December 13, 2018

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,

On behalf of over 65 employees and tens of thousands of customers I write this letter of strong opposition to the allowance of the merger between Aetna and CVS.

My name is Michael Conger, an owner and operator of 9 independent community pharmacies between Utah, Idaho and Montana with most locations offering a variety of services otherwise not met by the demands of big business. As a graduate of Pharmacy in 2003 I have seen the landscape of pharmacy change over the years in the most dismal way. While competition is considered healthy in any market it is nearly non-existent in the market of health itself. Over the years PBMs have become increasingly dictating resulting in increased medication costs, loss of patient access and a worsening overall health population which results in loss of access for patients as well as more spending of the U.S. tax dollar towards health care. For years our profession has been hearing how valuable a role we play in face to face communication with patients by impacting their health in ways that are not being met with the typical average of a six minute doctor visit. While we are being promoted on one hand as being instrumental in improving health outcomes we are seeing on the other hand PBMs play their role in destroying our pharmacist to patient and community influence. While pharmacies are lawfully restricted from banning together PBMs accomplish their market dominance by buying one another out and extending their overreaching dictations on the American people.

With one look at real data one will see that medication costs increased linearly over time. Once PBMs entered the market this cost increased exponentially. While being touted as claiming to reduce drug costs PBMs have proven nothing but the opposite by having record profits year after year while drug prices spike out of control. Dear Judge Leon, drug price increases are mildly influenced by drug manufactures and heavily impacted by PBMs. In fact, because of the rebate game that the PBMs implement this forces most brand name manufacturers to increase their drug prices despite their desire to lower them. They too are held hostage by the PBM. And who does this hurt? Every single person in the United States as this impacts premiums, leading to more government subsidies while crushing the uninsured to the point of unaffordability. In the end the result is poorer outcomes which results in even more spending as hospitalizations and other complications increase.

By now you have probably seen much data from the pharmacy world detailing what should be illegal practices that Caremark, Aetna and others already do. This includes sweetheart deals where Wellcare uses Caremark to administer the Medicare Part D portion of its business as an illusion to compliance of federal requirements to complete the merger. Also the fact that Caremark displays a conflict of interest by owning its own retail chain and mail order companies. Many Caremark plans result in mandatory mail order services, taking away a patients right to a face to face consult and adding to drug waste and increased likelihood of drug interactions as both their home pharmacy doesn't see their mail order scripts and their mail order pharmacy doesn't see their home pharmacy scripts. Despite having a lower level of patient specific service, Caremark has been found to selectively choose to pay more for

prescription services from their own pharmacies than they pay to non-owned chain and independent pharmacies. Non CVS pharmacy reimbursements have in fact gone so low that an overwhelming percentage of them are paid at less than the acquisition price the pharmacy paid for the product in the first place. This is no joke. Despite laws being in place to require PBMs to "update" their MAC (maximum allowable cost "dictated by the PBM") weekly, there is zero teeth in the law and PBMs rarely act in a way intended by the useless law. While you could think that this letter carries a lot of whining the facts are evident. Pharmacies are closing at an ever escalating rate. In each case services are lost which especially hurts small communities not served by the chain giants. It even has a devastating toll on the smaller chains with historical closures of Rite-Aid, Caremark's acquisition of Target pharmacies and more recently that Shopko just announcing the sale of nearly 70 pharmacies. This puts nearly 700 personnel out of jobs, reduces patient access and reduces patient outcomes. Reimbursements are becoming so dismal that it is almost impossible to continue to serve the public. Just last week I sat down with a friend who owns a pharmacy which went from a healthy business up to 2015. Despite a steady number of continued prescription volume his business has decreased in value to nearly nothing and he is contemplating shutting his doors. This is all due to poor reimbursements with many payments being under cost. PBMs also take away money on the back end. Pharmacies are subject to significant takebacks for subjective criteria to which we are set up in a lose-lose endeavor. We are responsible for making sure our patients are adherent to selective therapy criteria such as blood pressure, diabetes and cholesterol. We are even judged and payments we are penalized when we have a patient who qualifies for a cholesterol medicine but are not currently prescribed them. Despite our efforts to communicate with the medical provider, if refused, we still are penalized for having that patient under our umbrella. This puts us and the patient at a discord as the takebacks from the PBMs can be as penalizing or more as $250 per patient per trimester each year. With all the patients we have and all the specific reasons doctors feel therapy is not appropriate we have a dictator sitting at the helm as the judge, jury and executioner and they exploit that to the fullest. Not only do they penalized us on the money that they paid for cholesterol, diabetes and blood pressure, but they apply the penalty as a percentage against ALL medication payments they've made to us during that trimester. In most of our pharmacies this is resulting in over $18,000 per year. It is absolutely crushing us and will continue to crush the patients we serve as we become extinct one by one. Furthermore Caremark and others contribute to rising drug costs through spread pricing, manufacturer rebates, mail order waist.

So what is the solution? More competition. There has already allowed too much consolidation and there is already a significant shortage in PBM competition. It is incomprehensible to me that one could believe the Caremark/Aetna merger leads to more competition. The facts are clear. They have demonstrated their aggressive tactics in market dictation by forcing mail order plans, dictating contracts and payment terms, after-claim takebacks and so much more.

Please consider all these points and the supporting documentation in making your decision. Included is an illustration of pharmacy takebacks as well as letters being seen more and more which FORCE our patients with established care to their own mail order pharmacies.

Sincerely and desperately,

Michael Conger
Pharmacist and Pharmacy Owner
[redacted]

CVS caremark

Anti-competitive

November 21, 2018

Prescription benefit plan changes starting January 1, 2019

Dear [redacted]

We'd like to tell you about some important changes to your prescription benefit plan that will start on **January 1, 2019.**

What's changing? **Starting January 1, 2019,** you'll need to fill prescriptions for medications you take regularly (such as medication for high blood pressure or diabetes) in 90-day supplies at CVS Pharmacy® or through CVS Caremark® Mail Service Pharmacy. By doing so, you're getting medications at a lower cost and meeting your plan requirements. **If you fill them anywhere else, or in 30-day supplies, they will no longer be covered and you'll pay 100% of the cost.** Your plan does allow two 30-day refills at your current pharmacy before you need to change to 90-day refills.

New plan choices: Now you have more options to choose from when filling your 90-day supply prescriptions. Pick up your medications at CVS Pharmacy or have them delivered by mail to your door. Read the enclosed packet to learn more.

Convenient delivery options from CVS Pharmacy: Call your CVS Pharmacy or download the CVS Pharmacy app to have your 90-day supplies delivered along with short-term medications (such as antibiotics). Two delivery speeds available:

On-Demand Delivery - Get it within four hours for a small fee*.

1-2 day delivery - Get it in 1-2 days from USPS, at no extra cost to you**.

Fast and easy prescription transfers: Transfer your 90-day supply prescriptions in just a few clicks. Go to **Caremark.com/MoveMyMeds** and enter your member ID (found on your member ID card). Then select your medications and we'll transfer them for you – it's that simple.

Questions? Visit **Caremark.com** or call us at the number on the back of your member ID card.

We have your best health at heart,
Your Customer Care Team

* Most prescriptions eligible for delivery with qualifying health plans. Orders must be placed by 4 p.m. or four hours before pharmacy closing, whichever is earlier, to ensure delivery within same day. Order cut-off times and delivery fees apply. Delivery is limited to certain locations within a 10-mile radius of CVS Pharmacy locations, and as allowed by and in accordance with state guidelines and regulations. Participating locations only. Select non-prescription items only available for delivery when ordering through CVS Pharmacy app. Non-prescription items not available from CVS in Target locations. Either the member or an agent of the member must be present at the delivery address to receive a prescription package. Your delivery is provided at a special rate as part of your prescription benefit plan. You will be notified of the fee before you prepay for your delivery order. Other restrictions apply, see www.cvs.com/RxDelivery or ask pharmacy staff for details.
**Most prescriptions eligible with qualifying health plans. Delivery period does not include Sundays or USPS holidays. Order cut-off times and delivery fees apply. Select non-prescription items only available for delivery when ordering through CVS Pharmacy app. Non-prescription items not available from CVS in Target locations. Participating locations only. Delivery not available to every address. Delivery prices may vary from store prices. Coupons/promotions may not be available with delivery orders. Other restrictions apply. Ask pharmacy staff for details. Your delivery is provided at a special rate as part of your prescription benefit plan. You will be notified of the fee before you prepay for your delivery order. Other restrictions apply, see www.cvs.com/RxDelivery or ask pharmacy staff for details.

Your privacy is important to us. Our employees are trained regarding the appropriate way to handle your private health information.
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CVS CAREMARK | Part D Services

And this is moderate compared to other takebacks

2018 CVS Caremark Medicare Part D Retail Performance Network Program™: Trimester 2 Report

SilverScript - Results for [redacted]

SilverScript Financial Results

Performance Plan Name	Final Overall Performance Score	Network (Variable Rate Range %)	Variable Rate	Est Total Ingredient Cost (IC) Paid	Est Total IC Paid Times Variable Rate
SilverScript Choice	95.05%	40 B (5.0-7.0)	5.0%	$ 63,954	$ 3,198
		40 G (6.5-8.5)	6.5%	$ 11,391	$ 740
SilverScript Plus	95.05%	41 B (3.5-5.5)	3.5%	$ 3,414	$ 120
		41 G (6.5-8.5)	6.5%	$ 472	$ 31
SilverScript Choice					$4089
SilverScript Plus					=$12,267

percent of takebacks

SilverScript Performance Results*

Category	Medication Adherence				Other Categories			Final Overall Performance Score
Performance Criteria	RAS Antagonists[1]	Statins[2]	Diabetes[3]	Overall Adherence Score	Gap Therapy (Statin)[4]	CMR Completion Rate (MTM)[5]	Formulary Compliance[6]	
Volume	15	19	7	41	13	2	1,662	
Score	100.00%	94.74%	100.00%	97.56%	69.23%	100.00%	99.10%	
Criteria Weight	27.44%	34.78%	12.80%	75.00%	10.00%	10.00%	5.00%	
Weighted Score	27.44%	32.93%	12.80%	**73.17%**	**6.92%**	**10.00%**	**4.95%**	**95.05%**

9/13

Financial Results Notes:
Reference the notes on the Regional Performance Plans Financial Results page.

Performance Results Notes:
*Pharmacies are scored **individually** based on their performance for each Performance Plan in which a pharmacy has paid claims utilization within the trimester.
Scoring: 1, 2, 3, 4 - PQS provides the measurement and displays in the EQuIPP dashboard approximately 45 days after the close of each trimester; 5 - OutcomesMTM® provides the measurement for CMR completion rate; 6 - CVS Caremark provides the measurement of paid claims within applicable time period.
For additional information, reference the notes on the Regional Performance Plans Performance Results page.

with a near perfect score on refill & pickup rate we are penalized over $4,000 because out of 13 cholesterol candidates 4 patients are not on one despite our continuous plea to Drs & patients.

Why do I not just discharge these 4 patients since their insurance is stealing $12,000/year because they refuse or can't tolerate a statin.

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