

STATEMENT OF

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before the

THE SUBCOMMITTEE ON THE FEDERAL WORKFORCE, POSTAL SERVICE,
AND THE DISTRICT OF COLUMBIA
UNITED STATES HOUSE OF REPRESENTATIVES

on

THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM
PRESCRIPTION DRUG
INTEGRITY, TRANSPARENCY, AND COST SAVINGS ACT

February 10, 2010

I am pleased to be here today on behalf of Director John Berry of the Office of Personnel Management (OPM) to discuss H.R. 4489, the *Federal Employees Health Benefits Program (FEHBP) Prescription Drug Integrity, Transparency, and Cost Savings Act*.

OPM commends Chairman Lynch and the Subcommittee's continued efforts to expand the agency's oversight authority regarding FEHBP prescription drug benefits. This prescription drug benefit represents a significant portion of the \$39 billion dollar FEHB Program, comprising almost 30 percent of expenditures, and provides a valuable benefit to enrollees. In light of its importance, we are committed to ensuring that the FEHBP prescription drug benefit is cost-effective and transparent, and provides enrollees with comprehensive and quality coverage.

H.R. 4489 amends the FEHBP governing law by expanding OPM authority to regulate the prescription drug benefits offered by FEHBP health insurance carriers, including relationships with pharmacy benefit managers (PBMs), pharmaceutical manufacturers, and pharmacies. The bill outlines a uniform purchasing strategy for all FEHBP carriers, including pricing based on average manufacturer price (AMP). It prohibits certain ownership relationships and requires PBM transparency and the disclosure of all contract terms and related information.

OPM agrees with the Subcommittee that transparency and ethical business practices are an essential element of an effective FEHBP prescription drug program. Since 2005, our carrier contracts have included PBM transparency requirements. These requirements include restrictions and protocols relating to PBM drug substitutions similar to those in the bill.

While we are currently in the process of updating these contractual transparency requirements, we are concerned that this bill legislates PBM pricing and purchasing terms for FEHBP carriers. Requiring the use of specific contracting models and pricing methods via legislation will not allow the Program flexibility in an industry where business practices are rapidly evolving. We believe that these models and methods would be better addressed in the contracts with our carriers, allowing the Program and its health plans to accommodate changing industry practices.

We agree that PBMs should adhere to transparency standards of the type advocated by other large employers. Companies such as IBM, Caterpillar, and McDonald's are part of a coalition of 60 large employers which have certified those PBMs who have agreed to enter into contracts that comply with standards known as Transparency in Pharmaceutical Purchasing Solutions (TIPPS).

This approach would be more consistent with our current Program model wherein OPM has broad authority to contract with health insurance carriers and to aggressively negotiate for benefits and contract terms similar to other large employer benefit plans. An example of the need for flexibility relates to the bill's requirement for pricing to be based on AMP. We would note that AMP has a longstanding role in the Medicaid rebate program; this legislation appears to establish a separate definition, which could potentially conflict and lead to drug manufacturers reporting different AMPs for Medicaid and FEHBP.

As you are aware, the industry is currently in flux as to the appropriate pricing benchmark in light of recent litigation relating to the industry standard benchmark average wholesale price (AWP). The industry has not yet settled on the appropriate pricing benchmark due to deficiencies in the current alternatives to AWP. If OPM were mandated to use AMP, FEHBP carriers may be disadvantaged in the marketplace, especially if the industry moves to an alternative pricing benchmark, such as wholesale acquisition cost (WAC). Alternatively, if OPM is able to address these issues via contract instead of by statute, the FEHBP carriers would be required to negotiate using the most appropriate pricing benchmark available in the industry at that time.

Additionally, there may be significant administrative costs for OPM as well as for carriers and PBMs that would be passed on to enrollees as a result of certain sections of the bill. For example, the bill requires PBMs to comply with extensive reporting requirements to the agency, the carrier, and the enrollee. While we believe that disclosure is important, a balance must be struck to ensure that these administrative requirements do not impose significant costs upon enrollees and the Government. OPM would likely require additional resources to adequately implement the new responsibilities contemplated by the bill. Furthermore, additional procurement issues would have to be taken into consideration because some drug manufacturers are foreign corporations. This would affect our ability to audit those contracts.

That said, we do recognize that further efforts are needed to improve cost and pricing transparency related to FEHBP prescription drug benefits. An intra-agency workgroup,

including representatives from OPM's Inspector General's office, has been working on contracting requirements using the administrative authority currently available to us. One of the administrative options discussed at the Subcommittee forum held on September 29th, was to change PBM classification from "large provider" to "subcontractor" in our acquisition regulations. The workgroup evaluated the pros and cons of that option and determined that this approach would not provide the pass-through transparency currently envisioned. The Inspector General's office was instrumental in developing the requirements for large providers, including PBMs, which were incorporated into FEHBP contracts in 2005. Their on-site audit experience has proven to be very useful in the current workgroup discussions.

The workgroup is now developing a set of transparency principles that can be used to negotiate specific contract provisions. One example is requiring pass-through transparent pricing in contracts with PBMs in which the carrier receives the full value of the PBM's negotiated discounts, rebates, or other credits. We will continue to work with the OPM Inspector General and ensure that FEHBP contracts are regularly updated to reflect the changing marketplace and that transparency principles are adhered to and enforceable.

Moreover, we are reviewing a broad range of options for improving our current contractual procedures and redesigning how prescription drug services are purchased. Among the proposals that we are considering are those discussed at the forum held by the Subcommittee in September 2009, some of which, as you know, would require legislative action.

Our goal is to obtain the best and most affordable products for our enrollees. As the Subcommittee continues to examine this important issue, our Agency remains willing to work with you. We would be glad to provide technical assistance to address our concerns with the specific issues in the bill.

Thank you for the opportunity to testify on the provisions of H.R. 4489.