



Nevada Pharmacy Association

December 13, 2018

To: US District Judge Richard Leon/Peter Mucchetti, Chief

PBM's are a black box with no oversight from anyone and allowing this merger is significantly limiting the competitive market. Please Judge, I plead with you to not approve this merger and visit some practices to speak with independent pharmacies and private practice doctors for their front-line provider feedback. The National Community Pharmacy Association (NCPA), Nevada Pharmacy Association (NVPhA), and the American Medical Association (AMA) do not approve of this merger. Even with all the changes the PBM's have made costs remain **OUT OF CONTROL!**

Currently Doctors (Prescribers of medication) are not allowed to own more than 5-10% of a pharmacy due to Conflict-of-Interest. Why does this merger not fall under the same guidelines?

CVS Caremark, OptumRX, and Express Scripts manage almost 90% of all the Pharmacy Benefit Manager (PBM) business and also set their own reimbursement rates for competitive pharmacies, which is in direct violation of Stark and Antitrust Laws and they are allowed to continue to grow. "Yet for over 100 years, the antitrust laws have had the same basic objective: to protect the process of competition for the benefit of consumers, making sure there are strong incentives for businesses to operate efficiently, keep prices down, and keep quality up" ⁽¹⁾.

CVS Caremark, Optum, and Express Scripts all reimburse below cost on many prescriptions for competitive pharmacies and create take it or leave it contracts, then send and/or mandate patients fill prescriptions at a CVS/Caremark pharmacies.

They should not be allowed to set pricing for competitive pharmacies because they compete directly with them by owning their own pharmacies. They should not be allowed to control the doctors writing prescriptions, since they profit from doctors writing prescriptions for medications with the highest reimbursements, and bill state and federal governments with almost no oversight and see unprecedented profits. It has been documented in Arkansas and in other states that CVS/Caremark reimburses its own pharmacies more than competitive pharmacies, and it can be proven if audited by an outside independent third-party entity understanding the business.

Medical drug costs are out of control and the barrier to entry with below cost reimbursements from PBM's keep new businesses from starting up and current businesses from staying in business.

Sincerely,

Nevada Pharmacy Association

1. <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws>