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Peter Mucchetti,
Chief, Healthcare and Consumer Products Section,
Antitrust Division,
Department of Justice,
450 Fifth Street NW, Suite 4100,
Washington, DC 20530

December 5, 2018

Dear Mr. Mucchetti,

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AAPS remains concerned for patients despite the Department of Justice Antitrust Division's determination that the CVS-Aetna merger would not present horizontal or vertical competition concerns other than the Part D plan (PDP) overlap. We disagree with this finding.

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<http://aapsonline.org/cvs-aetna/>

The DOJ itself notes the benefits competition has brought "[C]ompetition between [CVS and Aetna's PDPs] has led not only to lower premiums and out-of-pocket expenses but also improved drug formularies, more attractive pharmacy networks, enhanced benefits, and innovative product features." (Competitive Impact Statement, pg. 5, line 2-5).

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The merger boasts price, access, choice, and convenience. The choice is the CVS store on Main Street or Market Street. Statements by CVS CEO Larry Merlo indicate a combined CVS-Aetna would indeed execute strategies, like the ones we outlined in our earlier letter, that restrict patient options and push patients to get their care at CVS Minute Clinics, not their family doctor's office. "Perhaps 20 percent of the retail space could be repurposed to expand Minute Clinics.... [I]t could mean more pharmacists practicing at the top of their licenses." stated Mr. Merlo.

Studies consistently find that patients overwhelmingly want "personalized provider interactions." and want time to discuss personal issues other than physical symptoms and medications. While we strongly believe healthcare is an active participant in free market principles, it is difficult to imagine discussing end-of-life issues with a "provider" at the drugstore.

Our patients will see higher insurance premiums, lower quality, and fewer novel insurance products that meet their specific needs. This merger will unquestionably result in patient enrolled in plans managed by Aetna being steered toward CVS products and away from competitors' offerings.

CVS is already on the forefront of limiting patient choice when it comes to where they purchase their prescriptions. According to industry analysts writing for DrugChannels.com:

CVS Health's Maintenance Choice program is the most prominent limited network model for commercial plan sponsors. For 2016, 25 million covered lives were enrolled in the program, up from 23 million in 2015. ... Under the program, a beneficiary can obtain maintenance medications from either a CVS retail pharmacy or a CVS Caremark mail pharmacy. This model lets consumers choose the pharmacy channel (mail or retail) but limits the choice to CVS Health dispensing channels. <https://www.drugchannels.net/2017/01/yes-commercial-payers-are-adopting.html>

Given the track record of CVS in limiting patient choice, it is inconceivable that it will not use the merger with Aetna to move more patients (known to CVS/Aetna as "enrolled lives") into its restricted pharmacy networks. And CVS makes the most of its captive consumers by charging the highest prices for drugs. Earlier this year, *Consumer Reports* compared the prices of five standard prescriptions and found they cost a combined \$66 at an online pharmacy, \$105 at Costco, while the bill at CVS was \$900. Meanwhile at an independent physician's office in a state allowing in-office dispensing, a patient can bypass the middlemen and get the same drugs for a total of \$29. <https://www.consumerreports.org/health-insurance/how-big-healthcare-mergers-like-cvs-and-aetna-could-affect-you/>

We ask the court and DOJ to take a closer look at how the above practices might be in violation of antitrust statutes before allowing the merger to proceed. Forcing patients to shop at the highest priced pharmacy seems to us to be antithetical to principles of robust competition. One might argue that CVS would reduce prices for Aetna enrollees in order to lower costs for the insurer. But in an environment

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We also ask that the DOJ and the court consider anti-competitive actions a combined CVS-Aetna might take to steer patients covered by Aetna to care at CVS Minute Clinics and away from competitors, such as the independent physicians patients might otherwise prefer. The DOJ and court should also consider the impact to competition for ancillary items and other medical products, patients might be encouraged to buy in conjunction with care provided at CVS-Aetna owned facilities.

Finally, a merger should not proceed while there is an ongoing federal whistleblower case, *Behnke vs. CVS Caremark*, alleging CVS violated federal laws while under contract with Aetna to administer Part D plans. Shockingly, Aetna recently suspended the whistleblower who brought these claims against CVS to light, claims that include a complex scheme for rigging payments to pharmacies in an anti-competitive manner. A merger prior to the resolution of these allegations could improperly allow CVS to influence Aetna's cooperation with this investigation, to the extent that it hasn't already done so.

In conclusion, we ask the DOJ and the U.S. District Court to consider the above factors that demonstrate approval of the proposed settlement will result in less competition, fewer options, harm to patients' pocketbooks, and ultimately their health.

Sincerely,

Marilyn M. Singleton, M.D., J.D.
President, Association of American Physicians and Surgeons

cc Judge Richard Leon

From: [REDACTED]
To: [ATR-Antitrust - Internet](#)
Subject: AAPS Asks DOJ and U.S. District Court to Reconsider CVS-Aetna Merger - AAPS | Association of American Physicians and Surgeons
Date: Thursday, December 6, 2018 10:11:21 AM

<https://aapsonline.org/aaps-asks-doj-and-u-s-district-court-to-reconsider-cvs-aetna-merger/>

AAPS Asks DOJ and U.S. District Court to Reconsider CVS-Aetna Merger

U.S. District Court Judge Richard Leon expressed concerns that he was being used as a “rubber stamp” and that the DOJ was only raising “anti-competitive concerns about one-tenth of one percent of this \$69 billion deal.” On Monday, December 3, Judge Leon [delayed final approval the merger](#) for at least a couple more weeks and another hearing is set for Dec. 18. AAPS is taking this opportunity to reemphasize concerns raised earlier in the process along with new issues related to the merger.

Peter Mucchetti,

Chief, Healthcare and Consumer Products Section,
Antitrust Division,
Department of Justice,
450 Fifth Street NW, Suite 4100,
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Sent from my iPhone

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To: [ATR-Antitrust - Internet](#)
Subject: AAPS Asks DOJ and U.S. District Court to Reconsider CVS-Aetna Merger - AAPS | Association of American Physicians and Surgeons
Date: Thursday, December 13, 2018 2:01:41 PM

<https://aapsonline.org/aaps-asks-doj-and-u-s-district-court-to-reconsider-cvs-aetna-merger/>

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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,

Thank you for your careful review of the proposed CVS-Aetna settlement.

On behalf of our physician members, we are writing to express appreciation that the settlement is not simply being rubber stamped.

Patients' options, and their pocket books, are too often on the losing end of the mergers sweeping across the medical industry. Likewise, in this case, there are unaddressed aspects of the proposed merger that we feel improperly impede competitive forces, resulting in fewer choices for patients—not to mention higher prices.

We have sent the Department of Justice our comments regarding additional factors we believe were not addressed in the settlement. Enclosed please find a copy of the letter outlining our concerns.

Your willingness to at least tap on the brakes before signing off on the combination of two of the largest corporate healthcare entities is most welcome, whatever your final decision may be.

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