
Cross Plains Pharmacy LLC

December 12, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington D.C. 20001

Dear Judge Leon,

My name is Lisa Kostecki, and I am the owner of Cross Plains Pharmacy, an independent pharmacy in Cross Plains, WI. I am writing on behalf of my pharmacy and the pharmacists that I employ to express my full opposition to the CVS-Aetna merger. I am encouraged to know that you have taken a pause to consider the merger of these two mega corporations that would together control a disproportionate share of the healthcare marketplace.

You are not alone in feeling that you are “in the dark” regarding the merger. I believe that is in fact the goal of these two mega corporations. I believe that most Americans, are unaware of the true nature of the pharmacy benefit manager industry and the control they have over the lives and healthcare of millions of Americans. The PBM’s which control nearly 80% of all prescriptions filled in the U.S. include CVS, Express Scripts, and OptumRx. And as stated in the attached letter from Teresa Dickinson “*All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.*”

I completely agree with all the points made in her letter and I urge to consider the impact a merger would have on independent pharmacies and the people and communities we serve. My pharmacy was started by my father in 1972 and we have served this community for 46 years. I am fearful that this merger will force me to close my doors as I will no longer be able to compete in a market where patients are free to choose the pharmacy provider of their choice. I am already

battling the loss of revenue due to the PBM's ability to lower reimbursements at their discretion, with no regard for the actual cost of medication and ever-increasing DIR fees, other fees and duplicate credentialing, complete with extra fees that go right into their pockets. So far this year, Aetna and CVS Caremark have taken back **\$11,104.11** in DIR fees. That number will continue to increase as there are still just over 2 weeks to go.

Your Honor, I thank you for taking a step back to consider the ramifications of this merger and for taking the time to listen to the concerns of pharmacists who are working with our patients every day and see the problems that can arise when an unregulated PBM industry acquires too much control with no oversight or accountability.

Thank you for your consideration of the information I have shared with you, as well as information provided by Teresa Dickinson. On behalf of my independent pharmacy, and others, who are at the mercy of CVS's anticompetitive business practices, I hope you will rule against the merger and protect the relationship between patient and their chosen community pharmacies.

Respectfully,



Lisa Kostecki
Registered Pharmacist and Pharmacy Owner
Cross Plains Pharmacy LLC

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The Honorable Richard J. Leon
Senior Judge
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333 Constitution Avenue N.W.
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Dear Judge Leon,

My name is Teresa Dickinson, and I am the owner of Melrose Pharmacy, an independent pharmacy in Phoenix, AZ. I am also the president of Pharmacists United for Truth and Transparency (PUTT), a coalition of more than 1,200 independent and community pharmacies across the U.S. I am writing on behalf of my organization and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are “in the dark” with regard to the merger. We promise **you are**, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS’ in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna’s Medicare Part D business to WellCare only served to maintain CVS’ market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient’s pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a “firewall” between its pharmacies and its CVS Caremark PBM, yet CVS routinely “markets” independent pharmacy

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patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, **cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.



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- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we

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want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation’s largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they’ve had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS’ “Squeeze and Buy” tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS’ anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Teresa Dickinson
President and Pharmacy Owner
Pharmacists United for Truth and Transparency
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