Testimony of Congressman Doug Collins
Energy and Commerce Member Day Hearing
July 25, 2019

Chairman Pallone and Ranking Member Walden, thank you for holding this hearing today. I appreciate the opportunity to appear before you and discuss the importance of addressing the impacts of direct and indirect (DIR) fees on Medicare Part D patients and pharmacies across the country.

Currently, three pharmacy benefit managers (PBMs)—middlemen between pharmacies and insurers—own over 80% of the pharmaceutical insurance market, allowing them to steer patients to their own pharmacies and operate with little transparency, even in dealings with the federal government. In recent years, these PBMs have begun to purchase or merge with some of the largest health insurers in order to increase their market share and block competition from access to the marketplace.

Under Medicare Part D, PBMs extract price concessions from pharmacies that they should be passing on to patients. They claim that they pass along 90% or more of these savings to the Part D program. But according to the Centers for Medicare and Medicaid Services (CMS), PBMs and PDP sponsors often use these pharmacy rebates and price concessions to pad their profits instead of lowering the price patients pay for medications. In fact, in its proposed rule, "Modernizing Part D and Medicare Advantage to Lower Drug Prices and Reduce Out-of-Pocket Expenses," CMS notes that the documented increase of retroactive pharmacy fees has translated into higher cost-sharing for beneficiaries, pushing them more quickly into the "donut hole,", or coverage gap of their Part D benefit. CMS chose not to finalize the rule at this time but stated that due to the volume of comments, it will need additional time to review all of the input from stakeholders.

These fees make it increasingly difficult for community pharmacies to care for patients and operate their businesses as the fees are unpredictable and can be clawed back months after the medications are dispensed. CMS stated that under current rules, PBMs may have weak incentives—and in some cases even no incentive—to lower prices at the point of sale or to choose lower net cost alternatives.

On February 7, 2019, I reintroduced the Phair Pricing Act of 2018 (H.R. 1034) with Congressman Vicente Gonzalez (D-TX), Congressman Peter Welch (D-VT), Congressman Buddy Carter (R-GA) and Congressman Morgan Griffith (R-VA) to address the gap between reality and the claims that PBMs and prescription drug plan (PDP) sponsors negotiate with pharmacies on behalf of patients. The Phair Pricing Act will guarantee patients at the pharmacy counter directly benefit from lower costs allegedly negotiated on their behalf by directing all

price concessions between pharmacies and PDP sponsors or PBMs to be included at the point of sale.

The Phair Pricing Act will also bring much-needed transparency to a notoriously complex industry. CMS' proposed rule stated that passing through pharmacy price concessions at the point-of-sale would save beneficiaries $9.2 billion over 10 years at the pharmacy counter. It would also address how PBMs and PDP sponsors use pharmacy rebates and price concessions to pad their profits instead of lowering the price patients pay for medications, which is the stated purpose of the rebates and price concessions.

Additionally, the current system allows PBMs to create quality metrics that favor pharmacies they own rather than rewarding the highest quality of care. H.R. 1034 seeks to remedy this by directing the Secretary of Health and Human Services to determine the quality measures that apply to pharmacy operations. Under the bill, the Secretary will also be required to consult with members of the pharmacy supply chain and appropriate standard-setting bodies to design measures that improve patient health outcomes..

As the Committee considers legislation to lower drug costs for Americans and improve health care transparency, I encourage you to consider the Phair Pricing Act to decrease the costs of prescription drugs and protect pharmacies from anti-competitive behaviors.

Doug Collins