

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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September 9, 2011

The Honorable Jon Leibowitz
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Leibowitz:

We are writing to ask you to give close scrutiny to the proposed merger of Express Scripts, Inc., and Medco Health Solutions, Inc. The proposed merger would combine the largest and third largest pharmacy benefit managers (PBMs) to create a single entity that would be over twice as large as the next biggest competitor.

If combined, the newly merged PBMs would control one-third of total 2011 PBM market share and 60% of the market share for mail-order drugs.¹ One analyst noted that the merger would shift the balance of competition in the PBM market, changing a market with “three equal competitors” into one with “one huge player and a distant second and third.”² Medco will lose large contracts with Blue Cross Blue Shield and United Health Care in 2012, potentially mitigating some of the concerns raised by the combination of the two companies. However, the FTC must carefully analyze the competitiveness issues raised by the merger of these two large competing PBMs. Community pharmacists have stated that “this merger would further disrupt this marketplace, to the detriment of patients, true competition, and lower prices.”³

¹ AIS Health, *Selected PBMS by Mail-Order Volume, With Penetration and Market Share, as of 1Q2011* (<http://aishealth.com/archive/ndbn062411-04>).

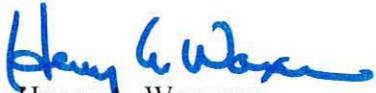
² Gabelli Securities Analysts Jeff Jonas, quoted in TheStreet, *Express, Medco Issues Could be Bigger Pill* (July 21, 2011) (online at <http://www.thestreet.com/print/story/11193560.html>)

³ National Community Pharmacists Association, *Pharmacists: Proposed Express Scripts-Medco Merger Would Reduce Competition and Raise Health Care Costs* (July 21, 2011)

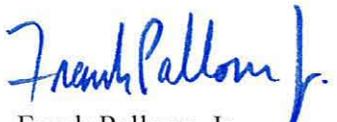
Changing industry dynamics raise additional questions about this merger and its impact on consumers and healthcare costs. Expensive specialty drugs are the fastest-growing areas of the pharmaceutical market, and their distribution occurs primarily through large, mail-order service by PBMs.⁴ In June 2011, Walgreens, the nation's largest drug store chain, and Express Scripts announced that Walgreens would no longer be part of the Express Scripts network because of a pricing dispute. CVSCaremark, which would be the largest competitor for the new entity, is already the subject of an FTC investigation relating to its merged PBM and pharmacy businesses.

The proposed merger would affect hundreds of millions of Americans with private health insurance and have a potentially significant impact on drug cost for government programs including Medicare Part D, Medicaid, the Federal Employee Health Benefits Plan, and TriCare. The market for prescription drugs, which involves often opaque interactions between insurance companies, pharmaceutical manufacturers, pharmacies, and PBMs, is complex and rapidly changing, and the impacts of this merger could be significant. We are therefore asking that you carefully examine the impacts on healthcare cost and access as a result of the proposed Express Scripts-Medco merger.

Sincerely



Henry A. Waxman
Ranking Member



Frank Pallone, Jr.
Ranking Member
Subcommittee on Health



Diana DeGette
Ranking Member
Subcommittee on Oversight
and Investigations

cc: The Honorable Fred Upton
Chairman

The Honorable Cliff Stearns
Chairman
Subcommittee on Oversight
and Investigations

The Honorable Joe Pitts
Chairman
Subcommittee on Health

⁴ See, e.g. Drug Channels, *New Data on Pharmacy Industry Market Share* (Aug. 2010); OncologyLive, *Specialty Pharmacy: Status and Future Direction* (Mar. 2011) (online at <http://www.onclive.com/publications/obtn/2011/January-2011/specialty-pharmacy-status-and-future-direction>).