

Washington, DC (July 25, 2012)—Today, Rep. Elijah E. Cummings, Ranking Member of the House Committee on Oversight and Government Reform, is testifying before the Senate Committee on Commerce, Science, and Transportation about a [joint report](#) released today on “gray market” drug companies as part of a bicameral [investigation](#)

led by Cummings, Senator Rockefeller, Chairman of the Senate Commerce Committee, and Senator Harkin, Chairman of the Senate Health, Education, Labor, and Pensions Committee. Cummings’s testimony as prepared for delivery follows:

**Ranking Member Elijah E. Cummings
House Committee on Oversight and Government Reform**

**Hearing Before the Senate Committee on Commerce, Science, and Transportation
“Short-Supply Prescription Drugs: Shining a Light on the Gray Market”**

July 25, 2012

Chairman Rockefeller, Ranking Member Hutchinson, and Members of the Committee, thank you for inviting me to testify. Let me also extend my personal thanks to Chairman Rockefeller, Chairman Harkin, and their staffs for their great work during this investigation and for the comprehensive report issued today.

If I may, I would like to focus briefly on why I launched this investigation, what we have found so far, and what we can do about it.

[\[Figure 1\]](#) I initiated this investigation last year after receiving a heartfelt [letter](#) from Brenda Frese. Brenda is the head coach of the women’s basketball team at the University of Maryland, and these are pictures of Brenda and her son Tyler. Brenda wrote to me about a critical shortage in a drug called cytarabine, which treats leukemia in children. Let me read what she wrote:

Without cytarabine, many leukemia patients won't be cured and will die. What makes this hit home even more for me and my family is that my three year old son Tyler is a leukemia patient who has benefited from cytarabine.

As we began investigating this shortage, we found something very disturbing. Hospitals told us that even though they could not get the drug from their authorized distributors, they were being inundated with phone calls, emails, and faxes from gray market companies offering this shortage drug and others at highly inflated prices. They were outraged by this, and so was I.

Based on information provided by the hospitals, we started with five drugs facing critical shortages, and we identified five gray market companies marketing them at exorbitant prices. We asked these companies where they were getting these drugs, and how much money they were making by selling them. Based on their initial responses, we expanded our investigation to cover 125 different companies, and we reviewed 300 different drug transaction chains.

The report issued today does a terrific job laying out the facts in detail, so let me highlight one example that illustrates our findings.

[\[Figure 2\]](#) First, let me put up a chart that shows how things are supposed to work. Under normal circumstances, drugs go from manufacturers to distributors to hospitals, pharmacies, or other health care providers that dispense them to patients. But that is not what happens in the gray market. In gray market transactions, shortage drugs are being diverted into much longer distribution chains.

[\[Figure 3\]](#) Let me show you an example. This transaction involved fluorouracil, which is used to treat various forms of cancer, including colon, stomach, breast, and pancreatic cancer. As you can see, instead of three stops in this case, there were nine. The main problem is that each one of these entities marked-up the price of the drug.

[\[Figure 4\]](#) Let me show you how much. This is the same chart, now listing the prices for each transaction. This drug started at \$7 per vial when it was sold by the authorized distributor. It was later sold for \$50 ... \$69 ... \$95 ... \$275 ... \$375 ... In the end, it was finally sold to a hospital for an astonishing \$600. That was for a single vial of this cancer drug—more than 85 times its initial price.

This was not an isolated incident. We found this same pattern with all of the drugs we examined. This system makes absolutely no sense for patients who need these critical drugs or for hospitals that treat them. The current system allows this network of private companies to boost their profits. And for what? For doing nothing but charging offensively high prices, increasing the overall costs to our nation’s health system, and raising significant safety concerns as these drugs crisscross the country with mark-ups at every stop.

So how could this happen? How do these gray market drug companies get their hands on these drugs when hospitals cannot? The answer is through pharmacies. In more than two-thirds of the drug sale chains we examined (69%), gray market companies were able to buy shortage drugs from entities with pharmacy licenses.

[\[Figure 5\]](#) In the same chain we have been discussing, you can see that the third company was a pharmacy named Priority Healthcare. Rather than dispensing the drug to a patient, this pharmacy sold it to a gray market wholesaler called Tri-Med America, which then sold it down the line.

During our investigation, we discovered that Priority was actually a fake pharmacy. It sold all of its drugs to Tri-Med and none to patients. We also discovered that the owner of this pharmacy was married to the owner of Tri-Med, the gray market wholesaler. State regulators found that the pharmacy committed numerous violations of state law, and the wholesaler’s license has now been revoked.

Again, this was not an isolated incident. In North Carolina, for example, an individual named Jessica Hoppe set up two companies—LTC Pharmacy and International Pharmaceuticals, a pharmacy and a wholesaler. But when state regulators went to inspect these companies, this is what they found.

[\[Figure 6\]](#) They reported that LTC Pharmacy was “not an operating pharmacy” and that “no dispensing has taken place since opening.” Licenses for both companies have now been surrendered or denied. However, just last week, we learned that the owner has now opened a new company, just under a different name and in a different state.

Even legitimate pharmacies are being used by unscrupulous gray market companies to obtain access to shortage drugs. Gray market companies and their brokers have been approaching pharmacies, asking them to buy drugs on their behalf, and promising big profits in return. For example, an email to one pharmacy said this: “We guarantee our Pharmacies 20% or more every time.” Another email encouraged a pharmacy to locate shortage drugs, saying this: “The more you find, the more you make.”

Some gray market companies even duped pharmacies into believing that buying shortage drugs for them would help needy patients obtain drugs faster, when in fact all they were doing is artificially driving up prices.

The good news is that there is something we can do about this. In May, I introduced [legislation](#), and there are two provisions I would like to highlight. First, my bill would prohibit wholesalers from buying drugs from pharmacies. There is no legitimate reason for wholesalers to do this, and this is how many shortage drugs are being diverted into the gray market.

Second, my bill would create a national wholesaler database that would allow state boards of pharmacy to share information more easily. One of the biggest challenges state regulators face is monitoring enforcement actions in other states. We have already found examples of gray marketers being shut down in one state only to open their doors in another.

Let me close by emphasizing again why this investigation is so important. As Brenda Frese said to me in her letter last year, this is a matter of life and death. Nobody should be allowed to profiteer at the expense of patients by jacking up the price of drugs in critically short supply. We’re talking about kids with leukemia in some cases—children with life-threatening illnesses—and these companies are taking advantage of them to boost their bottom-line.

I would like to thank Chairman Rockefeller and Chairman Harkin once again, as well as your staffs. Without your direct involvement and your sustained leadership, there is no way we would have uncovered as much as we did during this investigation. Thank you.