such as site-neutral payments and asked about the impact of hospital consolidation on patients. Ms. Tripoli said hospital consolidation increases prices for employers and patients.

Rep. Kathy Manning (D-NC) spoke about independent pharmacies and instances in which they can be paid less than larger chains for prescription refills. Mr. Scott said the data he has seen indicates independent pharmacies on average are paid more than larger chains. When asked whether more transparency would better highlight payment discrepancies between independent pharmacies and larger chains, Mr. Scott said Congress should adjust laws to ensure pharmacies in rural areas can better serve patients' health care needs.

Rep. Eric Burlison (R-MO) said the federal government over-regulating the health care industry is to blame for the high rate of consolidation and health care costs. He asked Mr. Baker about his business model and criticized the notion that all PBMs should have to abide by the same model. In response to a question, Mr. Scott spoke about the importance of giving pharmacists more flexibility to provide care and patient services, particularly in rural areas. Rep. Burlison also asked about the inability for consumers to shop via price for their health care services.

Rep. Pramila Jayapal (D-WA) spoke about the way patients are impacted by hospital mergers and about a bill she co-sponsored with Rep. Victoria Spartz (R-IN) to expand anti-trust enforcement to non-profit hospitals. Rep. Jayapal said she supports Medicare for All and eliminating middlemen from the health care system, but also said that Congress needs to act to address hospital consolidation.

Rep. Erin Houchin (R-IN) asked Dr. Sachdev to share her policy ideas and explain how Indiana is leading in efforts to address consolidation in health care and high health care costs. Dr. Sachdev said Congress should codify insurer price transparency rules and include drug information, prohibit gag clauses for all parties, and increase transparency into the entire drug supply chain, particularly PBMs. Dr. Sachdev said employers have limited flexibility to adjust their formularies because PBMs can charge fees that discourage the changes.

Rep. Bobby Scott (D-VA) asked about the lack of reasonable prices in the health care setting and how prices can vary between hospitals in the same geographic area. In response to a question, witnesses discussed the fiduciary label and whether it should be applied to PBMs. Rep. Scott also asked about hospital facility fees being charged in non-hospital settings.

Rep. Virginia Foxx (R-NC) asked how Indiana is tackling hospital consolidation. Dr. Sachdev said Indiana is still working to address it, but transparency has been a key first step. Rep. Foxx also asked how plan sponsors can better access cost and quality data. Mr. Baker said under the CAA the data plan sponsors receive can be aggregated and it would be more useful if they could see the claim-level data.

Rep. Jahana Hayes (D-CT) spoke about the high rate of hospital consolidation, including hospitals purchasing physician's offices and receiving higher reimbursements by adding facility fees without increasing the quality of care. She asked how plans determine payment without knowing the setting in which the care is provided. Ms. Monahan said insurers cannot determine appropriate payment without knowing the site of care and in response to a follow up question from Rep. Hayes said the system should move toward site-neutral payments where the cost of care for a service does not vary based on the setting. Rep. Hayes also asked about ways transparency could address PBM business practices.

Rep. Chavez-DeRemer (R-OR) asked how Congress could require PBMs to pass on rebates onto patients. Ms. Baker said transparency in data would shine light on how rebates are being used. She also asked about the impact of vertical consolidation and ways Congress can address it. Mr. Baker said delinking how PBMs make their profit from a percentage of acquisition cost and sales cost because it incentivizes them to select the higher priced drug.

Rep. James Comer (R-KY) asked about the variation in prices among pharmacies and PBMs and recent comments a CVS executive made regarding Congress' role in regulating PBMs. Rep. Comer also asked about ways PBMs could increase plan sponsors' access to data and be more transparent. Mr. Scott said the industry is transparent, which Rep. Comer disagreed with.

If you have questions, please contact [Heather Meade](#) or [Heather Bell](#).

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