

## REVIEW OF CVS-AETNA MERGER / PHARMACY BENEFIT MANAGERS

: TO THE HONORABLE JUDGE RICHARD J. LEON  
: FROM JEFF LIBERMAN , HOWARD BEACH APOTHECARY INC.  
: SUBJECT CVS-AETNA MERGER  
: DATE DECEMBER 12, 2018  
: URGENCY HIGH

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Dear Judge Leon,

I'm writing to you today as an independent pharmacy owner of 37 years who is extremely concerned for the longevity of my business, as well as for the business of the other ~4,000 remaining independent pharmacies in the US. This subject has many people confused or "in the dark", but as I will explain below, the fundamental principles of anti-competition are being breached in a way that is not only harmful to hardworking independent pharmacists who have spent a lifetime growing a business, but also to Consumers who are subject to higher drug prices; it should be no surprise that the rate of people 65 and over filing for bankruptcy grew nearly 204 percent between 1991 to 2016. Research proved that higher drug costs was a direct variable in this increase. If we do not create a level of transparency and regulation in this industry quickly, this problem will only continue to grow.

Your Honor, I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger.

### What is the Current landscape, and why is it dangerous?

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy for America. Allowing for an industry titan like CVS to own and control one of the largest Pharmacy Benefit Managers (PBM), Caremark, immediately shifts the entire landscape of the pharmaceutical industry, and the pricing power associated with drug costs.

To exacerbate the problem this merger creates, since there is currently no regulation or transparency into the pricing power and drug costs driven by the PBMs, the costs passed on to the independents is entirely arbitrary and inflated. For example, if we decide to appeal their reimbursement to us (showing copies of the invoices to prove cost), they simply deny the claim, with a "take it or leave it" response. As an independent Pharmacist, our hands are tied and we have no way to negotiate or come close to a remotely fair price. To make matters worse, they very well can decide two months after the medication is given to the patient to claw back more money in what they've devised as a "Direct and Indirect Remuneration Fee" (D.I.R. fee). While we try to stay honorable and stick to contracts and agreed upon prices, PBMs want us to decline signing contracts because they're paying us below cost or just pennies above what a drug costs us. Anecdotally, I personally had to put over \$100,000 into my business to keep it going because of the way PBM's are paying us and taking advantage.

## So, what's actually going on inside the PBMs, and why are they called "The Mafia of the Pharma Industry"?

In its most basic form, CVS/CAREMARK decides how much they pay themselves and how much they pay everyone else in their pharmacy networks. Period. No one ever knows what these numbers are because they claim it is a "proprietary platform of pricing". This is an excuse to be opaque. PBM's are not required to have transparency or share their pricing schedules, and so they won't. If they were doing everything above board and had nothing to hide they would have an open pricing schedule for all to see.

You hear on the news every evening about the high price of drugs, where the manufacturers are blaming the drug rebates. These are not drug rebates your honor, this is the PBMs extorting money from the manufacturers. The PBM tells the manufacturer if you want your drug to be on formulary you must give us a "rebate". The manufacturer does this because they want their drug to be on formulary, but on the other hand this extortion payment is cutting into their profits, so the manufacturers have no choice but to raise their prices to keep their profit margins. Again, this is a direct result of the lack of oversight of the PBMs, but this is not what gets reported on, which is why we need your support.

## What's been done so far?

The good news is that some states have picked up on the unfair practices taking place and have started to take action. In Ohio, CVS has been the subject of some 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. The findings resulted in the termination of CVS' contract. This sparked similar investigations in Arkansas, Kentucky, West Virginia and most recently Pennsylvania.

## In Conclusion...

Your Honor, I am clearly very passionate about this subject, as I have poured my heart into my business for 37 years. I am watching this criminal and greedy activity take place before my eyes, and we're looking to you for justice. CVS/CAREMARK was given a license to steal from every American, every state and from the federal government by giving them "safe harbor rights". To conclude, I highly advise to please consider this: Why would you allow this corporation that isn't penalized for their actions get any larger by allowing this merger to go through.

I am enclosing a few articles out of the hundreds out there that explain the greed of the PBM's notably CVS/CAREMARK.

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



Respectfully,  
Jeff Liberman R.Ph.  
Howard Beach Apothecary Inc.

