



December 12, 2018

Peter Mucchetti, Chief  
Healthcare & Consumers Products Section  
Antitrust Division Department of Justice  
450 Fifth Street NW, Suite 4100  
Washington, D.C. 20530

Dear Mr. Mucchetti,

My name is Tim Hamrick, and I am the Chief Executive Officer of American Pharmacy Cooperative, Inc. (APCI), representing more than 1,700 independent pharmacy owners in 26 states. I am writing on behalf of APCI, its community pharmacy members, and the patients they serve to express our strident opposition to the CVS/Aetna merger.

The three major PBMs – CVS/Caremark, Express Scripts, and OptumRx – control nearly 80 percent of all prescriptions filled in the United States. All three are either owned or poised to be owned by large health insurance companies. These insurers seek to control and serve as gatekeeper between patients, medical providers, pharmacies, and other sectors of the healthcare system.

I want to shine some light into CVS:

- CVS/Caremark, the PBM arm of CVS, creates pharmacy networks where patients can have their covered prescriptions filled. CVS/Caremark sets the contract terms for these pharmacies to fill covered prescriptions, and determines which pharmacies will be included in their pharmacy network. This network includes CVS-owned retail pharmacies, along with independent pharmacies and other chains, such as grocery-based and mass retailer pharmacies. It would seem that CVS has a significant conflict of interest by creating the patient's pharmacy benefit plan; setting reimbursements for the pharmacies in its network; and filling patient prescriptions through its own massive retail chain, mail order pharmacy, and specialty pharmacies. In addition, CVS/Caremark uses its proprietary platform as plan designer to steer patients – through financial incentives or misleading fear tactics – into CVS pharmacies or mail order. Adding insult to injury, CVS/Caremark also sets the reimbursement rates for CVS' competitors, a practice almost unheard of outside the healthcare sector. Could you imagine McDonald's setting prices for Burger King?

{[www.apcinet.com](http://www.apcinet.com)}

- On or about October 26, 2017 – a mere five weeks before announcing its intended purchase of Aetna on December 3, 2017 – CVS drastically cut its reimbursement rates to independent and community pharmacies across the United States. This particular round of reimbursement cuts marked the third time in 12 months that CVS/Caremark cut reimbursements without any kind of prior notice to network pharmacies. While CVS/Caremark attributed these cuts to a “computer glitch,” the company refused to reimburse pharmacies at the pre-cut rate for prescriptions filled during the time it claims the reimbursements were “accidentally” cut.
- In another case of adding insult to injury, CVS followed its deep fourth-quarter cuts with letters to independent pharmacy owners offering to buy their pharmacies. In a blatant example of the sheer gall exhibited by CVS, these letters cited “cuts to reimbursements” as one of the reasons pharmacy owners might consider selling their businesses to CVS. A copy of one such letter is enclosed.
- APCI believes the scrutiny placed on the role PBMs play in the drug supply chain, along with the growing evidence that PBMs contribute to increased prescription drug prices, are factors helping to drive the merger between CVS and Aetna. The main source of purported cost savings touted by CVS and Aetna may be in containing unnecessary costs that PBMs add to the price of prescriptions.
- Control and manipulation of patient data, along with a reduction in patient choice by a combined CVS/Aetna, are also significant concerns. Consumers should have the freedom to choose healthcare providers that produce the highest-quality health outcomes at an effective cost. It is APCI’s position that a combined CVS/Aetna will coerce patients into certain physicians and pharmacies without regard to patient preference.

For all the talk about cost savings, prescription drug costs continue to rise at an unsustainable rate. These increases occur despite vertical mergers such as UnitedHealth’s acquisition of pharmacy benefit manager Catamaran in 2015. Moreover, the anticipated efficiencies touted by CVS and Aetna may benefit the merged company more than the consumer. In fact, consumers are more likely to be driven to use health care resources chosen by the health plan rather than those of his or her choosing. We are certain that two things will occur after this merger: Prescription drug costs to the consumer will continue to increase, as will pharmacy benefit managers’ profits.

In short, bigger is not always better. Driving down costs can through consolidation can only occur when transparency and accountability exist within a given marketplace.

We are already seeing behaviors from PBMs that obfuscate the true cost of drugs. Across the PBM industry there is a movement to shift pharmacy reimbursements to what are called “Generic Effective Rate” payment agreements. In such an agreement the pharmacy is reimbursed a substantial discount to a benchmark called Average Wholesale Price (AWP) for generic drugs. The



manipulation of AWP by the drug supply chain has been well documented for years. That the Generic Effective Rate is the benchmark of choice for these new contracts gives us concern that we are headed even farther in the wrong direction when it comes to drug pricing transparency.

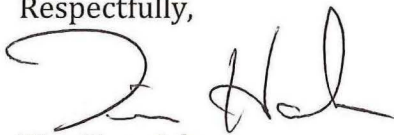
Aetna and CVS/Caremark were early to shift pharmacies to Generic Effective Rate contracts in Medicare Part D. But to further obfuscate true pricing, our members claim that these companies together are reimbursing a much higher amount to the pharmacy at the point of sale, and then taking back a substantial amount of the revenue after the fact in the form of retroactive DIR fees. This inflates the copays and coinsurance for which the patient is responsible, which pushes them into the "donut hole" more rapidly, and ultimately moves patients into catastrophic coverage faster. We have no visibility if all of these DIR fee / clawbacks are then being reported back to the government to flow into the rate setting process for the next year.

This is just one example of how these companies are working together today to increase the complexity of our supply chain. If the line between the two is fully removed, we worry that these tactics will get even worse, to the detriment of patients and payers across the country that are demanding more transparency when it comes to drug pricing.

Again, we are not fundamentally opposed to consolidation within industries. There is much good that can come from the economies of scale that can bring lower costs to consumers. But without fair competition, transparency, proper regulation, and mechanisms to foster accountability, consolidation can just deepen the drug pricing hole that taxpayers and lawmakers are desperately trying to escape. As such, this proposed acquisition warrants a close examination as to whether it will lead to higher drug prices and fewer quality and convenience options for consumers.

Thank you for your consideration of the information provided. On behalf of our small business pharmacies, their patients, and the communities they serve, we hope that you will closely scrutinize this issue in the hope that you will protect Main Street and its citizens.

Respectfully,

A handwritten signature in black ink, appearing to read "Tim Hamrick", written over a horizontal line.

Tim Hamrick  
Chief Executive Officer  
American Pharmacy Cooperative, Inc.

Enc.





Kenny Sanders  
Call me anytime at:  
[REDACTED]

Ever wondered what your pharmacy business is worth? If so, we should talk.

I'm a pharmacist myself. I know what independents are experiencing right now: declining reimbursements, increasing costs, a more complex regulatory environment.

Mounting challenges like these make selling your store to CVS Pharmacy® an attractive and practical option.

I can help you understand what your store is worth.

Whether you're considering selling right now or in the future, it's simply good business to know the facts.

I can answer all your questions and give you a good idea how much your store is worth.

We'll take care of your patients. You can rest easy knowing we will remain in the same location and continue to provide the same level of high quality care as you did.

We always need strong professionals.

Our goal is to bring as many of your employees into the CVS Pharmacy family as possible. We provide competitive salaries and comprehensive benefits.

We can help make the acquisition process easy.

I'll work with you throughout the process and help you every step of the way. We want to work with you to maintain the level of service you worked so hard to create.

Why CVS Pharmacy is a comforting choice.

Our reputation for helping people on the path to better health is well known. We were the first national retail pharmacy chain to stop selling cigarettes. We answered the urgent need for a low-cost epinephrine auto-injector. Whether it's questions about drug interactions or lower cost generics, we're here for your patients. You couldn't leave your pharmacy in better hands.

Call me today at [REDACTED] or visit [cvs.com/pharmacyvalue](http://cvs.com/pharmacyvalue) to find out more. We can meet at your convenience, even outside business hours.

You've put a lot into your pharmacy. Maybe now's the time it pays you back.

I look forward to speaking with you soon.

Sincerely

Kenny Sanders  
Regional Director of Acquisitions  
You can reach me at [REDACTED]

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#BehindtheRxCurtain