

ONE HUNDRED EIGHTEENTH CONGRESS

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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April 18, 2023

Dr. Benedic Ippolito, Ph.D.  
Senior Fellow in Economic Policy Studies  
American Enterprise Institute  
1789 Massachusetts Avenue, N.W.  
Washington, D.C. 20036

Dear Dr. Ippolito:

Thank you for appearing before the Subcommittee on Health on Tuesday, March 28, 2023, to testify at the hearing entitled “Lowering Unaffordable Costs: Examining Transparency and Competition in Health Care.”

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Tuesday, May 2, 2023. Your responses should be mailed to Jolie Brochin, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to [Jolie.Brochin@mail.house.gov](mailto:Jolie.Brochin@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Brett Guthrie  
Chair  
Subcommittee on Health

cc: Anna Eshoo, Ranking Member, Subcommittee on Health

## **Attachment 1—Additional Questions for the Record**

### **The Honorable Cathy McMorris Rodgers**

1. I was encouraged to read in the 2023 Medicare Trustees Report that CMS actions, most notably removing hip and knee procedures off the “inpatient only list” and allowing patients to receive and doctors to perform additional services in the more efficient and less expensive outpatient setting have reduced total Medicare expenditures and contributed to extending the program’s solvency a little longer through 2031. How should Congress think about additional actions to enhance patient and provider choices by encouraging more services to be safely administered in the outpatient setting?
  - a. Would allowing more procedures to be done in outpatient settings, like Ambulatory Surgery Centers, enhance competition among providers and encourage hospitals to compete with ASCs and other hospitals who offer outpatient services?
  - b. Does research and existing data suggest patients would still be able to receive quality and safe care for certain additional services in outpatient settings?

### **The Honorable Earl L. “Buddy” Carter**

As a pharmacist, I’ve seen firsthand the obstacles patients face in filling their prescriptions. Manufacturer copay assistance is one of the ways many patients today are able to better afford their prescription medicines. According to a recent study, manufacturer copay assistance was found to close important affordability gaps, increasing utilization by 4.8 to 16.7 percent which in turn raised health outcomes by 1.0 to 3.3 percent. Unfortunately, “copay accumulator” schemes that PBMs have developed pocket a patient’s copay assistance; my bill, the HELP Copays Act, would ban this practice. Dr. Ippolito, you have written about the need for more transparency in the role of PBMs for plan sponsors or insurers. However, pharmacists like me see patients struggle with PBM transparency too, including understanding their coverage and benefits which often hide details on tactics like copay accumulators with hard to understand language.

1. Dr. Ippolito - Do you think there is a role for increased PBM transparency for patients so that they can actually understand their pharmacy benefit and accurately predict their out-of-pocket costs for their plan year so they don’t experience copay surprise from accumulator programs?

### **The Honorable Dan Crenshaw**

One of the most under-discussed supply-side barriers to competition are state certificate-of-need laws. My state of Texas recognizes the burden and does not have them, but in the more than 30 states that maintain these laws ([Certificate of Need State Laws \(ncsl.org\)](https://ncsl.org)), new health care providers are typically prohibited from entering the market without a government-ordained “certificate-of-need.” Nearly 20 years ago, the FTC said these laws were not successful in containing costs, and that they can actually increase prices by fostering anticompetitive barriers

to entry ([Improving Health Care: A Dose of Competition \(ftc.gov\)](https://www.ftc.gov)). Dr. Ippolito, unsurprisingly these well-intentioned but misguided laws are a result of poor federal policy, specifically incentives created in 1970s for states to adopt these laws.

1. Do you believe that they are contributing to increased federal spending on health care? Should Congress engage in a conversation about the merits of these state laws today?

**The Honorable Frank Pallone, Jr.**

1. There is little insight into how PBMs negotiate arrangements and rebates with drug manufacturers and what impact this has on health plans and patients. Increasing transparency with respect to contracting arrangements between PBMs and drug manufacturers has been proposed as a mechanism for lowering drug prices. Can you describe what benefit more transparency would have here?
2. As you mentioned in your testimony, there have been bipartisan proposals in Congress that would require PBMs to disclose certain information to plan sponsors and employers. Do you believe this is a proposal that would effectively lower costs while also providing plan sponsors with additional information to leverage better arrangements?
3. What role has market consolidation played with respect to PBMs? Do you believe consolidation has increased anti-competitive contracting arrangements?
4. You discussed in your testimony how consolidation is leading to increased costs for consumers and employers. Can you describe some of the consolidation that is occurring and how this is impacting our health system at large?
5. Can you describe ways Congress can address market consolidation and help lower costs?