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COMMITTEE ON AGRICULTURE
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COMMITTEE ON TRANSPORTATION
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PERMANENT SELECT
COMMITTEE ON INTELLIGENCE

Congress of the United States

House of Representatives

2422 Rayburn Building

Washington, DC 20515

March 7, 2018

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue N.W.
Washington D.C.

Dear Attorney General Sessions:

I write to express grave concern over the proposed acquisition of Aetna Inc. by CVS Health. A merger between CVS Health and Aetna Inc. could potentially destroy competition in the health care industry and would encourage further consolidation, imperiling consumer choice and increasing costs for prescription medications.

As regulators evaluate whether to permit the merger to move forward, the past actions of both companies should be taken into consideration. CVS already serves as the pharmacy benefits manager (PBM) for Aetna, and many independent stakeholders have had difficulty in accessing preferred networks under Aetna's Part D plans. The Centers for Medicare and Medicaid sanctioned Aetna in 2010 and 2015 for erroneously reporting that 6,887 retail pharmacies were "retail in-network," misleading seniors selecting Part D plans. This serious mistake resulted in enrollees being forced to pay cash at the point of sale for their prescriptions and seek repayment from Aetna or leave patients without their prescriptions.¹

CVS Caremark has appeared to exercise monopolistic power in the marketplace by using "take it or leave it" contracts with pharmacies all over the United States. The company has already run amok in my state by severely undercutting reimbursements to pharmacists. According to data collected by the Arkansas Pharmacists Association (APA) from small chain pharmacies and community pharmacies, in 2017, within the taxpayer funded Arkansas Works (Medicaid

¹ United States. Cong. House. Committee on the Judiciary, Subcommittee on Regulatory Reform, Commercial and Antitrust Law. *Hearing on Competition in the Pharmaceutical Supply Chain: The Proposed Merger of CVS Health and Aetna*: February 27, 2018. 115th Cong. 2nd (statement of the National Community Pharmacists Association), 2.

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expansion under the Affordable Care Act) and Exchange population, CVS Caremark and another PBM operating in the state paid community pharmacies on average between negative \$2 to negative \$4 per prescription across the entire market basket of services.

Perhaps more egregious is PBMs' actions in 2018 within Arkansas Works. On January 1, 2018, CVS Caremark and an insurance provider drastically cut reimbursements to the pharmacies, after contracts were already signed, by negatively manipulating maximum allowable cost prices. According to the APA, when testifying before state legislative committee, a CVS Caremark representative stated they intentionally set reimbursements on generic drugs for community pharmacies in a manner that pharmacies will lose on some and win on others. After patients were continually turned away from pharmacies refusing to fill prescriptions because of repeated below cost reimbursements in Arkansas Works, it was discovered that CVS Caremark and another PBM operating within the state had implemented spreads to pay pharmacies a low amount and charge the insurance companies a much higher amount. Since PBMs' contracts are not transparent, it is unknown who is pocketing the profits.

These actions have resulted in an emergency situation for the state legislature and community pharmacies that threatens the very existence of critical healthcare services and small businesses. Left unchecked, the vertical integration of PBMs could destroy competition in community pharmacies, leaving patients with broken provider-patient relationships, higher costs, and less access to patient centered care. This merger could have serious implications for healthcare delivery in rural areas. Merging two entities with such a large footprint within the drug supply chain will only exacerbate problems with respect to pharmacy access, especially in underserved areas, like the First District of Arkansas.

I earnestly request that, in addition to closely examining the consequences of a CVS/Aetna merger, that you also consider the broader question of PBMs owning retail and mail-order pharmacies and setting reimbursements rates. Vertical integration does not encourage competition or lower prices, but rather, could limit the choices and access for patients, driving out competitors while driving up prices and reimbursements for themselves. For example, in February 2018, CVS Caremark in Arkansas paid its CVS retail pharmacies over \$63 more per prescription than independent pharmacies in Arkansas. During the same time period, Arkansas independent pharmacists received letters from CVS offering to buy them out during hard times with declining reimbursement. PBMs' actions have led to laws being broken, self-dealing occurring, competition decreasing, access to provider of choice eroding, and complete failure of the pharmacy marketplace. The three biggest PBMs are now all in the Fortune 500 top 25 list and control 80% of the prescriptions in the United States.

The free enterprise system in America was based on the ideal that business ownership and entrepreneurship can operate and be profitable without the threat of a monolithic power standing

in the way. Community pharmacies in rural America –like those in my district – stand to lose the most, if not all, of their customers when market consolidations occur. Prescription drug costs are a perpetual challenge for rural Americans, and a merger between CVS Caremark and Aetna deserves a thorough and deliberate review by your agencies. The fate of community pharmacies is in your hands and, by extension, the lives of rural Americans who rely on community pharmacies to provide affordable prescriptions to keep them healthy and maintain their quality of life.

Thank you for your urgent attention to this matter.

Sincerely,



Rick Crawford
MEMBER OF CONGRESS

Enclosure: Information compiled by the Arkansas Pharmacist Association; letter from the Arkansas Heart Hospital

CC: The Honorable Maureen K. Ohlhausen, Acting Chairwoman