



PHARMACISTS UNITED FOR
TRUTH AND TRANSPARENCY
TRUTHRX.ORG

December 3, 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,

My name is Teresa Dickinson, and I am the owner of Melrose Pharmacy, an independent pharmacy in Phoenix, AZ. I am also the president of Pharmacists United for Truth and Transparency (PUTT), a coalition of more than 1,200 independent and community pharmacies across the U.S. I am writing on behalf of my organization and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are “in the dark” with regard to the merger. We promise **you are**, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS’ in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna’s Medicare Part D business to WellCare only served to maintain CVS’ market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient’s pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a “firewall” between its pharmacies and its CVS Caremark PBM, yet CVS routinely “markets” independent pharmacy

Pharmacists United for Truth and Transparency
326 S. Main Street
Winston-Salem, NC 27101
TruthRx.org



PHARMACISTS UNITED FOR
TRUTH AND TRANSPARENCY
TRUTHRX.ORG

patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.



PHARMACISTS UNITED FOR
TRUTH AND TRANSPARENCY
TRUTHRX.ORG

- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not “recyclable”). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing’s mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this “squeeze and buy” practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it’s so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it” - if we

Pharmacists United for Truth and Transparency
326 S. Main Street
Winston-Salem, NC 27101
TruthRx.org



PHARMACISTS UNITED FOR
TRUTH AND TRANSPARENCY
TRUTHRX.ORG

want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation’s largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they’ve had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS’ “Squeeze and Buy” tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS’ anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Teresa Dickinson
President and Pharmacy Owner
Pharmacists United for Truth and Transparency
Teresa@TruthRx.org

Pharmacists United for Truth and Transparency
326 S. Main Street
Winston-Salem, NC 27101
TruthRx.org



Abiola Folarin
Call me anytime at:
1-210-880-1831

Dear [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 1-210-880-1831 or visit 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

Abiola Folarin
Regional Director of Acquisitions
You can reach me at 1-210-880-1831.



155818

SilverScript®

P.O. Box 52424, Phoenix, AZ 85072-2424

T798 P1

155818



You could save up to 57% on medications in 2018!

Dear [REDACTED]

Save up to 57%¹ on prescriptions by choosing a Preferred Network Pharmacy

At SilverScript (PDP), we understand your need to keep out-of-pocket medication costs as low as possible. To make sure you're getting the best price for your covered drugs, choose a Preferred Network Pharmacy to fill your prescriptions, and fill 90-day supplies for each Tier 1, 2 and 3 medication you take regularly to save up to an additional 16%.²

Here is what you might save by filling 90-day supplies at a preferred retail pharmacy:

Drug Tier	30-DAY SUPPLY		90-DAY SUPPLY	Your Estimated Annual Savings for Each 90-day Supply ²
	Standard Pharmacy	Preferred Pharmacy	Preferred Pharmacy	
Tier 1	\$7.00	\$3.00	\$7.50	\$54.00
Tier 2	\$20.00	\$17.00	\$42.50	\$70.00
Tier 3	\$47.00	\$43.00	\$107.50	\$134.00

Our records indicate that you recently filled your prescriptions at a standard pharmacy. To begin saving, transfer your prescriptions to any preferred pharmacy. You can choose from more than 26,000 preferred pharmacies, including all CVS Pharmacy® locations, CVS Caremark Mail Service Pharmacy™³ and thousands of regional and local independent pharmacies.

Looking for a preferred pharmacy near you? For your convenience, we've included a few preferred pharmacies near your home on the back of this letter, along with information on how to find more locations near your home or travel destination nationwide. We've also included simple instructions for transferring your prescriptions to a new pharmacy.

Save at these nearby preferred pharmacy locations:

CVS PHARMACY
6300 SCIOTO DARBY RD
HILLIARD, OH 43026
614-529-2604

CVS PHARMACY
4610 CEMETERY RD
HILLIARD, OH 43026
614-777-5988

DECILLION HEALTHCARE
270 CRAMER CREEK CT
DUBLIN, OH 43017
614-367-7828

There may be other preferred pharmacies in your area. Visit SilverScript.com and use the *Pharmacy Locator* for a complete list. Look for the  indicating a preferred pharmacy location. You can also call SilverScript Customer Care at 1-866-561-9044, 24 hours a day, 7 days a week for assistance. (TTY: 711)

Transferring your prescriptions is easy.

- **CVS Pharmacy**— Call 1-800-287-1566 (TTY: 711) 9 a.m. to 9 p.m. EST Monday through Friday, and 10 a.m. to 6:30 p.m. EST Saturday. You can also call or visit a CVS Pharmacy location near you.
- **CVS Caremark Mail Service Pharmacy**— Call 1-866-235-5660 (TTY: 711) 24 hours a day, 7 days a week.
- **Any local or regional preferred pharmacy**— Contact your selected pharmacy directly and provide them with the name, phone number and location of your current pharmacy.

¹ 57% savings based on SilverScript preferred pharmacy copays vs. standard pharmacy copays. Savings may vary by plan, state, drug tier and coverage stage. Call customer care for specific pricing on your medications.

² 16% savings based on four 90-day supplies filled at a preferred retail pharmacy compared to twelve 30-day supplies filled at a preferred retail pharmacy. Savings apply to Tier 1, 2 and 3 drugs in the Initial Coverage Stage, and may vary by plan and region and for those receiving Extra Help. Similar savings available through CVS Caremark Mail Service Pharmacy. Savings not available at standard network pharmacies or on drugs in Tiers 4 and 5.

³ The typical number of business days after the mail order pharmacy receives an order to receive your shipment is up to 10 days. Enrollees have the option to sign up for automated mail order delivery.

SilverScript Choice PDP pharmacy network offers limited access to pharmacies with preferred cost sharing in rural areas of AK and OK. The lower costs advertised in our plan materials for these pharmacies may not be available at the pharmacy you use. For up-to-date information about our network pharmacies, including pharmacies with preferred cost sharing, please call Customer Care at 1-866-235-5660 (TTY: 711) 24 hours a day, 7 days a week, or consult the online pharmacy directory at SilverScript.com.

Your privacy is important to us. Our employees are trained regarding the appropriate way to handle your private health information.

This information is not a complete description of benefits. Contact the plan for more information. Limitations, copayments and restrictions may apply. Benefits, premiums and/or copayments/ coinsurance may change on January 1 of each year. You must continue to pay your Medicare Part B premium.

The formulary and/or pharmacy network may change at any time. You will receive notice when necessary.

SilverScript is a Prescription Drug Plan with a Medicare contract offered by SilverScript Insurance Company. Enrollment in SilverScript depends on contract renewal.

©2017 SilverScript Insurance Company. All Rights Reserved.

CVS' PBM (Caremark) consistently pays its own CVS retail pharmacies more than it pays other independent pharmacies.



**LOCAL
PHARMACIES**

RECEIVED
\$909.38

**TEMOZOLOMIDE
100 MG
20 TABLETS**

Use as directed for
cancer treatment.

**CVS
pharmacy**

RECEIVED
\$3,940.22

**PHARMACISTS UNITED
for Truth & Transparency**



truthrx.org

SOURCE: ARKANSAS BLUE CROSS COMMERCIAL HEALTH PLANS, DATA COLLECTED FEB 2018

PBM UNFAIR BUSINESS PRACTICES

CVS Caremark (the CVS PBM) routinely profits through the use of SPREAD PRICING.

DRUG COST \$53.33

**LOCAL
PHARMACIES**

RECEIVED

\$5.40

**PHARMACY LOSS
(-\$47.93)**

**NEOMYCIN-POLYMYXIN
10 DAY SUPPLY**

Antibiotic used to treat
ear infection.

**CVS
caremark™**

CHARGED PLAN

\$53.53

PROVIDED NO DRUG,
JUST THE
PROCESSING FEE

**CVS/CAREMARK SPREAD
\$44.92**

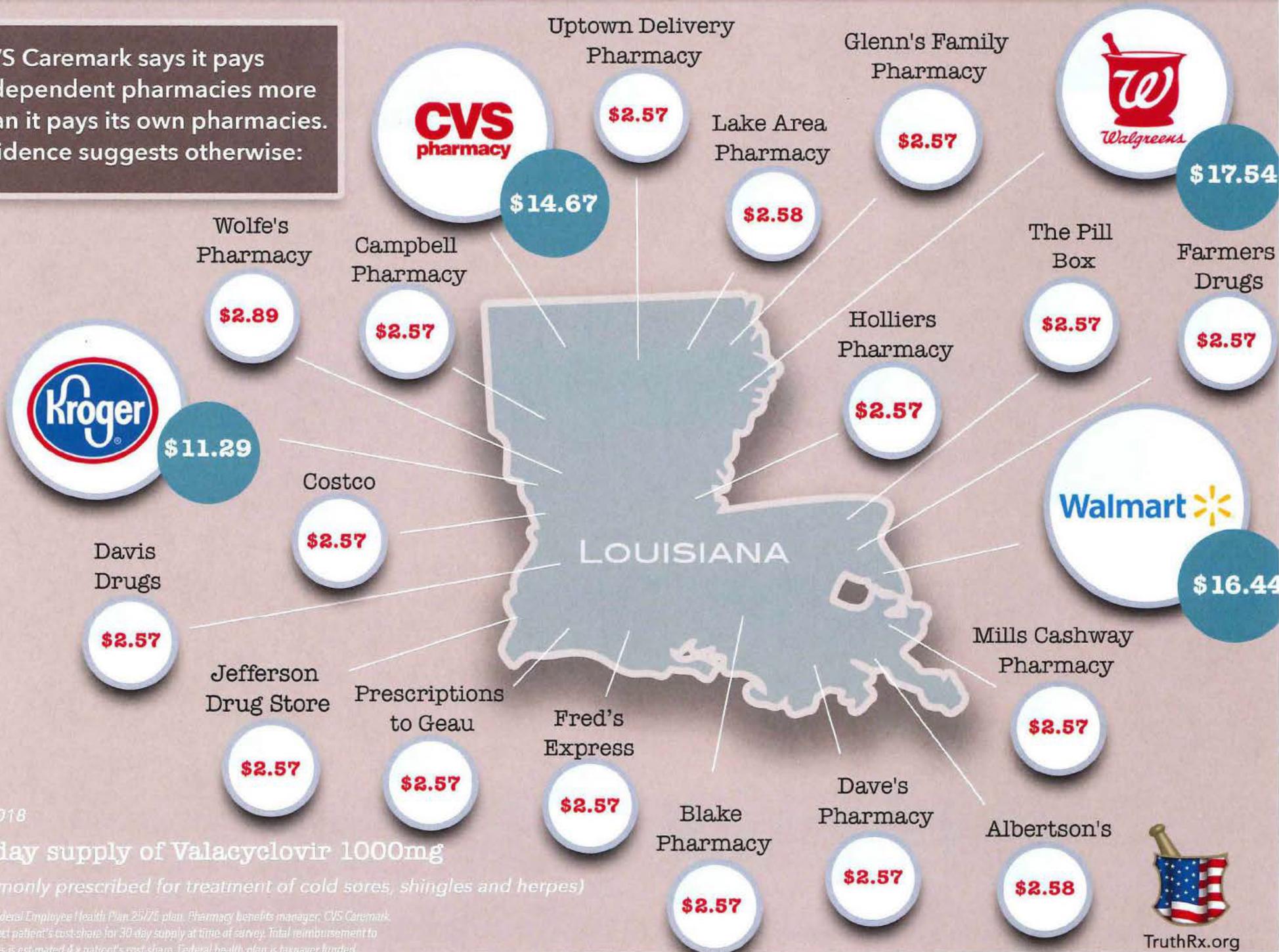
**PHARMACISTS UNITED
for Truth & Transparency**



truthrx.org

FEDERAL TAX DOLLARS USED AGAINST INDEPENDENT PHARMACIES

CVS Caremark says it pays independent pharmacies more than it pays its own pharmacies. Evidence suggests otherwise:



Fall 2018

30 day supply of Valacyclovir 1000mg

(commonly prescribed for treatment of cold sores, shingles and herpes)

Source: Federal Employee Health Plan 25/75 plan. Pharmacy benefits manager, CVS Caremark. Prices reflect patient's cost share for 30 day supply at time of survey. Total reimbursement to pharmacies is estimated 4x patient's cost share. Federal health plan is taxpayer funded.



TruthRx.org

FEDERAL TAX DOLLARS USED AGAINST INDEPENDENT PHARMACIES

CVS Caremark says it pays independent pharmacies more than it pays its own pharmacies. Evidence suggests otherwise:

Michelle's Pharmacy

\$1.26

Mason City Pharmacy

\$1.57

Harry's Pharmacy

\$1.26



\$4.65



\$8.35

John's Medical Pharmacy

\$1.26

Stacy's Pharmacy

\$1.26

CLOSED

SavMor Pharmacy Mt Pulaski

\$1.26

SavMor Mt Zion

\$1.26

CLOSED

Pharmacy Plus Inc

\$1.26



\$8.87



\$7.37

Atlanta Telepharmacy

\$1.26

Hopsdale Pharmacy

\$1.26

Sullivan Drugs (Carlinville)

\$1.26

Potter Drug

\$1.26

Athens Pharmacy

\$1.26



Fall 2018

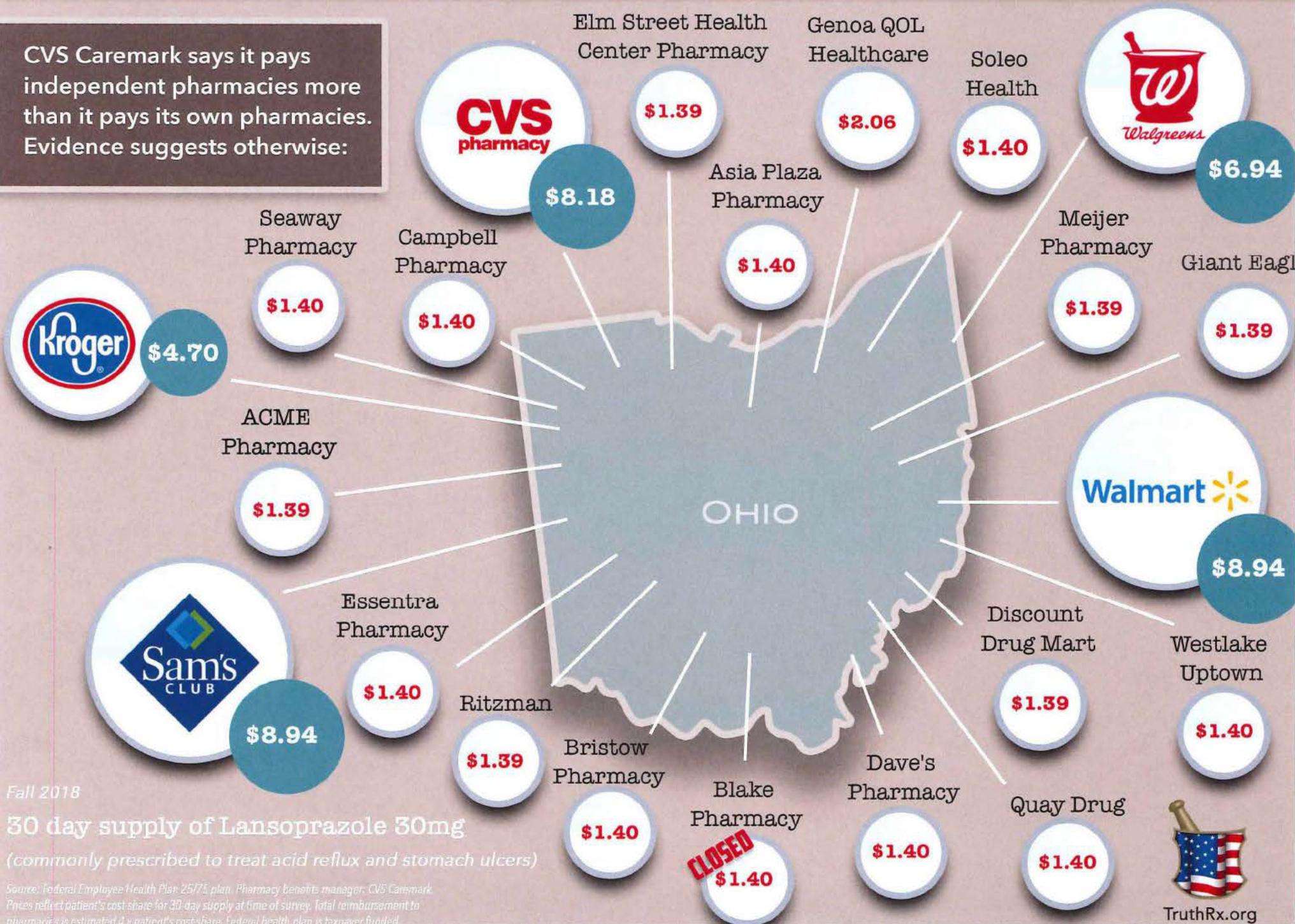
1-month supply of Duloxetine
(commonly prescribed for depression)

Source: Federal Employee Health Plan, 2577s plan. CVS Caremark is the pharmacy benefits manager administering the prescription drug benefit for this plan. Reimbursements listed are for 30-day supply



FEDERAL TAX DOLLARS USED AGAINST INDEPENDENT PHARMACIES

CVS Caremark says it pays independent pharmacies more than it pays its own pharmacies. Evidence suggests otherwise:



Fall 2018

30 day supply of Lansoprazole 30mg
(commonly prescribed to treat acid reflux and stomach ulcers)

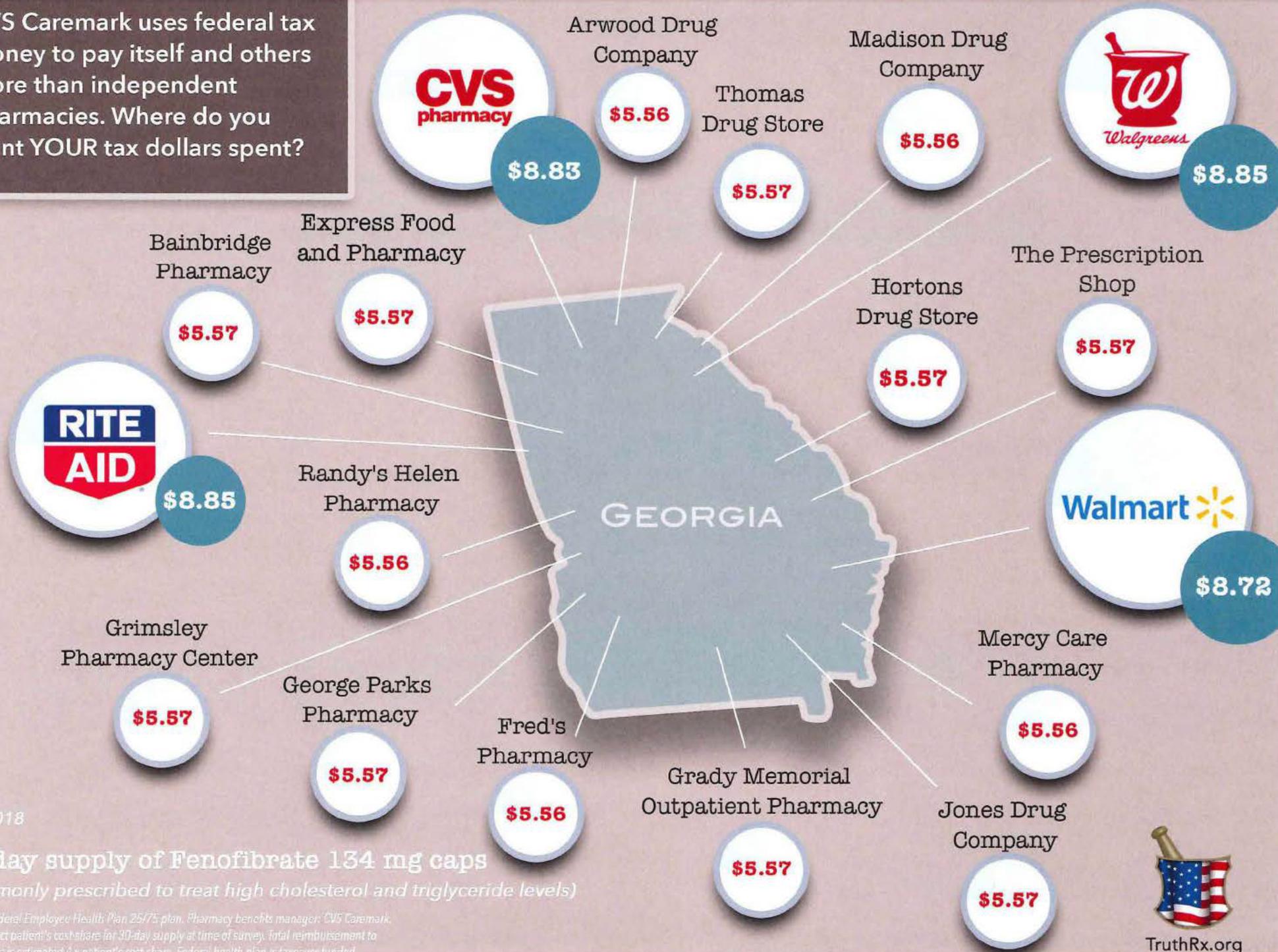
Source: Federal Employee Health Plan 25/75 plan. Pharmacy benefits manager: CVS Caremark. Prices reflect patient's cost-share for 30-day supply at time of survey. Total reimbursement to pharmacies is estimated 4x patient's cost-share. Federal health plan is taxpayer-funded.



TruthRx.org

FEDERAL TAX DOLLARS USED AGAINST INDEPENDENT PHARMACIES

CVS Caremark uses federal tax money to pay itself and others more than independent pharmacies. Where do you want YOUR tax dollars spent?



Fall 2018

30 day supply of Fenofibrate 134 mg caps
(commonly prescribed to treat high cholesterol and triglyceride levels)

Source: Federal Employee Health Plan 25/75 plan. Pharmacy benefits manager: CVS Caremark. Prices reflect patient's cost share for 30-day supply at time of survey. Total reimbursement to pharmacies is estimated 4x patient's cost share. Federal health plan is taxpayer funded.



TruthRx.org

EPIGATE

Where the Money Really Goes

Pharmacists United for **TRUTH & TRANSPARENCY**



DEMAND TRANSPARENCY

 TruthRX.org



WHAT CVS IS DOING TO MOM-AND-POP PHARMACIES IN THE US WILL MAKE YOUR BLOOD BOIL

Linette Lopez
March 30, 2018

- CVS Caremark, the in-house pharmacy benefit manager for CVS, has been accused of squeezing small pharmacies, driving some out of business.
- Lawmakers in Arkansas and Ohio have been quick to pass laws designed to end this by demanding higher transparency or regulatory oversight.
- CVS is also trying to buy up small pharmacies, which is much easier to do if they're going out of business.

The short version of what happened to CVS in 2018 is this: The company got too greedy, and then it got caught.

In its greed, the company squeezed independent mom-and-pop pharmacies. The squeezing wasn't being done by the part of CVS you buy dental floss from or visit to pick up a prescription, though it's not unrelated. It's a behind-the-scenes business known as a pharmacy benefit manager, which manages payments between insurers and pharmacies and drug companies.

The mom-and-pop pharmacies say CVS' in-house pharmacy benefit manager, CVS Caremark, slashed reimbursements for medications sold to their patients on Medicaid. At the same time, they say, it was reimbursing CVS pharmacies at much better rates. With some of them on the verge of going out of business, these pharmacies have rallied lawmakers – both Democrats and Republicans – to put an end to this.

So now CVS faces a tide of resistance to the way it deals with smaller rivals. Already, Arkansas legislators have passed a law aimed at curbing this behavior. This is new regulation in a Republican-dominated state. That's how bad things looked to the lawmakers.

Ohio is forcing PBMs to disclose more about the way their pricing and contracts work. Mom-and-pop pharmacists in states like Texas and Kentucky are realizing they have a CVS problem on their hands too. Caremark manages payment for Medicaid-managed care plans in more than 20 states.

This is important because CVS is trying to cut a \$68 billion deal to buy a health insurer, Aetna – a deal that would make it even more powerful and more able to obscure the whys and hows of pricing all through the healthcare system.

What's more, CVS isn't the only healthcare company trying to turn into a leviathan. Over the past few years the largest healthcare companies – including insurers, PBMs, hospitals, and drug companies – have been combining in what is known as vertical integration, or mergers between companies in the same industry whose businesses don't directly compete.

They say this is an effort to create efficiency in the healthcare system. What CVS has shown, though, is that this kind of integration can actually get companies drunk on pricing power, and create monopolistic monsters.

In Arkansas

To their credit, once legislators in Arkansas figured out what was happening to local pharmacies, they moved at blinding speed.

The state legislature nearly unanimously passed a bill designed to curb this behavior from PBMs on March 14.

The situation had gotten desperate, fast. The way mom-and-pop pharmacists tell it, CVS started bringing the pain at the beginning of 2018. Suddenly, reimbursement rates for Medicaid plummeted at the same time drug prices for Medicaid started rising. So in the beginning of February, Arkansas Attorney General Leslie Rutledge started investigating the matter.

"The amount paid to the pharmacy was less than half of what was being charged to the plans," Scott Pace, of the Arkansas Pharmacists Association, told Business Insider.

Pharmacists in Arkansas, for example, say:

- For a Fentanyl Patch 100, CVS pharmacies were reimbursed **\$400.65** while mom-and-pop pharmacies were reimbursed **\$75.74**.
- For Amoxicillin, CVS pharmacies were reimbursed **\$35.92** while mom-and-pop pharmacies were reimbursed **\$12.21**.
- For even something as simple as Ibuprofen, CVS pharmacies were reimbursed **\$5.86** while mom-and-pop pharmacies were reimbursed **\$1.39**.

Sometimes, the pharmacists say, they weren't reimbursed enough to cover the cost of filling the prescription. These aren't the only ones, to be clear. Business Insider has seen a long list of alleged disparities like the ones above.

CVS, for its part, denies that it is squeezing the mom and pops. Business Insider sent the above examples to the company, and its spokeswoman Christine Cramer said they were



Kenny Sanders
Call me anytime at:
1-205-690-4952

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 1-205-690-4952 or visit 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 1-205-690-4952.

patently wrong. However, she also said the pharmacists were "cherry-picking" reimbursements that look especially bad.

"The facts are that on an aggregate basis, we reimburse independent pharmacies at a higher rate than larger regional and national chains," she said.

"CVS Caremark considers local, independently owned pharmacies to be important partners in creating our pharmacy networks, and in fact, independent pharmacies account for nearly 40% of our network," she added.

"Furthermore, we reimburse our participating network pharmacies, including the many independent pharmacies that are valued participants in our network, at competitive rates that balance the need to fairly compensate pharmacies while providing a cost-effective benefit for our clients."

This response did not jibe with what legislators, patients, and pharmacists were seeing on the ground, though.

Out of a \$50 drug, for example, say \$22 was paid to the mom and pop, the rest went to CVS – to its PBM. At the same time, patients looking at how much a drug cost their health plan in their explanation-of-benefits portal would show a price of, say, \$100.

"The numbers were stark," Pace said.

So until this was all figured out, people who bought medicines at their local pharmacies in Arkansas (and Ohio) didn't know that their neighbors were getting screwed. They also didn't know that, as their local pharmacists were getting squeezed, CVS was waiting in the wings, sending out letters offering to buy the very mom-and-pop shops it was forcing out of business.

One pharmacist, Rick Pennington of Lonoke, Arkansas, said that if it weren't for his business mailing a generic erectile-dysfunction pill to nine states, he'd be out of business.

"When you look at who's controlling the money and who has the leverage, it's the PBMs who have control," Pace told Business Insider. "These folks are trying to get more integrated into the healthcare system, and so far we've seen that means patients lose. Next, they'll buy a hospital and be an HMO. I think that's bad for patient choice."

He added: "It's not a free market because there is no transparency on pricing." CVS, however, denies coordination between its PBM and its pharmacies.

"Our retail business has engaged in acquisition activity and outreach to other pharmacies since well before CVS and Caremark merged, and, in fact, the communications materials related to this activity has been relatively unchanged over the years," Cramer said. "Any retail acquisition activity is completely unrelated to, separated from, and not coordinated in any way with the PBM business' management of its pharmacy network."

In Ohio

The story for pharmacists in Ohio is a bit different. There, some have viewed CVS as problematic for years, but instead of seeing reimbursement rates plunge, legislators and pharmacists said they've been moving up and down like crazy since around 2015. By October or November of last year, gross annual margins for Medicaid payments to mom and pops were going below zero, and pharmacists were losing money on most drugs sold.

"Because those rates are set arbitrarily you're set up for a roller-coaster ride," Antonio Ciaccia of the Ohio Pharmacists Association said in a phone interview with Business Insider. "No one expects to get rich off Medicaid ... but if you sat down with a pharmacist that was willing to tell you, 'Here's what I was getting paid,' you could match it up with state-utilization data and see the spread and how significant the loss was ... That's what kind of lit everything up in Ohio."

There was also the suspicion that Medicaid was being overcharged. One legislator, after being briefed on what was going on by Ohio's Medicaid agency, said simply,

"We're getting hosed."

And of course, CVS sent those letters soliciting acquisitions. One came on November 9 of last year, a particularly bad time for the state's mom-and-pop pharmacists.

Suddenly, the number of people in Ohio government demanding answers, led by Ohio Speaker Cliff Rosenberger, started to multiply. They realized that the Ohio Department of Medicaid wasn't even asking for the right pricing data, and CVS had never considered giving it to them. Now, as rules change within the department, it'll have to.

Brad Miller, Rosenberger's press secretary, said this was something his boss had been looking into for years.

"In order to be responsible stewards of taxpayer dollars, you must have access to reliable and accurate data," he said.

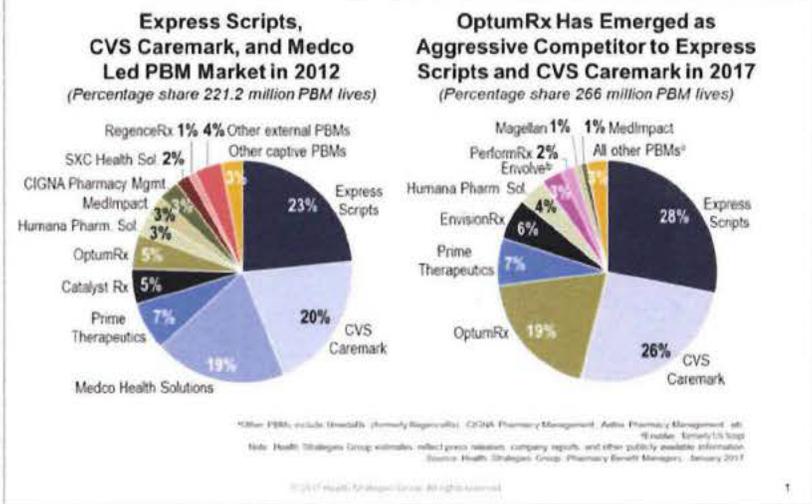
"Around the state, we are seeing the negative impact the current system is having on local, independent pharmacies, many of which have been forced to close in recent years. This, in turn, reduces patients' treatment options and access to care. Having access to this data will go a long way toward lowering prescription-drug costs for patients and employers, as well as help reduce the burden on Ohio taxpayers."

Ciaccia told Business Insider that during the three years CVS has been engaging in this behavior it has gained 68 pharmacies in the state. Its competitor Walgreens added only two locations over the same period.

"We are done messing around in Ohio," he said. "This system is completely broken ... It is layered and layered with conflicts of interest. I don't care who the PBM is."

What a tailor can do!

Catamaran Integration Has Driven OptumRx's Growth into the Third-Largest PBM



PBMs have all sorts of tricks up their sleeves to make money not just from pharmacists but also from insurers and drug companies – basically anyone involved in getting medicine to you.

Here are a few of their greatest hits:

- They can make money (as we've seen here) off the spread between what they pay pharmacists and what they charge your insurance plan.
- They have gag orders on pharmacists, so your pharmacist can't tell you whether it's actually cheaper for you to use plain old cash to buy a drug that isn't part of your healthcare plan. (Note, the fact that there might even be a cheaper alternative challenges the PBMs' claim that they save money for their clients in the first place.)
- They get reimbursements from pharmaceutical companies. The fatter the rebate, the more likely they'll include a company's drug in a client's (your) managed-care plan, but they don't have to share that reimbursement with the client (you). They can keep some and negotiate rebates for themselves. They can collect all kinds of administrative fees and other types of fees from drug companies too.

We've been learning about this slowly. Three PBMs – CVS Caremark, Express Scripts, and UnitedHealth Group – control about 70% of the US market, and they guard their secrets zealously. Recently, though, the news site Axios published a contract template for Express Scripts. No two contracts are alike, and Express Scripts grumbled that the one Axios published (which was rife with loopholes to make Express Scripts money at every turn) was old and irrelevant.

Yet the company demanded that DocumentCloud, where the contract was posted, immediately take it down, citing copyright infringement.

This "Oh it doesn't matter to our business – but DON'T TOUCH THAT!" response is trending in PBM world.

For example, earlier this month the US Senate introduced the Patient Right to Know Drug Prices Act, which would ban the so-called gag clauses mentioned above (as Arkansas lawmakers did in their bill).

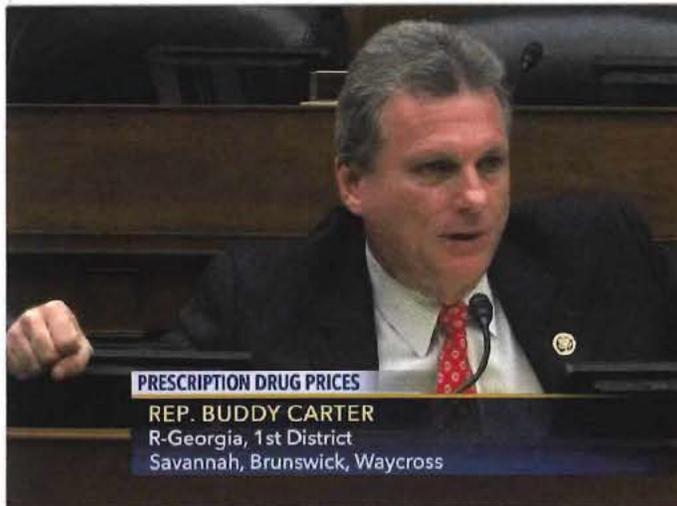
The Pharmaceutical Care Management Association, the PBM lobby, responded to that by saying:

"We support the patient always paying the lowest cost at the pharmacy counter, whether it's the cash price or the copay. This is standard industry practice in both Medicaid and the commercial sector. We would oppose contracting that prohibits drugstores from sharing with patients the cash price they charge for each drug. These rates are set entirely at the discretion of each pharmacy and can vary significantly from drugstore to drugstore."

Sounds as if they're for it, right? Wrong. Here's the next sentence.

"Fortunately, to the degree this issue was ever rooted in more than anecdotal information, it has been addressed in the marketplace."

So which is it, guys? Do you think transparency is important and support patient rights – or are you going to fight this bill?



It's a simple question. And it's easy to see the answer.

Rep. Buddy Carter, a Georgia Republican, introduced the Prescription Transparency Act to the US House of Representatives this month. It does basically the same thing as the Senate bill, and, as the only pharmacist in Congress, he knows he's facing a street fight from the PBM lobby.

"They spent \$600,000 against me when I first ran for office three years ago to try to get me defeated, and over the past few years we've seen them ramp up their political activity," Carter told Business Insider. He's also noticed that legislators in Washington are finally waking up to the urgency of this situation. There have been hearings about drug pricing in both houses, and Scott Gottlieb, the commissioner of the Food and Drug Administration, has come out swinging especially hard, saying that the PBMs sit at the top of a *"rigged system."*

"We've seen some companies that dropped the PBMs such as Caterpillar and they've been able to control drug prices," Carter said in a phone interview. *"Right now the focus is on prescription drug pricing, and the most impact we can have on pricing is to have control on transparency from the PBMs."*

If you believe that, you should also believe taking that control won't be easy. Once we do, though, it may change the way you look at what our healthcare is trying to become.

Reprinted with permission from Linette Lopez, Business Insider

HOLIDAY SEASON SALE 99¢ PER MONTH

Subscribe Today
[http://offers.courier-journal.com/specialoffer?](http://offers.courier-journal.com/specialoffer?gps-source=BENB&utm_medium=nanobarap1&utm_source=bounce-exchange&utm_campaign=2018HOLIDAY)
 gps-
 source=BENB&utm_medium=nanobarap1&utm_source=bounce-exchange&utm_campaign=2018HOLIDAY)

State hits CVS pharmacy benefit company with \$1.5 million fine

Deborah Yetter, Louisville Courier Journal Published 6:34 p.m. ET July 9, 2018 | Updated 4:36 p.m. ET July 10, 2018



(Photo: Kwangmoozaa, Getty Images/Stockphoto)

This story has been updated to include comments from CVS Caremark.

Kentucky has hit a national pharmacy benefit management company with a \$1.5 million fine, finding that Caremark PCS Health, an affiliate of drugstore chain giant CVS, committed hundreds of violations in processing claims of individual pharmacies.

The state Department of Insurance also put on probation for one year the company that dominates Kentucky's Medicaid prescription drug business, processing most of the pharmacy claims for the \$11 billion-a-year government health plan for low-income and disabled people.

"The department simply does not issue penalties of this nature lightly," said Patrick D. O'Connor II, the insurance department's deputy commissioner for policy. "However, we have to ensure companies fully comply with our laws to protect consumers and other businesses."

Related: [Health law advocates ask US officials to reject Bevin's Medicaid cuts \(/story/news/politics/2018/07/06/bevins-medicaid-dental-vision-cuts-federal-officials/764262002/\)](#)

The department found violations in 454 claims for reimbursement, according to a news release Monday. It also found 38 violations in cases where Caremark provided inconsistent or inaccurate information to the department, it said.

A Caremark spokeswoman said in an email Tuesday that the company officials are reviewing the terms of the order issued Monday. However, the company "respectfully disagrees" with the findings and officials are "exploring our options," said spokeswoman Christine Cramer.

She said that CVS Caremark is "committed to fairly reimbursing pharmacies in our network while providing a cost-effective benefit" for clients they serve.

Caremark operates in Kentucky as a pharmacy benefit manager, acting as a middleman in processing prescription drug claims pharmacists file seeking reimbursement from health plans including Medicaid. The company handles claims for four of the five outside managed care companies that oversee about \$7.3 billion of the state's Medicaid business.

While little known outside the industry, [pharmacy benefit companies \(/story/news/2018/03/26/kentucky-pharmacists-medicaid-payment-system/438151002/\)](#) have drawn fire in Kentucky from the state's about 500 independent pharmacies, who say the outside companies routinely cut costs at their expense and refuse to pay them full reimbursement.

"We were losing money on every Medicaid prescription," said pharmacist Rosemary Smith, who owns six independent drugstores in Eastern Kentucky with her husband, Luther, also a pharmacist.

Rosemary Smith said the state's enforcement action came after members of the organization she and her husband founded, the Kentucky Independent Pharmacists Alliance, filed hundreds of complaints with the state, alleging Caremark was refusing to pay them the actual costs of Medicaid prescriptions they filled.

"This is huge," she said, adding she hopes it will lead to a fairer system for the state's independent pharmacists.

In 2016, Kentucky pharmacists supported successful legislation that allows them to file complaints over how pharmacy benefit managers process claims. An investigation of several complaints led to the enforcement action announced Monday, the department said.

Also: <https://www.courier-journal.com/story/news/2018/07/05/groups-dentists-reporting-denied-care-after-bevin-medicaid-cuts/760670002/>

Support local journalism today
99¢ per month. Save 90%.

This year, independent pharmacists helped push through legislation aimed at forcing pharmacy benefit management companies such as CVS Caremark, to provide more transparency to managed care companies. The law (SB 100) requires that they (PBM) must report that to the state. It also empowers the state to set rates paid to pharmacies. <https://www.courier-journal.com/story/news/2018/07/09/kentucky-fines-cvs-pharmacy-company-millions-caremark-pcs-health/769502002/>

Pharmacists and some lawmakers complained the pharmacy benefit companies, as subcontractors to health insurance companies, operated largely in secret with little oversight.

Pharmacy benefit companies have drawn increasing scrutiny in states including Ohio, Arkansas and Kentucky as their growing power to set prices has prompted protests from independent pharmacists who say they lack the power and resources of the large drugstore chains.

Smith said she hopes Monday's fine leads to closer scrutiny of the industry she said profits at the expense of community drugstores.

"I think this should set a precedent," she said.

Deborah Yetter: 502-582-4228; dyetter@courierjournal.com; Twitter: @d_yetter. Support strong local journalism by subscribing today: [courier-journal.com/deborah-yetter](https://www.courier-journal.com/deborah-yetter) (http://offers.courier-journal.com/specialoffer?gps-source=FBLOUJOSEPHG&utm_medium=social&utm_source=social&utm_campaign=employeeoffer).

Read or Share this story: <https://www.courier-journal.com/story/news/2018/07/09/kentucky-fines-cvs-pharmacy-company-millions-caremark-pcs-health/769502002/>

CVS/Aetna: State Regulators Urged to Investigate CVS Caremark Reimbursement Cuts, Solicitation Letters, as Part of Aetna Review

State Regulatory Update

Independent pharmacists are urging state insurance regulators - as part of their reviews of the CVS/Aetna merger - to examine CVS Health's recent move to slash smaller rivals' prescription reimbursements and then offer to buy their stores.

The reimbursement cuts, some of which involved drugs used to treat digestive illnesses and other chronic conditions, occurred around October 25—five weeks before the December 3 Aetna deal announcement, a dozen independent pharmacists said. The cuts affected pharmacies in a number of states, including Florida, Kansas, Maryland, Ohio, Washington, and Wisconsin.

The cuts were both sudden and steep: one pharmacy went from earning \$41.63 for selling Metronidazole—an antibiotic used to treat bacterial infections—to losing \$72.27 per sale of the treatment. In another case, CVS-owned Caremark, the second-largest U.S. pharmacy benefit manager, paid just over 5 percent of the \$2,237.08 a pharmacy spent on Budesonide, a steroid used to treat Crohn's disease and ulcerative colitis.

"The reimbursement rates in question are established using aggregate information from wholesalers, third party sources and marketplace intelligence and are subject to change frequently," a CVS spokesperson said, as part of a longer statement included below.

Pharmacists allege "squeeze and buy." The independent pharmacists said in the weeks following the drastic reimbursement cuts, CVS faxed and e-mailed these same pharmacies solicitation letters asking if they were interested in selling their businesses to the chain, the nation's second largest.

"In our fourth quarter, the reimbursements from CVS Caremark were shockingly low," explained one independent pharmacist affected by the reimbursement cuts. "We don't even know if we'll survive 2018," the pharmacist added. "These are crooked games," said another independent pharmacist. "These are tactics and practices to squeeze [independent pharmacists] out of the market."

Two sources present at the exchange also said that during a meeting with a Maryland state insurance regulator and independent pharmacy representatives around the time of the cuts, a CVS lobbyist assured the regulator that the reimbursement cuts were simply a computer glitch.

Independent pharmacists urge state regulators to investigate as part of CVS/Aetna probe. CVS Health's recent actions demonstrate the vertically-integrated firm's strategy for bankrupting its smaller rivals, the independent pharmacists said. They believe that this power will only grow if CVS acquires the nation's third largest health insurer, which could provide the company greater leverage to foreclose independent competitors and establish dominance in the retail pharmacy space.

A move by state regulators to investigate the CVS reimbursement cuts and solicitation letters could impact what are likely to be already extensive reviews of the proposed Aetna merger. At the very least, CVS's actions present a public relations distraction just as the pharmacy chain prepares to present its case to federal and state authorities.

Although state insurance regulators typically retain broad merger review authority, they have typically focused primarily on acquirer solvency. However, if independent pharmacists present a strong case that CVS Caremark is already acting in an anticompetitive manner, it could affect state regulators'—or DOJ antitrust enforcers'—willingness to permit the company to vertically integrate further up the health care supply chain.

Whether the reimbursement cuts and other independent pharmacy issues are enough to convince the insurance regulators to ultimately take a hard line on the deal is another question. Although insurance regulators have recently shown interest in developing legislation to rein in some questionable PBM practices, their jurisdiction over PBMs such as Caremark is not clear cut. “If PBMs misbehave, it will be on the insurer who contracted their business,” said Wisconsin Deputy Commissioner of Insurance, J.P. Wieske.

A Closer Look at CVS Health’s Alleged “Squeeze and Buy” Tactics

CVS as business partner and competitor. Caremark, as one of nation’s three dominant PBMs, exercises substantial power over independent pharmacists’ businesses through reimbursements.

“As the largest third party payer, [Caremark] really controls the fate of our pharmacies to some extent,” explained one independent pharmacist. “When they dropped payments a few months ago, one drug that costs us \$1000, they were suddenly paying us \$25 on a \$1100 claim. That’s obviously unsustainable for any business.”

Simultaneously, CVS retail pharmacy is a competitor to the independent pharmacists. “It’s an interesting business because you, as an independent pharmacy owner, are actually paid by your competitor,” said one independent pharmacy representative, who requested anonymity for fear of reprisal from CVS. “Plus, your competitor has access to all of your patient records,” he added.

CVS Caremark can arbitrarily set prices through MAC lists and other fees. PBMs like CVS Caremark determine reimbursements paid to pharmacies for drugs through Maximum Allowable Cost (or MAC) lists: PBM-generated lists which set a maximum amount the PBM will reimburse the pharmacies for certain drugs, particularly generics. MAC lists are different for every pharmacy, even those within the same neighborhood or even next door.

By using MAC pricing, PBMs avoid setting contracted reimbursement rates—meaning such reimbursement cuts are within the bounds of the contracts the pharmacies have signed with CVS Caremark-administered plans.

MAC pricing is intended to promote competitive pricing by incentivizing pharmacies to purchase the least costly generic drugs available in the market. However, MAC lists allow PBMs to arbitrarily determine reimbursements to pharmacies, as a PBM can change its MAC prices for any drug on its MAC lists at any time, and can change the drugs included or excluded on its lists.

Due to this lack of transparency, pharmacists often do not know how much money they will make on a sale until the moment they ring up the purchase. “They can put any drug on the list, meaning they can avoid paying us a contracted reimbursement rate,” said one Maryland pharmacist affected by the October reimbursement cuts.

Most importantly, PBMs are not required to disclose the reimbursements they pay to pharmacies, so there is no way to determine PBMs’ profit spreads from these drugs. This also means it is impossible to tell whether PBMs are actually passing savings back to payers.

CVS letter seeks to acquire independent pharmacies. In the weeks after the October 25 reimbursement cuts, CVS sent [solicitation letters](#) to many of the affected independent pharmacists, urging the pharmacists to consider a sale to CVS. In one letter, Shane Stockton, a CVS Regional Director of Acquisitions, writes that as a pharmacist himself he knows “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,” the letter continues.

The letter goes on to assure the small business owners that CVS will take care of their patients, will stay in the same location, will bring on as many employees as possible, and that the representative will work with the owner to “make the acquisition process easy.”

Reimbursement cuts and letters suggest “squeeze and buy” approach. To be sure, prospecting letters are nothing new, and CVS has long attempted to buy out independent pharmacies. “It has been going on forever,” said one independent pharmacy representative. “They’re a business partner, privy to all your information—then they’ll turn around and use that information to say—hey, if you’re looking to sell, here we are.”

But the timing of the drastic reimbursement cuts and prospecting letters suggests a “squeeze and buy” approach, said independent pharmacists and industry experts. “They’re underpaying us and forcing customers out of our pharmacies—and of course paying themselves, at CVS, much more on a different contract, mind you—and it’s working to put many of our stores out of business,” said one pharmacist.

Ultimately, what is at stake is service and patient choice, said another independent pharmacist. “There are 22,000 independent pharmacists [in the U.S.] and 10,000 CVS stores,” he explained. “CVS is saying you can’t go to Bob or Joe’s pharmacy, you need to go to ours. Patients would get the best care by having the most choice, so patients are the ones being hurt here. And try calling your local CVS, and then try calling your independent pharmacist. I bet you can guess where you’ll get the better service.”

In meeting, CVS represented reimbursement cuts as a “computer glitch.” Around the time of the first reimbursement cuts, Maryland Pharmacists Association executive director Aliyah Horton and other independent pharmacy representatives were present at a meeting with CVS lobbyists and representatives of the Maryland Insurance Administration.

At the meeting, the CVS lobbyists assured the Maryland insurance regulator that the reimbursement cuts were a computer glitch, according to Horton and another independent pharmacy representative who confirmed the exchange. Later, however, CVS apologized to the independent pharmacy representatives and retracted their comment about the computer glitch.

CVS comment. A CVS spokesperson declined to comment on the computer glitch claim. In a statement, the spokesperson said:

“CVS Caremark is focused on providing our pharmacy benefit management clients with opportunities to improve health outcomes for their members, while also managing costs. We reimburse our participating network pharmacies, including the many independent pharmacies that are valued participants in our network, at competitive rates that balance the need to fairly compensate pharmacies while providing a cost-effective benefit for our clients.

In fact, we typically have more than 20,000 independent pharmacies included in a preferred network chosen by a benefit plan.

The reimbursement rates in question are established using aggregate information from wholesalers, third party sources and marketplace intelligence and are subject to change frequently. Wholesalers do not provide PBMs with access to individual pharmacies' acquisition costs at a drug level. We have a well-established appeals process for network pharmacies regarding reimbursement, and our responses to those appeals comply with all applicable laws.

CVS Caremark remains committed to providing our PBM clients and their members with a broad network of pharmacies that includes local, independent pharmacies. Our PBM business and network management is completely unrelated to our CVS Pharmacy retail business' acquisition program, and we maintain stringent firewall protections between our retail and PBM businesses.”



PHARMACISTS UNITED FOR TRUTH AND TRANSPARENCY

A Look Back at Efforts to Curtail PBM Power 2017-2018

2017

OCTOBER

- CVS, OptumRx make deepest cuts to reimbursements yet in 2017
- Cuts are unannounced, take place nationwide, and leave Independent pharmacy scrambling and in crisis. PUTT receives word of cuts from members across U.S

•Pharmacists Society for the State of New York (PSSNY) reaches out to CVS Caremark for series of calls that ultimately resulted in restoration of reimbursement rates on November 18, 2017. It is not for every pharmacy and every medication, but it is significant

•CVS/Caremark "restores" reimbursement to pre-October 26 levels for NYS pharmacies but declines to make pharmacists whole for Oct 26 - Nov 18 underwater reimbursements

NOVEMBER

DECEMBER

- CVS announces intent to purchase Aetna for \$69 billion
- UnitedHealthcare announces intent to purchase Davita Medical Group for \$5 billion
- Pharmacy reimbursements continue to plummet

2018

•Arkansas BCBS and CVS unexpectedly and drastically start cutting reimbursements to local pharmacies

•Maryland Department of Insurance (DOI) is told that cuts to pharmacy reimbursements were the result of a "glitch"

•Maryland DOI is told later there was no "glitch" - CVS gives a standard "PR response" to the question of why pharmacy reimbursement cuts occurred

JANUARY

- Pharmacy owner in Florida accidentally receives "spread" Medicaid MCO showing CVS made \$77/Rx on 2 claims while pharmacy lost \$50
- Ohio Pharmacists Association goes to state Medicaid to discuss spread
The Columbus Dispatch begins preliminary investigation of below-cost reimbursement claims by local pharmacies
- PUTT launches PR campaign to call attention to PBMs' profiteering off local taxpayers in Florida

FEBRUARY

- Arkansas Attorney General launches investigation into PBM reimbursements of local pharmacies
- Arkansas Pharmacists Association holds press conference to announce 250 drugs for which CVS paid themselves more than independent pharmacies
- Iowa county jail audit shows major spread for drug purchases between what county was charged versus what pharmacy was paid (with pharmacy forced to lose money)
- Wave of gag clause/consumer copay clawbacks hits national press - stories appear in The New York Times, USA Today, Wall Street Journal, CBS New syndicate, Bloomberg, Business Insider, NPR and several local stations in New York, Florida, Arizona, Pennsylvania, Vermont, Maine, Massachusetts and other states

- PBM Licensure Act officially signed into law in Arkansas
New York State Assembly and Senate include several PBM regulation bills in the state budget. Budget passes. Effective April 1, laws effective immediately:

Eliminate gag clauses in PBM-pharmacy/PSAO contracts
Prohibit co-pays higher than drug cost and clawbacks.
Standards for fair pharmacy audits

MARCH

APRIL

- State of Illinois begins implementing statewide Medicaid Managed Care despite failed pilot of program in Cook County that resulted in pharmacy closures and "pharmacy desert" issues during previous 2 years
- Iowa House Government Oversight Committee held a hearing to gather information on billing discrepancies and abuses by PBMs in publicly funded health plans and public entities in response to efforts from Rep. John Forbes and the Iowa Pharmacy Association

MAY

- PUTT releases "PBMs' Dirty Secret" 1 hour video on how PBMs operate

- Illinois passes legislation allowing \$10 million for critical access care pharmacy payments to help independent pharmacies in rural communities that are struggling because of the state's Medicaid managed care rollout and because of pharmacy benefit managers

- PSSNY works with legislature on PBM registration and licensure bill. Bill is introduced in late May in the Assembly and mid-June in Senate. It is too late to get any traction before the session ended on June 21

- PSSNY testifies at New York State Assembly Insurance and Health Committee Hearing on CVS-Aetna merger

- Pennsylvania AG Eugene DePasquale calls for audit of PBMs to bring transparency and accountability to prescription drug pricing in PA

- Ohio calls for audit of PBM pricing of prescription drugs for state's Medicaid program

- California Department of Insurance holds hearing on CVS-Aetna merger with all experts speaking against vertical integration and its impact on drug pricing, etc.

JULY

- State of Kentucky issues \$1.5 million fine to CVS related to reimbursements for pharmacists

- CVS sues State of Ohio to block release of report on its drug pricing

- California Insurance Commissioner asks Dept. of Justice to block CVS Aetna merger

JUNE

AUGUST

December 12, 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,

My name is Catherine Arapis, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also work at New London Specialty Pharmacy in New York, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a

“firewall” between its pharmacies and its CVS Caremark PBM, yet CVS routinely “markets” independent pharmacy patients with official letters stating that if the patient doesn’t switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers “deals” such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states’ investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS’ contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state’s Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Catherine Arapis

New London Specialty Pharmacy



carapis@nlspecialty.com

December 6, 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,

My name is Evonne Barber, I am a pharmacy technician at Palmer Pharmacy in Johnstown, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't

switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug-makers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, if we are to have patients to serve we are forced to sign contracts with CVS. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

A handwritten signature in cursive script that reads "Evonne Barber". The signature is fluid and somewhat stylized, with the first name "Evonne" and the last name "Barber" clearly distinguishable.

Evonne Barber
Palmer Pharmacy

[Redacted]
[Redacted]

December 6, 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,

My name is Brian Bartle, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the owner at Bartle's Pharmacy in Oxford, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a

"firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Brian Bartle

Brian W. Bartle
Bartle's Pharmacy

[REDACTED]

[REDACTED]

December 4, 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,

My name is Daniel Becker, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also [am the owner of Jefferson valley Pharmacy in Jefferson Valley, NY and Putnam Valley Pharmacy in Putnam Valley, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a

"firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the EpiPen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have EpiPen included on drug plan formularies.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for

their medications, without the benefit of the prescription benefit plan they pay for each month.

- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. As I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

Due to Generic Effective Rates (GER) in our contracts, CVS Caremark took back for the first 6 months of 2018 \$102,000. That was just for the first months of the year and I have no recourse but to grin and bear it.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,



Daniel Becker, President

Jefferson Valley Pharmacy
3693 Hill Blvd
Jefferson Valley, NY 10535

Putnam Valley Pharmacy
Po Box 416
Putnam Valley, NY 10579



From: 
To: dc.jnc@dc.gov
Cc: [ATR-Antitrust - Internet](#)
Subject: CVS-Public-Comments-Letter.docx
Date: Wednesday, December 5, 2018 8:27:43 PM
Attachments: [CVS-Public-Comments-Letter.docx](#)

<http://www.pharmacyowners.com/wp-content/uploads/2018/12/CVS-Public-Comments-Letter.docx>

CVS-Public-Comments-Letter.docx

December 3, 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,

My name is Teresa Dickinson, and I am the owner of Melrose Pharmacy, an independent pharmacy in Phoenix, AZ. I am also the president of Pharmacists United for Truth and Transparency (PUTT), a coalition of more than 1,200 independent and community pharmacies across the U.S. I am writing on behalf of my organization and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are “in the dark” with regard to the merger. We promise **you are**, as are most Americans about the true nature of

the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.
- CVS has been the subject of some states' investigations into questionable

pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS’ contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.

- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state’s Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.

- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other

drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the**

U.S. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health plan costs until well into 2018.

- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this “squeeze and buy” practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it’s so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it” - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the “backbone” and the “engine” of the U.S. economy. Many of us in the

nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Teresa Dickinson

President and Pharmacy Owner

Pharmacists United for Truth and Transparency

Teresa@TruthRx.org

Pharmacists United for Truth and Transparency

326 S. Main Street

Winston-Salem, NC 27101

TruthRx.org

Sent from my iPhone



PHARMACISTS UNITED FOR
TRUTH AND TRANSPARENCY
TRUTHRX.ORG

December 3, 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,

My name is Teresa Dickinson, and I am the owner of Melrose Pharmacy, an independent pharmacy in Phoenix, AZ. I am also the president of Pharmacists United for Truth and Transparency (PUTT), a coalition of more than 1,200 independent and community pharmacies across the U.S. I am writing on behalf of my organization and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are “in the dark” with regard to the merger. We promise **you are**, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS’ in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna’s Medicare Part D business to WellCare only served to maintain CVS’ market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient’s pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a “firewall” between its pharmacies and its CVS Caremark PBM, yet CVS routinely “markets” independent pharmacy

Pharmacists United for Truth and Transparency
326 S. Main Street
Winston-Salem, NC 27101
TruthRx.org



PHARMACISTS UNITED FOR
TRUTH AND TRANSPARENCY
TRUTHRX.ORG

patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

Pharmacists United for Truth and Transparency
326 S. Main Street
Winston-Salem, NC 27101
TruthRx.org



PHARMACISTS UNITED FOR
TRUTH AND TRANSPARENCY
TRUTHRX.ORG

- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not “recyclable”). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing’s mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this “squeeze and buy” practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it’s so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it” - if we

Pharmacists United for Truth and Transparency
326 S. Main Street
Winston-Salem, NC 27101
TruthRx.org



PHARMACISTS UNITED FOR
TRUTH AND TRANSPARENCY
TRUTHRX.ORG

want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation’s largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they’ve had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS’ “Squeeze and Buy” tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS’ anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Teresa Dickinson
President and Pharmacy Owner
Pharmacists United for Truth and Transparency
Teresa@TruthRx.org

Pharmacists United for Truth and Transparency
326 S. Main Street
Winston-Salem, NC 27101
TruthRx.org



1407 Madison Avenue, New York, N.Y. 10029
212-722-3200 Fax 212-722-3978

December 7, 2018

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

Dear Mr. Mucchetti,

My name is Marc Brandell, and I am a pharmacist at Madison Avenue Pharmacy in New York, N.Y. I have been a pharmacist at Madison Avenue Pharmacy for almost 20 years and have been a registered pharmacist for over 30 years. In addition to working in Madison Avenue Pharmacy I am also a member of the New York State Pharmacy Advisory Committee. This committee advises the New York State Department of Health and all other their divisions on Healthcare Policy and Procedures.

I am not an avid letter writer but I am compelled to express on behalf of myself and other Independent Pharmacists our full opposition to the CVS-Aetna merger.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system. This is the true nature of the Pharmacy Benefit Manager (PBM) industry.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to

allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives such as discounting copays to entice the use its stores or mail order programs.** CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** This is simply not true. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are 3 articles that further expose this "spread pricing". Article #1, is from Business Insider, March 30, 2018. Article #2 from Bloomberg News September 11, 201. Article #3 from The Capital Forum January 12, 2018. These articles demonstrate the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drug makers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates (illustration #1). This practice continues to date.
- Moreover, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, for example, Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immuno-suppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and have made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Thereafter, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Mr. Mucchetti, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here. If your Honor desires, I would be happy to detail.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is. **If we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Mr. Mucchetti, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here (Article #1), including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida (Illustration #2 and #3 respectively)

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we urge you to rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

A handwritten signature in cursive script that reads "Marc Brandell R.Ph." The signature is written in black ink and is positioned above the typed name.

Marc Brandell R.Ph.

Madison Avenue Pharmacy

1407 Madison Ave. New York, N.Y. 10029





WHAT CVS IS DOING TO MOM-AND-POP PHARMACIES IN THE US WILL MAKE YOUR BLOOD BOIL

Linette Lopez
March 30, 2018

- CVS Caremark, the in-house pharmacy benefit manager for CVS, has been accused of squeezing small pharmacies, driving some out of business.

- Lawmakers in Arkansas and Ohio have been quick to pass laws designed to end this by demanding higher transparency or regulatory oversight.

- CVS is also trying to buy up small pharmacies, which is much easier to do if they're going out of business.

The short version of what happened to CVS in 2018 is this: The company got too greedy, and then it got caught.

In its greed, the company squeezed independent mom-and-pop pharmacies. The squeezing wasn't being done by the part of CVS you buy dental floss from or visit to pick up a prescription, though it's not unrelated. It's a behind-the-scenes business known as a pharmacy benefit manager, which manages payments between insurers and pharmacies and drug companies.

The mom-and-pop pharmacies say CVS' in-house pharmacy benefit manager, CVS Caremark, slashed reimbursements for medications sold to their patients on Medicaid. At the same time, they say, it was reimbursing CVS pharmacies at much better rates. With some of them on the verge of going out of business, these pharmacies have rallied lawmakers – both Democrats and Republicans – to put an end to this.

So now CVS faces a tide of resistance to the way it deals with smaller rivals. Already, Arkansas legislators have passed a law aimed at curbing this behavior. This is new regulation in a Republican-dominated state. That's how bad things looked to the lawmakers.

Ohio is forcing PBMs to disclose more about the way their pricing and contracts work. Mom-and-pop pharmacists in states like Texas and Kentucky are realizing they have a CVS problem on their hands too. Caremark manages payment for Medicaid-managed care plans in more than 20 states.

This is important because CVS is trying to cut a \$68 billion deal to buy a health insurer, Aetna – a deal that would make it even more powerful and more able to obscure the whys and hows of pricing all through the healthcare system.

What's more, CVS isn't the only healthcare company trying to turn into a leviathan. Over the past few years the largest healthcare companies – including insurers, PBMs, hospitals, and drug companies – have been combining in what is known as vertical integration, or mergers between companies in the same industry whose businesses don't directly compete.

They say this is an effort to create efficiency in the healthcare system. What CVS has shown, though, is that this kind of integration can actually get companies drunk on pricing power, and create monopolistic monsters.

In Arkansas

To their credit, once legislators in Arkansas figured out what was happening to local pharmacies, they moved at blinding speed.

The state legislature nearly unanimously passed a bill designed to curb this behavior from PBMs on March 14.

The situation had gotten desperate, fast. The way mom-and-pop pharmacists tell it, CVS started bringing the pain at the beginning of 2018. Suddenly, reimbursement rates for Medicaid plummeted at the same time drug prices for Medicaid started rising. So in the beginning of February, Arkansas Attorney General Leslie Rutledge started investigating the matter.

"The amount paid to the pharmacy was less than half of what was being charged to the plans," Scott Pace, of the Arkansas Pharmacists Association, told Business Insider.

Pharmacists in Arkansas, for example, say:

- For a Fentanyl Patch 100, CVS pharmacies were reimbursed **\$400.65** while mom-and-pop pharmacies were reimbursed **\$75.74**.
- For Amoxicillin, CVS pharmacies were reimbursed **\$35.92** while mom-and-pop pharmacies were reimbursed **\$12.21**.
- For even something as simple as Ibuprofen, CVS pharmacies were reimbursed **\$5.86** while mom-and-pop pharmacies were reimbursed **\$1.39**.

Sometimes, the pharmacists say, they weren't reimbursed enough to cover the cost of filling the prescription. These aren't the only ones, to be clear. Business Insider has seen a long list of alleged disparities like the ones above.

CVS, for its part, denies that it is squeezing the mom and pops. Business Insider sent the above examples to the company, and its spokeswoman Christine Cramer said they were



Kenny Sanders
Call me anytime at:
1-205-690-4952

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'll 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 1-205-690-4952 or visit cvsv.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 1-205-690-4952.

patently wrong. However, she also said the pharmacists were "cherry-picking" reimbursements that look especially bad.

"The facts are that on an aggregate basis, we reimburse independent pharmacies at a higher rate than larger regional and national chains," she said.

"CVS Caremark considers local, independently owned pharmacies to be important partners in creating our pharmacy networks, and in fact, independent pharmacies account for nearly 40% of our network," she added.

"Furthermore, we reimburse our participating network pharmacies, including the many independent pharmacies that are valued participants in our network, at competitive rates that balance the need to fairly compensate pharmacies while providing a cost-effective benefit for our clients."

This response did not jibe with what legislators, patients, and pharmacists were seeing on the ground, though.

Out of a \$50 drug, for example, say \$22 was paid to the mom and pop, the rest went to CVS – to its PBM. At the same time, patients looking at how much a drug cost their health plan in their explanation-of-benefits portal would show a price of, say, \$100.

"The numbers were stark," Pace said.

So until this was all figured out, people who bought medicines at their local pharmacies in Arkansas (and Ohio) didn't know that their neighbors were getting screwed. They also didn't know that, as their local pharmacists were getting squeezed, CVS was waiting in the wings, sending out letters offering to buy the very mom-and-pop shops it was forcing out of business.

One pharmacist, Rick Pennington of Lonoke, Arkansas, said that if it weren't for his business mailing a generic erectile-dysfunction pill to nine states, he'd be out of business.

"When you look at who's controlling the money and who has the leverage, it's the PBMs who have control," Pace told Business Insider. "These folks are trying to get more integrated into the healthcare system, and so far we've seen that means patients lose. Next, they'll buy a hospital and be an HMO. I think that's bad for patient choice."

He added: "It's not a free market because there is no transparency on pricing." CVS, however, denies coordination between its PBM and its pharmacies.

"Our retail business has engaged in acquisition activity and outreach to other pharmacies since well before CVS and Caremark merged, and, in fact, the communications materials related to this activity has been relatively unchanged over the years," Cramer said. "Any retail acquisition activity is completely unrelated to, separated from, and not coordinated in any way with the PBM business' management of its pharmacy network."

In Ohio

The story for pharmacists in Ohio is a bit different. There, some have viewed CVS as problematic for years, but instead of seeing reimbursement rates plunge, legislators and pharmacists said they've been moving up and down like crazy since around 2015. By October or November of last year, gross annual margins for Medicaid payments to mom and pops were going below zero, and pharmacists were losing money on most drugs sold.

"Because those rates are set arbitrarily you're set up for a roller-coaster ride," Antonio Ciaccia of the Ohio Pharmacists Association said in a phone interview with Business Insider. "No one expects to get rich off Medicaid ... but if you sat down with a pharmacist that was willing to tell you, 'Here's what I was getting paid,' you could match it up with state-utilization data and see the spread and how significant the loss was ... That's what kind of lit everything up in Ohio."

There was also the suspicion that Medicaid was being overcharged. One legislator, after being briefed on what was going on by Ohio's Medicaid agency, said simply,

"We're getting hosed."

And of course, CVS sent those letters soliciting acquisitions. One came on November 9 of last year, a particularly bad time for the state's mom-and-pop pharmacists.

Suddenly, the number of people in Ohio government demanding answers, led by Ohio Speaker Cliff Rosenberger, started to multiply. They realized that the Ohio Department of Medicaid wasn't even asking for the right pricing data, and CVS had never considered giving it to them. Now, as rules change within the department, it'll have to.

Brad Miller, Rosenberger's press secretary, said this was something his boss had been looking into for years.

"In order to be responsible stewards of taxpayer dollars, you must have access to reliable and accurate data," he said.

"Around the state, we are seeing the negative impact the current system is having on local, independent pharmacies, many of which have been forced to close in recent years. This, in turn, reduces patients' treatment options and access to care. Having access to this data will go a long way toward lowering prescription-drug costs for patients and employers, as well as help reduce the burden on Ohio taxpayers."

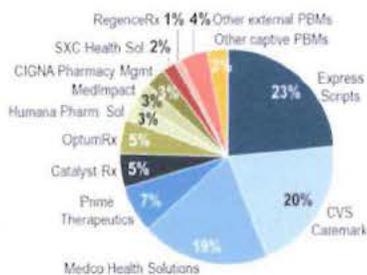
Ciaccia told Business Insider that during the three years CVS has been engaging in this behavior it has gained 68 pharmacies in the state. Its competitor Walgreens added only two locations over the same period.

"We are done messing around in Ohio," he said. "This system is completely broken ... It is layered and layered with conflicts of interest. I don't care who the PBM is."

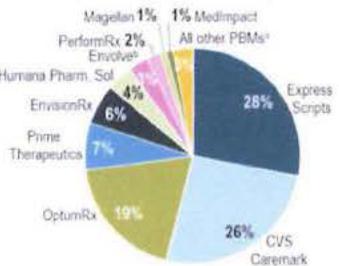
What a tailor can do!

Catamaran Integration Has Driven OptumRx's Growth into the Third-Largest PBM

Express Scripts, CVS Caremark, and Medco Led PBM Market in 2012
(Percentage share 221.2 million PBM lives)



OptumRx Has Emerged as Aggressive Competitor to Express Scripts and CVS Caremark in 2017
(Percentage share 265 million PBM lives)



*Other PBM include Unitedly (Former RegenceRx), CIGNA Pharmacy Management, Adva Pharmacy Management, etc.
Data: Health Strategies Group estimates reflect prior studies, company reports, and other publicly available information.
Source: Health Strategies Group, Pharmacy Benefit Manager, January 2017

PBMs have all sorts of tricks up their sleeves to make money not just from pharmacists but also from insurers and drug companies – basically anyone involved in getting medicine to you.

Here are a few of their greatest hits:

- They can make money (as we've seen here) off the spread between what they pay pharmacists and what they charge your insurance plan.
- They have gag orders on pharmacists, so your pharmacist can't tell you whether it's actually cheaper for you to use plain old cash to buy a drug that isn't part of your healthcare plan. (Note, the fact that there might even be a cheaper alternative challenges the PBMs' claim that they save money for their clients in the first place.)
- They get reimbursements from pharmaceutical companies. The fatter the rebate, the more likely they'll include a company's drug in a client's (your) managed-care plan, but they don't have to share that reimbursement with the client (you). They can keep some and negotiate rebates for themselves. They can collect all kinds of administrative fees and other types of fees from drug companies too.

We've been learning about this slowly. Three PBMs – CVS Caremark, Express Scripts, and UnitedHealth Group – control about 70% of the US market, and they guard their secrets zealously. Recently, though, the news site Axios published a contract template for Express Scripts. No two contracts are alike, and Express Scripts grumbled that the one Axios published (which was rife with loopholes to make Express Scripts money at every turn) was old and irrelevant.

Yet the company demanded that DocumentCloud, where the contract was posted, immediately take it down, citing copyright infringement.

This "Oh it doesn't matter to our business – but DON'T TOUCH THAT!" response is trending in PBM world.

For example, earlier this month the US Senate introduced the Patient Right to Know Drug Prices Act, which would ban the so-called gag clauses mentioned above (as Arkansas lawmakers did in their bill).

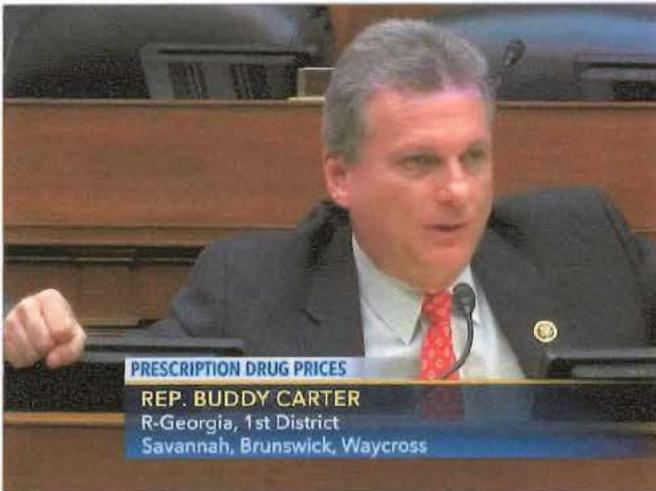
The Pharmaceutical Care Management Association, the PBM lobby, responded to that by saying:

"We support the patient always paying the lowest cost at the pharmacy counter, whether it's the cash price or the copay. This is standard industry practice in both Medicaid and the commercial sector. We would oppose contracting that prohibits drugstores from sharing with patients the cash price they charge for each drug. These rates are set entirely at the discretion of each pharmacy and can vary significantly from drugstore to drugstore."

Sounds as if they're for it, right? Wrong. Here's the next sentence.

"Fortunately, to the degree this issue was ever rooted in more than anecdotal information, it has been addressed in the marketplace."

So which is it, guys? Do you think transparency is important and support patient rights – or are you going to fight this bill?



It's a simple question. And it's easy to see the answer.

Rep. Buddy Carter, a Georgia Republican, introduced the Prescription Transparency Act to the US House of Representatives this month. It does basically the same thing as the Senate bill, and, as the only pharmacist in Congress, he knows he's facing a street fight from the PBM lobby.

"They spent \$600,000 against me when I first ran for office three years ago to try to get me defeated, and over the past few years we've seen them ramp up their political activity," Carter told Business Insider. He's also noticed that legislators in Washington are finally waking up to the urgency of this situation. There have been hearings about drug pricing in both houses, and Scott Gottlieb, the commissioner of the Food and Drug Administration, has come out swinging especially hard, saying that the PBMs sit at the top of a *"rigged system."*

"We've seen some companies that dropped the PBMs such as Caterpillar and they've been able to control drug prices," Carter said in a phone interview. *"Right now the focus is on prescription drug pricing, and the most impact we can have on pricing is to have control on transparency from the PBMs."*

If you believe that, you should also believe taking that control won't be easy. Once we do, though, it may change the way you look at what our healthcare is trying to become.

Reprinted with permission from Linette Lopez, Business Insider

Legal notices in the Ottumwa Courier showed how much Wapello County paid CVS's Caremark drug benefits unit. Photographer: Marisa Gertz/Bloomberg

The Secret Drug Pricing System Middlemen Use to Rake in Millions

By Robert Langreth, David Ingold and Jackie Gu
September 11, 2018

Not everybody reads the legal notices inside the Ottumwa Courier. But in January, Iowa pharmacist Mark Frahm noticed something unusual in the paper.

For years, Frahm's South Side Drug bought pills from distributors, and dispensed prescriptions to the Wapello County jail. In turn, the pharmacy got reimbursed for the drugs by CVS Health Corp., which managed the county's drug benefits plan.

As he compared the newspaper notice with his own records, and then with the county's, Frahm saw that for a bottle of generic antipsychotic pills, CVS had billed Wapello County \$198.22. But South Side Drug was reimbursed just \$5.73.

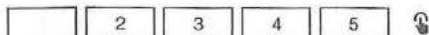
So why was CVS charging almost \$200 for a bottle of pills that it told the pharmacy was worth less than \$6? And what was the company doing with the other \$192.49?

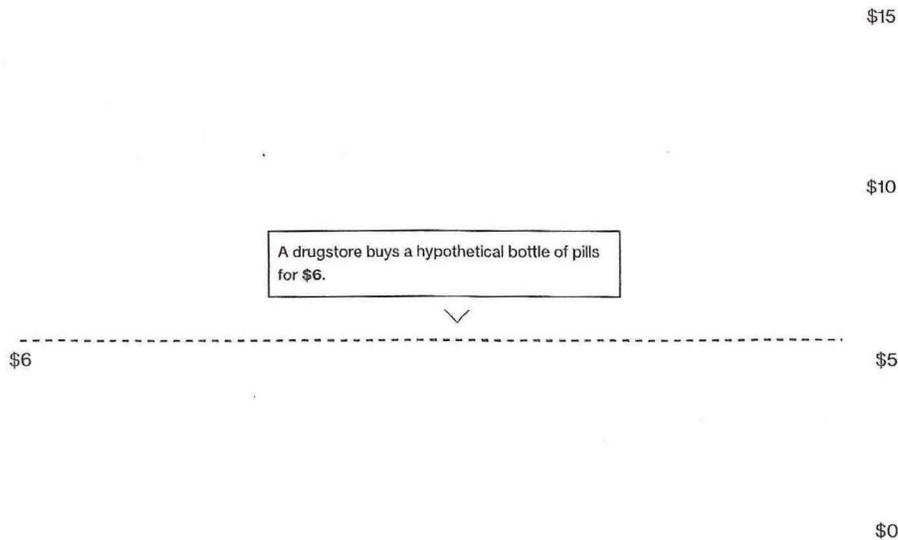
Frahm had stumbled across what's known as spread pricing, where companies like CVS mark up—sometimes dramatically—the difference between the amount they reimburse pharmacies for a drug and the amount they charge their clients.

It's where pharmacy benefit managers (PBMs) like CVS make a part of their profit. But Frahm says he didn't think the spread could be thousands of percent.

"Middlemen have to make some money, but we didn't expect it to be this extreme," said Frahm, who said his pharmacy lost money in the jail account last year because CVS paid so little. "We figured everyone was playing fair."

How Spread Pricing Works





In an analysis of pharmacy and middleman markups in Medicaid plans around the country, Bloomberg found big spreads on dozens of drugs, and evidence that the spreads are growing. For many widely used generic drugs, state insurance plans are collectively paying millions of dollars in fees to private companies.

CVS is run from Woonsocket, Rhode Island, and is best known for its thousands of drugstores across the U.S. But more than 40 percent of the company's operating income comes from the other side of its business—administering prescription drug benefits for companies, governments and until recently, in Wapello County, the local jail.

Spread pricing is a practice that's most common with generic drugs, which make up almost 90 percent of all prescriptions dispensed in the U.S. Generic pills often cost pennies on the dollar compared with brand-name versions, and promoting them has been the focus of U.S. efforts to keep drug costs under control—especially in insurance programs like Medicaid that provide care to millions of lower-income people.

Yet critics argue the practice of spread pricing may actually be propping up costs as middlemen divert fees and markups to themselves, undercutting the savings generics are supposed to offer.

CVS and other PBMs say that pharmacists cherry-pick examples like Frahm's bottle of antipsychotics because they want to agitate for more money.

Spread pricing "is not a secret to our clients," Richard Ponesse, a senior director at CVS, told Iowa state lawmakers at a hearing in April. Many choose it because it's "more predictable" than being exposed to pharmacy rates for drugs.

"Ultimately, under this model, we make money on some drugs and lose money on others," CVS spokeswoman Christine Cramer said in response to questions about the practice.

To probe what middlemen make, Bloomberg examined the prices of 90 of the best-selling generic drugs used by Medicaid managed-care plans. In 2016, the drugs made up a large portion of Medicaid's spending on generics.

Markups on these commonly prescribed generic drugs are growing, with huge markups on some well-known medicines, Bloomberg found. For the 90 drugs analyzed, which includes more than 500 dosages and formulations, PBMs and pharmacies siphoned off \$1.3 billion of the \$4.2 billion Medicaid insurers spent on the drugs in 2017.

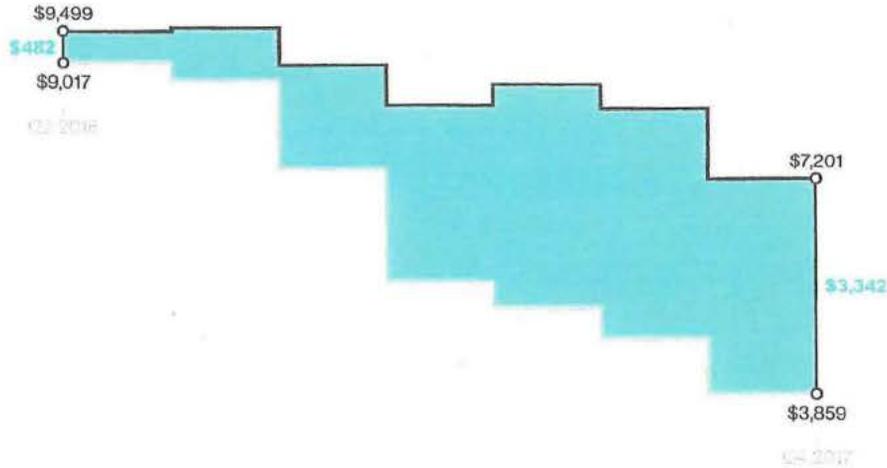
While pricing data for benefit managers and their corporate clients, as well as some governments, is hidden, state Medicaid programs regularly publish comprehensive spending and price data that provide a window into how much middlemen and pharmacies make on markups.

The biggest markups tended to come on newer generic drugs. In 2017, markups in some states increased the price paid by state Medicaid plans for generic versions of the Novartis AG's leukemia pill Gleevec by as much as \$3,000 per prescription.

Imatinib 400 mg (generic Gleevec) in Ohio

Disease: Leukemia

Cost to pharmacy Cost to state Medicaid program Combined pharmacy and PBM spread and fees



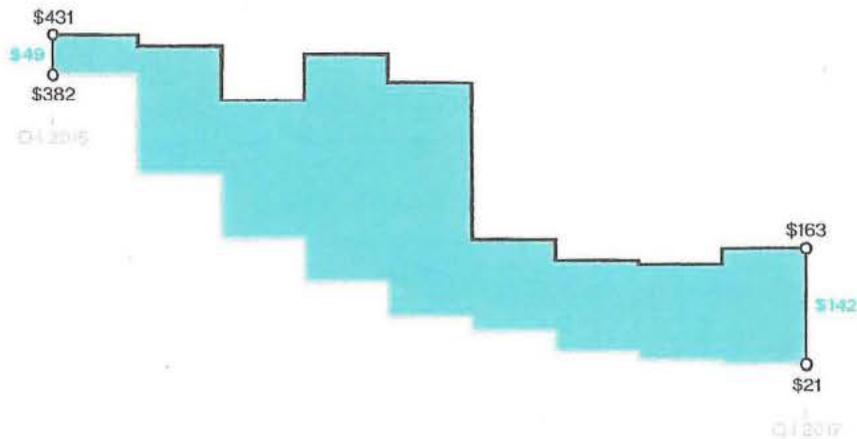
Note: Drug prices reflect a 30-day supply; numbers may not add precisely due to rounding

Aripiprazole, a generic antipsychotic drug that was one of the most costly drugs to Medicaid programs in 2016, was also heavily marked up in many states. While the market price for aripiprazole dropped rapidly during 2017 to about \$20 a month, many state Medicaid plans, including in Ohio, New York, Arizona and Texas, were still paying more than \$140 a month for the drug, according to the data.

Aripiprazole 5 mg (generic Abilify) in New York

Disease: Schizophrenia and depression

Cost to pharmacy Cost to state Medicaid program Combined pharmacy and PBM spread and fees



Note: Drug prices reflect a 30-day supply; numbers may not add precisely due to rounding

The broad-brush analysis doesn't distinguish between how much of the markup is going to the pharmacies and how much is retained by PBMs. But independent pharmacists interviewed by Bloomberg say the money largely isn't going to them.

State Medicaid programs have increasingly turned to managed-care plans to keep costs under control. Bloomberg's analysis included 31 states and the District of Columbia where reliable drug data was available from 2015 to 2017.

Among the generic drugs examined, pharmacies and supply chain middlemen on average added to the bill almost 32 percent in 2017, up from 24 percent in 2015. That was still lower than markups in the traditional fee-for-service Medicaid programs, although the gap has been narrowing, Bloomberg found.

Drug plans have fought to keep the spreads secret.

In Ohio, CVS manages drug benefits for four out of five Medicaid managed-care plans, which are run by private insurers and cover roughly 90 percent of the state's 2.8 million full Medicaid beneficiaries.

In July, CVS sued the state to prevent the release of a report on how much spread it received from Medicaid programs there. A summary released in June found that CVS and other PBMs' 8.8 percent spread came to \$5.70 per prescription across all brand-name and generic drugs.

Ohio could have gotten the same services for \$1.90 per prescription or less by switching to a fee-based model, according to the state-sponsored analysis. The hidden fees Ohio paid amounted to \$223.7 million in a 12-month period through March, according to the consultant.

CVS said that revealing pricing details would keep it from getting the best rates, and that money it makes on spreads pays for other services the company provides. CVS said that last year its margins in the PBM business were 3.5 percent, and that overall privatized Medicaid has saved Ohio money.

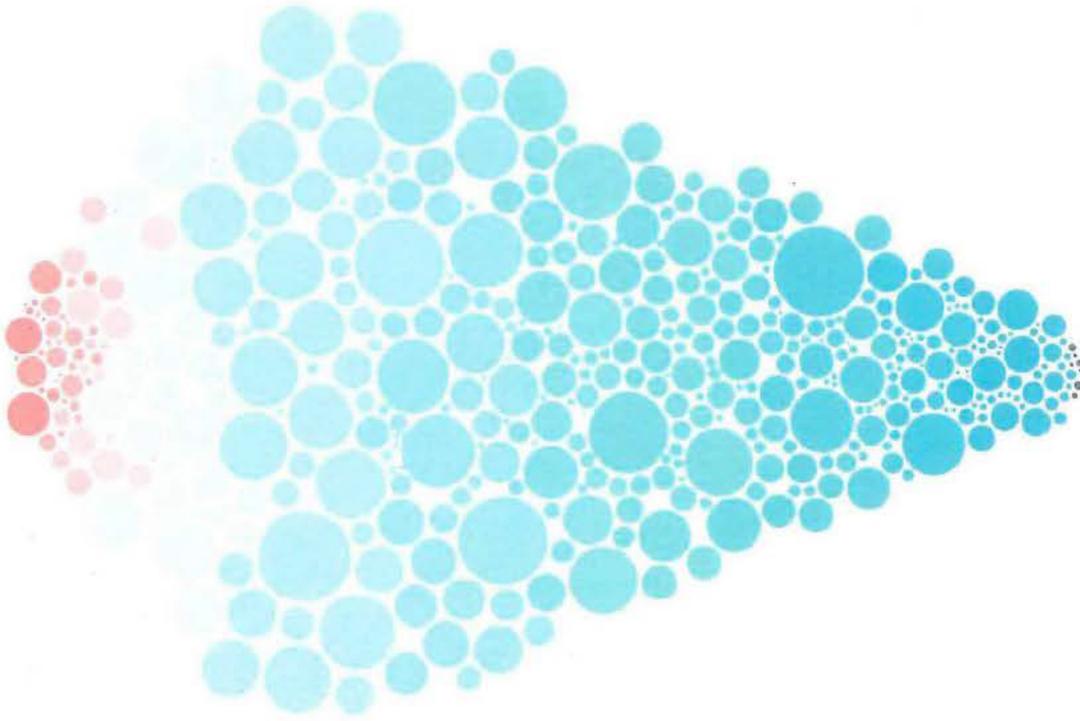
Following the report, Ohio ordered managed-care plans in the state to terminate their spread pricing contracts for 2019.

"We intend to open up the black box once and for all," said Tom Betti, a spokesman for the Ohio Department of Medicaid. He said Ohio's report appeared to be the first time a state had looked at spread pricing in detail. "Manufacturers go to great lengths to keep the prices secret," he said.

Drug Markups in Ohio

Generic drugs in Ohio Medicaid managed-care plans and their markups in Q4 2017





In August, a separate study conducted by the Ohio auditor found that PBMs were receiving \$6.14 per generic drug prescription in Ohio's managed Medicaid programs in the 12-month period through March.

That's consistent with Bloomberg's findings, which indicate that combined pharmacy and PBM markups in the Ohio program were just under \$8 per prescription in 2017 and early 2018. Taken together, it suggests that PBMs, not pharmacies, have been getting most of the markups on generic drugs in Ohio.

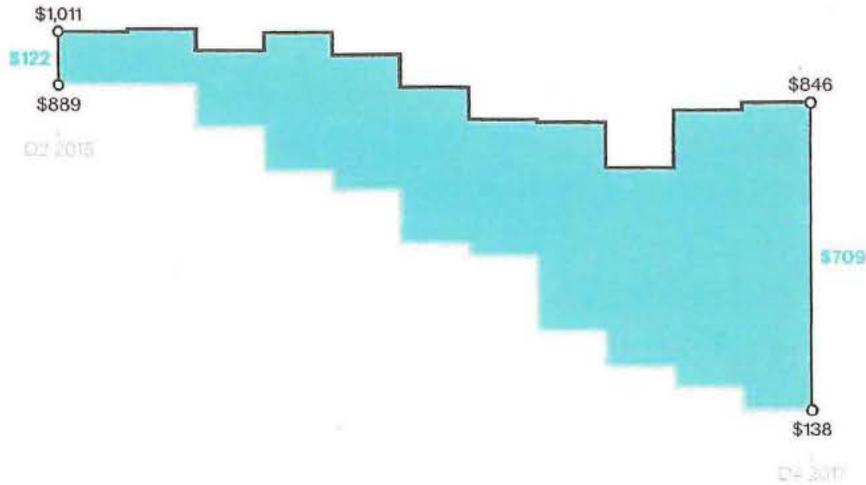
While Ohio's markups on generic drugs are above average, according to Bloomberg's findings, they're nothing compared with those in neighboring Indiana. Generic drug markups in that state's four privately run Medicaid plans averaged well over \$13 per prescription in 2017—more than any other managed-care state Bloomberg reviewed.

In late 2017, private Medicaid plans in Indiana spent more than \$800 for a 30-day supply of entecavir, a hepatitis B pill that cost pharmacies less than \$140 to buy. State plans paid more than \$100 per prescription for generic versions of the heartburn drug Nexium, which cost pharmacies less than \$25 at the time.

Entecavir 0.5 mg (generic Baraclude) in Indiana

Disease: Hepatitis B

Cost to pharmacy Cost to state Medicaid program Combined pharmacy and PBM spread and fees

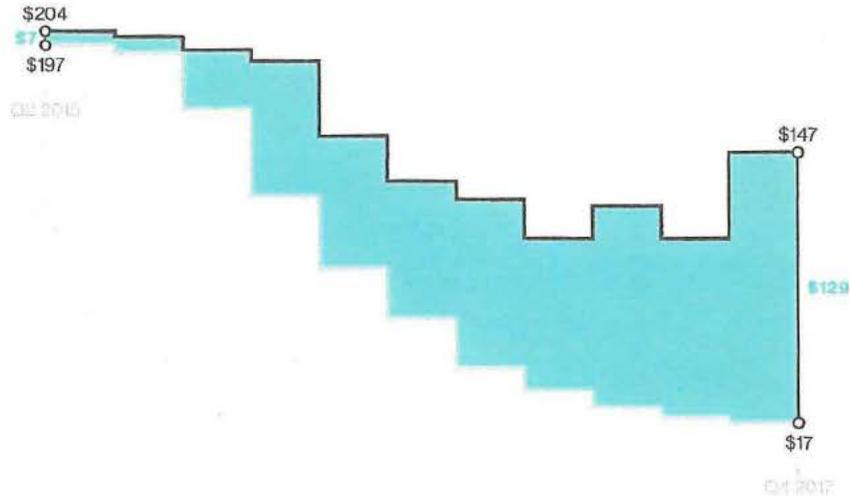


Note: Drug prices reflect a 30-day supply; numbers may not add precisely due to rounding

Esomeprazole 40 mg (generic Nexium) in Indiana

Disease: Heartburn

Cost to pharmacy Cost to state Medicaid program Combined pharmacy and PBM spread and fees



Note: Drug prices reflect a 30-day supply; numbers may not add precisely due to rounding

Pharmacists in Indiana say they are getting a tiny slice of those markups.

“We’ve seen nothing but declining margins,” says Josh Anderson, co-owner of Crowder’s Pharmacy, an independent drugstore in Bedford, Indiana.

Indiana is “very aware of the national dialogue and concerns regarding managed-care PBM transparency,” said Jim Gavin, a spokesman for the Indiana Family and Social Services Administration. “We are monitoring this issue very closely.”

PBMs say customers—governments and employers—have a choice about whether to use spread pricing, or fee-based arrangements where drug prices are passed along directly.

Spread pricing “continues to be the preferred way” by clients to pay for pharmacy benefits, said Brian Henry, a spokesman for Express Scripts Holding Co., which along with CVS is one of the U.S.’s largest PBMs. “It adds predictability for the plan sponsors” who don’t have to worry about costs that vary from pharmacy to pharmacy.

In Iowa, Wapello County is now buying the jail’s drugs directly from Frahm’s pharmacy after discovering that in some months it was paying CVS over \$4,500 a month, while the company was reimbursing the pharmacy about \$1,500, said county supervisor Jerry Parker.

It's also investigating whether it could save more by cutting CVS out of its far-larger county employee drug plan.

"We didn't have any idea," said Parker, comparing dealing with the labyrinthine drug-benefits system with the county's more workaday duties. "It is more complicated than fixing a road."

The PBM industry's lobbying group says criticism of the practice is driven by pharmacists greedy for more money.

"Our job isn't to enrich drugstores, it is to save money for health plans," said Mark Merritt, president of the Pharmaceutical Care Management Association. Some clients prefer spread pricing because it encourages PBMs to promote generics by allowing them to make money on the lowest-cost drugs, he said. They've also reduced the high markups some pharmacies have gotten in traditional Medicaid arrangements, Merritt said.

PBMs pricing practices have also generated lawsuits.

Four hundred independent pharmacies have accused UnitedHealth Group's PBM, OptumRx, of manipulating its generic drug price lists "to line its pockets at the expense of independent pharmacies," according to a lawsuit filed in 2017 in federal court in Pennsylvania.

The company maintained separate price lists for pharmacies and for its clients, and sometimes paid pharmacies a steeply discounted price for a drug, but then billed its clients a much higher amount, according to the lawsuit.

UnitedHealth Group said it offers a variety of arrangements to help keep costs down. The company called the lawsuit "meritless" and said it and other claims are "designed only to increase pharmacists' income at consumers' expense."

In July of last year, West Virginia cut out PBMs, including Express Scripts and CVS, from its Medicaid managed-care program. By running the program itself and eliminating spreads and reducing administrative fees, it expects to save \$30 million a year—about 4 percent of the state Medicaid drug spending, a state spokeswoman said.

And this June, Pennsylvania's auditor general started reviewing PBM practices in that state's Medicaid program, citing a lack of oversight into how they determine prices.

Despite the pushback, critics of the industry don't think that spread pricing will stop.

"The PBMs have found they can do it and get away with it," says Stephen Schondelmeyer, a professor of pharmaceutical economics at the University of Minnesota. "The way that spread pricing is being done these days, generics don't always save you money."

Methodology: Bloomberg News compared government spending on more than 90 top-selling generic drugs in Medicaid managed-care programs to a government survey of pharmacy purchase prices, the National Average Drug Acquisition Cost (NADAC). The analysis encompasses over 500 dosages and formulations. Medicaid reports state drug utilization data on a quarterly basis.

Bloomberg chose the drugs based on 2016 spending data tabulated by the Centers for Medicare and Medicaid Services; additional major recent generic introductions identified by GoodRx were also included. Drugs whose units couldn't be reliably matched between databases, or whose per-unit prices varied by package size, were excluded. Excluded drugs were primarily topical or injected medicines; almost all big-selling generic pills were included.

For each drug, weekly NADAC prices were averaged for a calendar quarter to generate an average price for the quarter. These prices were compared to quarterly Medicaid spending for the drug in each state's managed-care plan to determine the average quarterly markup over pharmacy purchase price. The analysis doesn't distinguish between how much money was retained by pharmacies and how much went to drug benefit managers. Patient copayments, usually minimal for generic drugs in Medicaid, were not included.

To generate national averages, Bloomberg analyzed data from 31 states and the District of Columbia with over \$10,000 in generic drug Medicaid managed-care spending in each of 2015, 2016, and 2017. Hawaii was excluded due to data anomalies that resulted in implausibly large markups in some years.

The analysis does not include rebates that state Medicaid programs receive from drug companies based on prescription

CVS/Aetna: State Regulators Urged to Investigate CVS Caremark Reimbursement Cuts, Solicitation Letters, as Part of Aetna Review

State Regulatory Update

Independent pharmacists are urging state insurance regulators - as part of their reviews of the CVS/Aetna merger - to examine CVS Health's recent move to slash smaller rivals' prescription reimbursements and then offer to buy their stores.

The reimbursement cuts, some of which involved drugs used to treat digestive illnesses and other chronic conditions, occurred around October 25—five weeks before the December 3 Aetna deal announcement, a dozen independent pharmacists said. The cuts affected pharmacies in a number of states, including Florida, Kansas, Maryland, Ohio, Washington, and Wisconsin.

The cuts were both sudden and steep: one pharmacy went from earning \$41.63 for selling Metronidazole—an antibiotic used to treat bacterial infections—to losing \$72.27 per sale of the treatment. In another case, CVS-owned Caremark, the second-largest U.S. pharmacy benefit manager, paid just over 5 percent of the \$2,237.08 a pharmacy spent on Budesonide, a steroid used to treat Crohn's disease and ulcerative colitis.

"The reimbursement rates in question are established using aggregate information from wholesalers, third party sources and marketplace intelligence and are subject to change frequently," a CVS spokesperson said, as part of a longer statement included below.

Pharmacists allege "squeeze and buy." The independent pharmacists said in the weeks following the drastic reimbursement cuts, CVS faxed and e-mailed these same pharmacies solicitation letters asking if they were interested in selling their businesses to the chain, the nation's second largest.

"In our fourth quarter, the reimbursements from CVS Caremark were shockingly low," explained one independent pharmacist affected by the reimbursement cuts. "We don't even know if we'll survive 2018," the pharmacist added. "These are crooked games," said another independent pharmacist. "These are tactics and practices to squeeze [independent pharmacists] out of the market."

Two sources present at the exchange also said that during a meeting with a Maryland state insurance regulator and independent pharmacy representatives around the time of the cuts, a CVS lobbyist assured the regulator that the reimbursement cuts were simply a computer glitch.

Independent pharmacists urge state regulators to investigate as part of CVS/Aetna probe. CVS Health's recent actions demonstrate the vertically-integrated firm's strategy for bankrupting its smaller rivals, the independent pharmacists said. They believe that this power will only grow if CVS acquires the nation's third largest health insurer, which could provide the company greater leverage to foreclose independent competitors and establish dominance in the retail pharmacy space.

A move by state regulators to investigate the CVS reimbursement cuts and solicitation letters could impact what are likely to be already extensive reviews of the proposed Aetna merger. At the very least, CVS's actions present a public relations distraction just as the pharmacy chain prepares to present its case to federal and state authorities.

Although state insurance regulators typically retain broad merger review authority, they have typically focused primarily on acquirer solvency. However, if independent pharmacists present a strong case that CVS Caremark is already acting in an anticompetitive manner, it could affect state regulators'—or DOJ antitrust enforcers'—willingness to permit the company to vertically integrate further up the health care supply chain.

Whether the reimbursement cuts and other independent pharmacy issues are enough to convince the insurance regulators to ultimately take a hard line on the deal is another question. Although insurance regulators have recently shown interest in developing legislation to rein in some questionable PBM practices, their jurisdiction over PBMs such as Caremark is not clear cut. “If PBMs misbehave, it will be on the insurer who contracted their business,” said Wisconsin Deputy Commissioner of Insurance, J.P. Wieske.

A Closer Look at CVS Health’s Alleged “Squeeze and Buy” Tactics

CVS as business partner and competitor. Caremark, as one of nation’s three dominant PBMs, exercises substantial power over independent pharmacists’ businesses through reimbursements.

“As the largest third party payer, [Caremark] really controls the fate of our pharmacies to some extent,” explained one independent pharmacist. “When they dropped payments a few months ago, one drug that costs us \$1000, they were suddenly paying us \$25 on a \$1100 claim. That’s obviously unsustainable for any business.”

Simultaneously, CVS retail pharmacy is a competitor to the independent pharmacists. “It’s an interesting business because you, as an independent pharmacy owner, are actually paid by your competitor,” said one independent pharmacy representative, who requested anonymity for fear of reprisal from CVS. “Plus, your competitor has access to all of your patient records,” he added.

CVS Caremark can arbitrarily set prices through MAC lists and other fees. PBMs like CVS Caremark determine reimbursements paid to pharmacies for drugs through Maximum Allowable Cost (or MAC) lists: PBM-generated lists which set a maximum amount the PBM will reimburse the pharmacies for certain drugs, particularly generics. MAC lists are different for every pharmacy, even those within the same neighborhood or even next door.

By using MAC pricing, PBMs avoid setting contracted reimbursement rates—meaning such reimbursement cuts are within the bounds of the contracts the pharmacies have signed with CVS Caremark-administered plans.

MAC pricing is intended to promote competitive pricing by incentivizing pharmacies to purchase the least costly generic drugs available in the market. However, MAC lists allow PBMs to arbitrarily determine reimbursements to pharmacies, as a PBM can change its MAC prices for any drug on its MAC lists at any time, and can change the drugs included or excluded on its lists.

Due to this lack of transparency, pharmacists often do not know how much money they will make on a sale until the moment they ring up the purchase. “They can put any drug on the list, meaning they can avoid paying us a contracted reimbursement rate,” said one Maryland pharmacist affected by the October reimbursement cuts.

Most importantly, PBMs are not required to disclose the reimbursements they pay to pharmacies, so there is no way to determine PBMs’ profit spreads from these drugs. This also means it is impossible to tell whether PBMs are actually passing savings back to payers.

CVS letter seeks to acquire independent pharmacies. In the weeks after the October 25 reimbursement cuts, CVS sent [solicitation letters](#) to many of the affected independent pharmacists, urging the pharmacists to consider a sale to CVS. In one letter, Shane Stockton, a CVS Regional Director of Acquisitions, writes that as a pharmacist himself he knows “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,” the letter continues.

The letter goes on to assure the small business owners that CVS will take care of their patients, will stay in the same location, will bring on as many employees as possible, and that the representative will work with the owner to “make the acquisition process easy.”

Reimbursement cuts and letters suggest “squeeze and buy” approach. To be sure, prospecting letters are nothing new, and CVS has long attempted to buy out independent pharmacies. “It has been going on forever,” said one independent pharmacy representative. “They’re a business partner, privy to all your information—then they’ll turn around and use that information to say—hey, if you’re looking to sell, here we are.”

But the timing of the drastic reimbursement cuts and prospecting letters suggests a “squeeze and buy” approach, said independent pharmacists and industry experts. “They’re underpaying us and forcing customers out of our pharmacies—and of course paying themselves, at CVS, much more on a different contract, mind you—and it’s working to put many of our stores out of business,” said one pharmacist.

Ultimately, what is at stake is service and patient choice, said another independent pharmacist. “There are 22,000 independent pharmacists [in the U.S.] and 10,000 CVS stores,” he explained. “CVS is saying you can’t go to Bob or Joe’s pharmacy, you need to go to ours. Patients would get the best care by having the most choice, so patients are the ones being hurt here. And try calling your local CVS, and then try calling your independent pharmacist. I bet you can guess where you’ll get the better service.”

In meeting, CVS represented reimbursement cuts as a “computer glitch.” Around the time of the first reimbursement cuts, Maryland Pharmacists Association executive director Aliyah Horton and other independent pharmacy representatives were present at a meeting with CVS lobbyists and representatives of the Maryland Insurance Administration.

At the meeting, the CVS lobbyists assured the Maryland insurance regulator that the reimbursement cuts were a computer glitch, according to Horton and another independent pharmacy representative who confirmed the exchange. Later, however, CVS apologized to the independent pharmacy representatives and retracted their comment about the computer glitch.

CVS comment. A CVS spokesperson declined to comment on the computer glitch claim. In a statement, the spokesperson said:

“CVS Caremark is focused on providing our pharmacy benefit management clients with opportunities to improve health outcomes for their members, while also managing costs. We reimburse our participating network pharmacies, including the many independent pharmacies that are valued participants in our network, at competitive rates that balance the need to fairly compensate pharmacies while providing a cost-effective benefit for our clients.

In fact, we typically have more than 20,000 independent pharmacies included in a preferred network chosen by a benefit plan.

The reimbursement rates in question are established using aggregate information from wholesalers, third party sources and marketplace intelligence and are subject to change frequently. Wholesalers do not provide PBMs with access to individual pharmacies' acquisition costs at a drug level. We have a well-established appeals process for network pharmacies regarding reimbursement, and our responses to those appeals comply with all applicable laws.

CVS Caremark remains committed to providing our PBM clients and their members with a broad network of pharmacies that includes local, independent pharmacies. Our PBM business and network management is completely unrelated to our CVS Pharmacy retail business' acquisition program, and we maintain stringent firewall protections between our retail and PBM businesses.”

Illustration #2

CVS' PBM (Caremark) consistently pays its own CVS retail pharmacies more than it pays other independent pharmacies.

**LOCAL
PHARMACIES**

RECEIVED
\$909.38

**TEMOZOLOMIDE
100 MG
20 TABLETS**

Use as directed for
cancer treatment.

**CVS
pharmacy**

RECEIVED
\$3,940.22

**PHARMACISTS UNITED
for Truth & Transparency**



truthrx.org

SOURCE: ARKANSAS BLUE CROSS COMMERCIAL HEALTH PLANS, DATA COLLECTED FEB 2018

EPIGATE

Where the Money Really Goes

Pharmacists United for **TRUTH & TRANSPARENCY**



DEMAND TRANSPARENCY

PBM UNFAIR BUSINESS PRACTICES

CVS Caremark (the CVS PBM) routinely profits through the use of SPREAD PRICING.

DRUG COST \$53.33

**LOCAL
PHARMACIES**

RECEIVED
\$5.40

PHARMACY LOSS
(-\$47.93)

**NEOMYCIN-POLYMYXIN
10 DAY SUPPLY**

Antibiotic used to treat
ear infection.


CVS
caremark™

CHARGED PLAN

\$53.53

PROVIDED NO DRUG,
JUST THE
PROCESSING FEE

**CVS/CAREMARK SPREAD
\$44.92**

**PHARMACISTS UNITED
for Truth & Transparency**



truthrx.org

December 6, 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,

My name is Rebecca Bryant, I am a pharmacist at Palmer Pharmacy in Johnstown, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty**

pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves**. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance**. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing**. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant

rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health

plan costs until well into 2018.

- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November

2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Rebecca Bryant, PharmD

Rebecca Bryant, PharmD
Palmer Pharmacy

[REDACTED]
[REDACTED]

December 12, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,

My name is Jennifer Burch, and I am the pharmacy owner of Central Pharmacy, an independent pharmacy in North Carolina. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall;" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.

- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health cost until well into 018.
- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

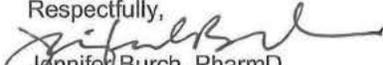
Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it"—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses that depend on the government to help keep the playing field level so we can *effectively care for our patients and still compete with the mega-corporations.*

Our major fear is the merger of the nation's largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they've had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,



Jennifer Burch, PharmD
Durham, NC

December 4, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,

My name is Steve Burney, and I am the pharmacy owner of Foothills Pharmacy, an independent pharmacy in Columbus, NC. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall;" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The

findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.

- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health cost until well into 2018.
- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider

selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

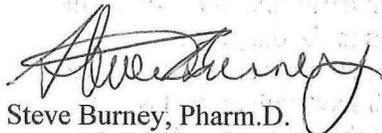
Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it"—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation's largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they've had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,



Steve Burney, Pharm.D.
Foothills Pharmacy
80 Shuford Rd
Columbus, NC 28722

December 3, 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,

My name is Peter Camporese III, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I am also the owner/partner of Middleburgh Pharmacy Inc in Middleburgh, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating

that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-

income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the U.S. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, if we are to have patients to serve we are forced to sign contracts with CVS. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,



Peter Camporese III
Middleburgh Pharmacy, Inc.

[REDACTED]
[REDACTED]

December 3, 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,

My name is Peter Camporese Sr, and I am a The Co-Owner of Middleburgh Pharmacy Inc a small town Community Pharmacy in Middleburgh, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase.

CVS also offers “deals” such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states’ investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS’ contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state’s Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients’ annual deductible. Lower-

income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the U.S. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, if we are to have patients to serve we are forced to sign contracts with CVS. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

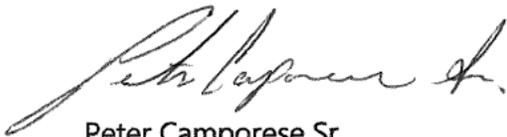
Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,



Peter Camporese Sr.
Middleburgh Pharmacy, Inc.



December 6, 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,

My name is Jennifer Christman, I am a pharmacist at Palmer Pharmacy in Johnstown, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty**

pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves**. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance**. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing**. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant

rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health

plan costs until well into 2018.

- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November

2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

A handwritten signature in cursive script that reads "Jennifer Christman RPh". The signature is written in black ink and is positioned to the right of the word "Respectfully,".

Jennifer Christman, RPh
Palmer Pharmacy

Two solid black rectangular redaction boxes covering contact information, likely a phone number and an address, located below the typed name and pharmacy name.

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, DC 20001

Dear Judge Leon,

My name is Karl Clearwaters, R.Ph. and I am the pharmacy owner of Herbst Apothecary, an independent pharmacy in Kokomo, Indiana. I am submitting this writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- CVS owns retail pharmacies that compete with the other pharmacies in its pharmacy network. I believe it is a huge conflict of interest to allow the patient's pharmacy benefit plan to provide plan prescriptions. CVS fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its CVS Caremark PBM to drive patients to their own pharmacies by sending letters to patients using independent pharmacies stating that if the patient does not use a CVS pharmacy then his/her medication cost share will increase and by offering "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy.
- In order to comply with federal requirements to complete this merger. Aetna sold its Medicare D business to WellCare Health Plans, Inc. who uses CVS to administer that portion of its business.
- CVS has been the subject of some states' investigations into questionable pricing practices. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. These programs are notoriously difficult for patients to opt out of - if they are allowed to opt at all - and almost always result in leaving patients with months of unused "maintenance" medications.
- CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- Independent pharmacies are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These three PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts independent pharmacies are offered are "take it or leave it"-if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Another fear is our patients will not be able to continue the relationships they've had with us for generations and will be forced by the big conglomerate to their one brick and mortar pharmacy or forced to use mail order.

Thank you for your consideration of the information provided. My pharmacy and other independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,


Karl Clearwaters, R.Ph.
Herbst Pharmacy
201 N. Dixon Rd.
Kokomo, In. 46901

Herbst Pharmacy
710 W. Main St.
Greentown, In. 46936

Herbst Pharmacy
2330 S. Dixon Rd.
Kokomo, In. 46902

Thomas M D'Angelo R.Ph

December 2, 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,

My name is Thomas D'Angelo, and I am the first Vice President of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also own and operate my own independent pharmacy and Home Infusion Company located in Nassau County. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.

- CVS owns retail pharmacies as well as Coram Health Care a home infusion pharmacy. Both entities compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore

entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but

pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.

- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed

pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

A handwritten signature in black ink, appearing to read 'Thomas M D'Angelo', with a long horizontal flourish extending to the right.

Thomas M D'Angelo R.Ph

Americare Compounding, LLC

December 7, 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,

My name is Stephen Davis, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the owner and work at Throggs Neck Pharmacy in Bronx, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a

"firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Stephen Davis Rph.

Respectfully,

Stephen Davis

Throggs Neck Pharmacy

[REDACTED]

[REDACTED]

RYE BEACH PHARMACY
464 FOREST AVE RYE NY 10580

December 2, 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,

My name is [name], and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also [am the owner/work at] at [name of pharmacy] in [town], NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a

“firewall” between its pharmacies and its CVS Caremark PBM, yet CVS routinely “markets” independent pharmacy patients with official letters stating that if the patient doesn’t switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers “deals” such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states’ investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS’ contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state’s Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS**. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

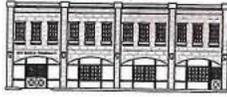
Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Your Name
Your Store
Your Phone Number
Your Email



Rye Beach Pharmacy
Compounding Specialists

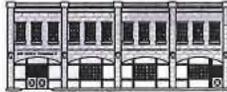
Steven Dershowitz, R.Ph.
Head Community Pharmacist

464 Forest Ave
Rye, NY 10580

info@ryerx.com
www.ryerx.com

Tel (914) 967-0856 ext. 5 Fax (914) 967-1989

Steven Dershowitz RPh



Rye Beach Pharmacy
Giaquinto Family since 1946

Rosella Menta, R.Ph.
Compounding / Community Pharmacist
Specializing in Consultative Services & BHRT

464 Forest Ave
Rye, NY 10580

rosella@ryerx.com
www.ryerx.com

Tel (914) 967-0856 ext. 6 Fax (914) 967-0264
Cell (917) 681 - 5107

Rosella Menta RPH



Rye Beach Pharmacy
Giaquinto Family since 1946

Ray Raimondi, R.Ph.
Compounding Pharmacist

464 Forest Ave
Rye, NY 10580

info@ryerx.com
www.ryerx.com

Tel (914) 967-0856 ext. 6 Fax (914) 967-0264

Ray Raimondi RPh

Ronald B May



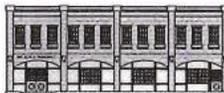
Rye Beach Pharmacy
Giaquinto Family since 1946

Ronald B. May, R.Ph.
Natural Products Manager
Pharmacist Specializing in Nutrition

464 Forest Ave
Rye, NY 10580

ronald@ryerx.com
www.ryerx.com

Tel (914) 967-0856 ext. 3 Fax (914) 967-1989



Rye Beach Pharmacy
Compounding Specialists

Joseph Ghabour, Pharm.D
Compounding Pharmacist

464 Forest Ave
Rye, NY 10580

info@ryerx.com
www.ryerx.com

Tel (914) 967-0856 ext. 6 Fax (914) 967-1989

Joseph Ghabour RPh

December 6, 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,

My name is Dr. Ajay Desai, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the pharmacist at Oval Pharmacy in Bronx, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or

very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS’ contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.

- **Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state’s Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.**
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.**
- **At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients’ annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.**
- **CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not “recyclable”). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the**

transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- *On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the U.S. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.*
- *Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.*

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

*You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.*

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the

country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ajay Desai', with a long horizontal flourish extending to the right.

Dr. Ajay Desai, PharmD
Oval Pharmacy

██████████
ajay@ovalpharmacy.com

December 6, 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,

My name is Dhvani Desai, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also work at Desai's Pharmacy in Bronx, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania.

- **Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.**
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.**
- **At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.**
- **CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.**
- **On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the U.S. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer**

December 6, 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,

My name is Narsinh Desai, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I own and also work at DESAI'S PHARMACY in BRONX NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.

- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.

- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the

Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the U.S. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, if we are to have patients to serve we are forced to sign contracts with CVS. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,



Narsinh Desai Pharmacist and Owner
Desai's Pharmacy 228 W 238th Street Bronx NY 10463

[Redacted]
[Redacted]

December 6, 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,

My name is Vijay Desai, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the owner of Village Apothecary in New York, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a

"firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the U.S. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, if we are to have patients to serve we are forced to sign contracts with CVS. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,



Vijay Desai, PharmD
President
Village Apothecary



December 10, 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,

My name is Anthony Fazio, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the owner of Lakeview Pharmacy in Lynbrook, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan**

prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal

when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder

the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.

- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

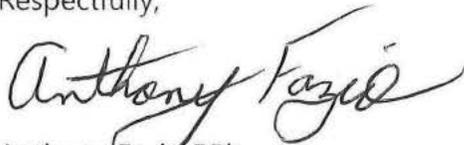
Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how

CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Handwritten signature of Anthony Fazio in cursive script.

Anthony Fazio RPh
Lakeview Pharmacy

[Redacted]
[Redacted]

December 6, 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,

My name is Pamela Furman, I am a pharmacy technician at Palmer Pharmacy in Johnstown, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't

switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug-makers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, if we are to have patients to serve we are forced to sign contracts with CVS. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Pamela Furman

Pamela Furman
Palmer Pharmacy

[REDACTED]

[REDACTED]

DEAR Judge Leon, Please Read!

December 2, 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,

My name is Jean Fusaro, R.Ph., MS, and I am a member of the Pharmacists Society of the State of New York, and the Long Island Pharmacists Society, representing over 4,000 pharmacists and students of pharmacy in New York State. I also work at Family Pharmacy in Glendale, 11385 NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a

"firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, if we are to have patients to serve we are forced to sign contracts with CVS. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

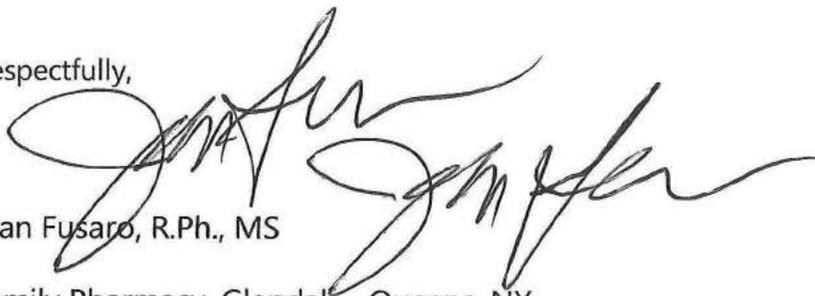
Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

A handwritten signature in black ink, appearing to read 'Jean Fusaro', written in a cursive style.

Jean Fusaro, R.Ph., MS

Family Pharmacy, Glendale, Queens, NY

Rx Express Pharmacy, Huntington, NY

██████████
████████████████████



PHARMACISTS UNITED FOR
TRUTH AND TRANSPARENCY
TRUTHR.ORG

FENNY 1 PHARMACY
362 C MONROE ST
PASSAIC NJ 07055
973-928-2230
FAX 973-928-2269

December 3, 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,

My name is Teresa Dickinson, and I am the owner of Melrose Pharmacy, an independent pharmacy in Phoenix, AZ. I am also the president of Pharmacists United for Truth and Transparency (PUTT), a coalition of more than 1,200 independent and community pharmacies across the U.S. I am writing on behalf of my organization and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are “in the dark” with regard to the merger. We promise **you are**, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.



PHARMACISTS UNITED FOR
TRUTH AND TRANSPARENCY
TRUTHRX.ORG

December 3, 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,

My name is Teresa Dickinson, and I am the owner of Melrose Pharmacy, an independent pharmacy in Phoenix, AZ. I am also the president of Pharmacists United for Truth and Transparency (PUTT), a coalition of more than 1,200 independent and community pharmacies across the U.S. I am writing on behalf of my organization and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are “in the dark” with regard to the merger. We promise **you are**, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.



PHARMACISTS UNITED FOR
TRUTH AND TRANSPARENCY
TRUTHR.ORG

December 3, 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,

My name is Teresa Dickinson, and I am the owner of Melrose Pharmacy, an independent pharmacy in Phoenix, AZ. I am also the president of Pharmacists United for Truth and Transparency (PUTT), a coalition of more than 1,200 independent and community pharmacies across the U.S. I am writing on behalf of my organization and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are “in the dark” with regard to the merger. We promise **you are**, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.



- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS



defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS’ contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.

- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state’s Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple



sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse



pharmacies at the pre-~~Oct. 2009~~ rate during the period it claims reimbursements were accidentally cut. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health plan costs until well into 2018.

- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this “squeeze and buy” practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it’s so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it” - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses who depend on the



government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

PARISH

US ANDY

Teresa Dickinson
President and Pharmacy Owner
Pharmacists United for Truth and Transparency
Teresa@TruthRx.org

Pharmacists United for Truth and Transparency
326 S. Main Street
Winston-Salem, NC 27101
TruthRx.org

FENNY 1 PHARMACY
362 C MONROE ST
PASSAIC NJ 07055
973-928-2230
FAX 973-928-2269

December 7, 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,

My name is Ken Giaquinto, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also a co-owner with Dad and brother at Rye Beach Pharmacy in Rye, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above

the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.

- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy,** a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from

the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

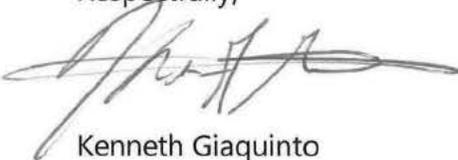
Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,



Kenneth Giaquinto
Rye Beach Pharmacy

[Redacted]
[Redacted]

December 2, 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,

My name is Jay Gummella, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the owner & work at Loisaída Rx, Inc in NY, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a

"firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

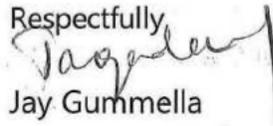
To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Sir, as a retail pharmacist I am in the front lines trying to balance the needs of my patients and run a business in the most anti competitive environment facilitated by this mergers and acquisitions of these highly profitable PBM's and the Insurance companies. I urge you to take a deep look into this matter. While at the pharmacy school or soon after I joined the profession

afterwards, I never imagined that I, as a medical professional would be doing the begging for fair reimbursement for a fair job performed which includes dispensing a product and my knowledge.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,



Jay Gummella

Supervising Pharmacist

Loisaida Rx, Inc

[Redacted]

[Redacted]

December 4, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,



My name is Ruston Guy and I am the pharmacy owner of Crampton Drug, an independent pharmacy in Crampton. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall," between its pharmacies and its CVS Caremark PBM; yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed... if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing’s mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health cost until well into 018.

- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it”—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation’s largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they’ve had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,

Your Name

Your Pharmacy Name

City, State

Ruston
Chandler Dray
 [Redacted Signature]



Tarheel Town Pharmacy
370 E Main Street, Suite 160
Carrboro, NC 27510
Phone: (919) 240-7827

December 10, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,

My name is Mallinath Hadimani, and I am the pharmacy owner of Tarheel Town Pharmacy, an independent pharmacy in Carrboro, NC. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall;" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal



Tarheel Town Pharmacy

370 E Main Street, Suite 160

Carrboro, NC 27510

Phone: (919) 240-7827

action. The question must be posed...if there is a “firewall” between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies’ patient data information to solicit their medications?

- CVS has been the subject of some states’ investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state’s Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients’ annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted



Tarheel Town Pharmacy

370 E Main Street, Suite 160

Carrboro, NC 27510

Phone: (919) 240-7827

medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing’s mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health cost until well into 018.

- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it”—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses that depend on the government to help keep



Tarheel Town Pharmacy
370 E Main Street, Suite 160
Carrboro, NC 27510
Phone: (919) 240-7827

the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation's largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they've had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,

Mallinath Hadimani
Tarheel Town Pharmacy
Carrboro, NC

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,

My name is James Herring and I am the pharmacy owner of Medical Village Pharmacy and Scotland Drug Pharmacy, independent pharmacy practices in Laurinburg, North Carolina. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall;" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary

information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.

- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients’ annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing’s mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health cost until well into 2018.

- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it”—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation's largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they've had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,

James Edward Herring

Medical Village Pharmacy and Scotland Drug Pharmacy

Laurinburg, North Carolina

THANK YOU FOR
YOUR TIME & CONSIDERATION!


December 2, 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,

My name is Mark Hertz and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the owner of Hampton Liggett Drugs in Hampton Bays, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or

very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.

- **Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.**
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.**
- **At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.**
- **CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the**

transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- *On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.*
- *Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.*

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

*You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.*

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the

country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,



Mark Hertz, President
B&B Hampton Drugs, Inc dba Hampton Liggett Drugs



December 4, 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,

My name is Dr. Jeffrey Hill, and I am a member of the Pharmacists Association of the State of California (CPhA), American Pharmacist Association and the National Community Pharmacist Association. I also am the owner and pharmacist at Valley Prescription and Compounding Pharmacy in Merced, CA. I am writing on behalf of all small business pharmacy owners everywhere to express my full opposition to the CVS-Aetna merger. I am greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. I promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies and chain pharmacies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a

“firewall” between its pharmacies and its CVS Caremark PBM, yet CVS routinely “markets” independent pharmacy patients with official letters stating that if the patient doesn’t switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers “deals” such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. All the above examples fly in the FACE of the Sherman Antitrust Act of 1890!!!

- CVS has been the subject of some states’ investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS’ contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state’s Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the U.S. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts. I, fortunately, was not one of these sellers. But, I did have a CVS representative stop in my pharmacy announcing that they wished to buy my pharmacy. I told her "it's not for sale". Her arrogant reply was, "it will be!".

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, if we are to have patients to serve we are forced to sign contracts with CVS. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative. Tell me, where else is there a business model where one's direct competitor dictates one's overall prices and tells said business how much profit they're allowed to make?

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Jeffrey Hill, Pharm.D., PCAB, NCPA, CPhA
Valley Prescription and Compounding Pharmacy
330 E. 13th Street Merced, CA 95341

[Redacted]
[Redacted]

December 4, 2018

The Honorable Richard J. Leon

Senior Judge

U.S. District Court for the District of Columbia

333 Constitution Avenue N.W.

Washington, DC 20001

Dear Judge Leon,

My name is Dr. Amanda Holley, and I am the pharmacy owner of Chilhowie Drug Company, Inc., an independent pharmacy in Chilhowie, Va. I am writing on behalf of my pharmacy, my employees, and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.

- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall," between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters starting that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.

- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.

- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The "rebate effect" was first made public in 2016 during the Epipen pricing

scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health cost until well into 2018.

- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider

selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it"—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation's largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they've had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,



Amanda Doane Holley

Chilhowie Drug Company, Inc.

Chilhowie, Va.

December 4, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,

My name is Ryan Hoskins, and I am the pharmacy owner of Archdale Drug Co., Inc., an independent pharmacy in North Carolina. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall," between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing

other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.

- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state’s Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.

- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients’ annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing’s mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health cost until well into 2018.

- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

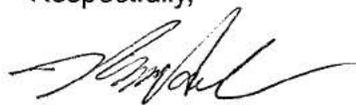
Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it” —if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation’s largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they’ve had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,



Ryan Hoskins
Archdale Drug Co., Inc.
Archdale, NC

December 4, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,

My name is Ryan Hoskins, and I am the pharmacy owner of Deep River Drug, an independent pharmacy in North Carolina. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall," between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing

other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.

- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.

- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health cost until well into 2018.

- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it” —if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation’s largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they’ve had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,



Ryan Hoskins
Deep River Drug
High Point, NC

December 6, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,

My name is Dylan Hubers and I am the pharmacy manager of O'Neals Drug Store, an independent pharmacy in Chocowinity, NC. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall;" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?
- CVS has been the subject of some states' investigations into questionable pricing practices, especially regarding Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them

to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.

- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients’ annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they can opt at all – and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing’s mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health cost until well into 018.

- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it”—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses that depend on the government to help keep the playing field level, so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation's largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they've had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,

A handwritten signature in black ink, appearing to read 'Dylan Hubers', with a long horizontal line extending to the right.

Dylan Hubers
O'Neals Drug Store
Chocowinity, NC

December 4, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,

My name is Dale Hutchins, and I am the pharmacy owner of Medicare Pharmacy, LLC an independent pharmacy in Indian Trail, NC and I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

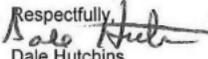
- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall;" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health cost until well into 018.
- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it"—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation's largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they've had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,

Dale Hutchins
Med Care Pharmacy


December 4, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,



My name is Lee Eskey and I am the pharmacy owner of Cromerston, an independent pharmacy in Cromerston NC. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall," between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

• CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing’s mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

• On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health cost until well into 018.

• Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it”—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation’s largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they’ve had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,

Your Name

Your Pharmacy Name

City, State

Lee Isley
Crometons Drug
Crometons NC

December 2, 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,

My name is iqbal karim, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also Firo Pharmacy in the Bronx, NY 10452. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan

prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal

when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the U.S. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder

the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.

- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, if we are to have patients to serve we are forced to sign contracts with CVS. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how

CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

At this point in time we are being severely underpaid on most medications and our cost of doing business is not being reimbursed. We are losing money everyday and also turning away prescriptions for new patients when the losses are in 10s of dollars on each prescription.

Respectfully,



Iqbal Karim
Firo Pharmacy

[Redacted]

[Redacted]

My name is Brook King and I am the pharmacy owner of Cremerton Drug, an independent pharmacy in Cremerton NC. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall," between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

• CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing’s mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

• On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health cost until well into 018.

• Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it”—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation’s largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they’ve had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,

Your Name

Your Pharmacy Name

City, State

Brad King
Cromerton Drug
Cromerton, NC

December 2, 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,

My name is Maya Kurtz, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the owner at Smith Pharmacy in Hicksville, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan

prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal

when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder

the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.

- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how

CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Maya Kurtz
Smith Pharmacy
53 N Broadway
Hicksville, NY 11801





PHARMACISTS UNITED FOR
TRUTH AND TRANSPARENCY
TRUTHRX.ORG

December 3, 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,

My name is Teresa Dickinson, and I am the owner of Melrose Pharmacy, an independent pharmacy in Phoenix, AZ. I am also the president of Pharmacists United for Truth and Transparency (PUTT), a coalition of more than 1,200 independent and community pharmacies across the U.S. I am writing on behalf of my organization and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise **you are**, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order**

Pharmacists United for Truth and Transparency
326 S. Main Street
Winston-Salem, NC 27101
TruthRx.org

*I agree with 100% of
this letter!*

*Teresa Dickinson
LAKESHORE PHARMACY INC
BIRMINGHAM, AL 35209*



PHARMACISTS UNITED FOR
TRUTH AND TRANSPARENCY
TRUTHRX.ORG

programs. CVS defends this practice by claiming it maintains a “firewall” between its pharmacies and its CVS Caremark PBM, yet CVS routinely “markets” independent pharmacy patients with official letters stating that if the patient doesn’t switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers “deals” such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states’ investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS’ contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state’s Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid



PHARMACISTS UNITED FOR
TRUTH AND TRANSPARENCY
TRUTHRX.ORG

arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.



PHARMACISTS UNITED FOR
TRUTH AND TRANSPARENCY
TRUTHRX.ORG

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Teresa Dickinson
President and Pharmacy Owner
Pharmacists United for Truth and Transparency
Teresa@TruthRx.org

Pharmacists United for Truth and Transparency
326 S. Main Street
Winston-Salem, NC 27101
TruthRx.org

December 4, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,

My name is Gregory Large. and I am the pharmacy owner of Family Drug, an independent pharmacy in Big Stone Gap, Virginia. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall;" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the

patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers “deals” such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a “firewall” between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies’ patient data information to solicit their medications?

- CVS has been the subject of some states’ investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.

- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state’s Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.

- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such

as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health cost until well into 2018.

- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so.

The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it"—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

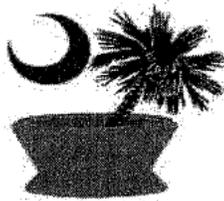
Our major fear is the merger of the nation's largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they've had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,

A handwritten signature in black ink, appearing to read "Gregory Large". The signature is written in a cursive, flowing style.

Gregory Large
Family Drug
Big Stone Gap, VA 24219



SUP-RX PHARMACY
1011 BROAD ST
SUMTER, SC 29150

December 5, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,

My name is Ashlee Lloyd and I am the pharmacy manager of Sup-Rx Pharmacy, an independent pharmacy in Sumter, SC. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS/Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall," between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.

- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The "rebate effect" was first made public in 2016 during the EpiPen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have EpiPen included on drug plan formularies.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health cost until well into 018.
- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it"—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

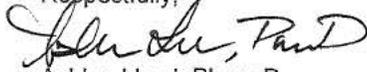
We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation's largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only

serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they've had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,



Ashlee Lloyd, PharmD
Sup-Rx Pharmacy
Sumter, SC 29150

Information on this page and pages that follow is protected health information and subject to all privacy and security regulations under HIPAA and state privacy laws.

Confidentiality/Notice: This form and the following pages contain information intended for the use of the individual or entity named above. The authorized recipient of this information is prohibited from disclosing this information to any other party. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or action taken in reliance on the contents of this document is strictly prohibited. If you have received this fax in error, please notify the sender immediately to arrange the return of this document. c/d 5499234

December 4, 2018

The Honorable Richard J. Leon

Senior Judge

U.S. District Court for the District of Columbia

333 Constitution Avenue N.W.

Washington, DC 20001

Dear Judge Leon,

My name is Amber Locklear and I am the pharmacy owner of Red Springs Old Main, an independent pharmacy in Red Springs, NC. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRX, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the

spin-off useless.

- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall;" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.

- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies

attempting to serve patients in CVS plans.

- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients’ annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing’s mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health cost until well into 018.
- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it”—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation’s largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the

relationships they've had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,

Amber Locklear

Red Springs Old Main Pharmacy

Red Springs, NC 28377

Thanks so much!

December 5, 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,

My name is Tulasi Malla, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the owner of KING-RAJ Pharmacy in Bronx, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a

"firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Tulasi Malla Pharm.D.

Tulasi Malla

KING-RAJ Pharmacy

[REDACTED]
[REDACTED]

December 6, 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,

My name is Philip A. Malvone and I am a practicing pharmacist, working at New London Specialty Pharmacy in New York, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a

CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we

want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

In conclusion, this "business" deal is not in the best interest of the patients. I know I am speaking for myself and on behalf of other healthcare providers when I express my extreme concern regarding the effect this will have on the quality of care that patient's will receive if this occurs.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Philip Malvone
Philip Malvone, Pharm.D, AAHIVP

New London Specialty Pharmacy
246 8th Ave, 2nd Floor
New York, NY 10011
(P) 212-414-9755
(F) 212-414-9752
(E) pmalvone@nlspecialty.com



December 3, 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,

My name is Sunil Mandalapu and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also owner of at New Amsterdam Drug Mart Inc in New York City, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- CVS is one of the worst offenders in mandatory mail order pharmacy,** a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of

subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the

playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,



Sunil Mandalapu
New Amsterdam Drug Mart
[REDACTED]
Sunil@newamsterdamdrugmart.com

December 4, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,

My name is Katie Marlowe, and I am the pharmacy owner of Pembroke Drug, an independent pharmacy in Pembroke, NC. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count

toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing’s mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health cost until well into 018.

- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it”—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation’s largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they’ve had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,

Katie Marlowe
Pembroke Drug
Pembroke, NC

December 6, 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,

My name is Christine Mylott, I am a pharmacy technician at Palmer Pharmacy in Johnstown, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't

switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug-makers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, if we are to have patients to serve we are forced to sign contracts with CVS. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Christine Mylott

Christine Mylott
Palmer Pharmacy

[REDACTED]
[REDACTED]

December 6, 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,

My name is Ellen Nedo, I am a pharmacy technician at Palmer Pharmacy in Johnstown, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't

switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug-makers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

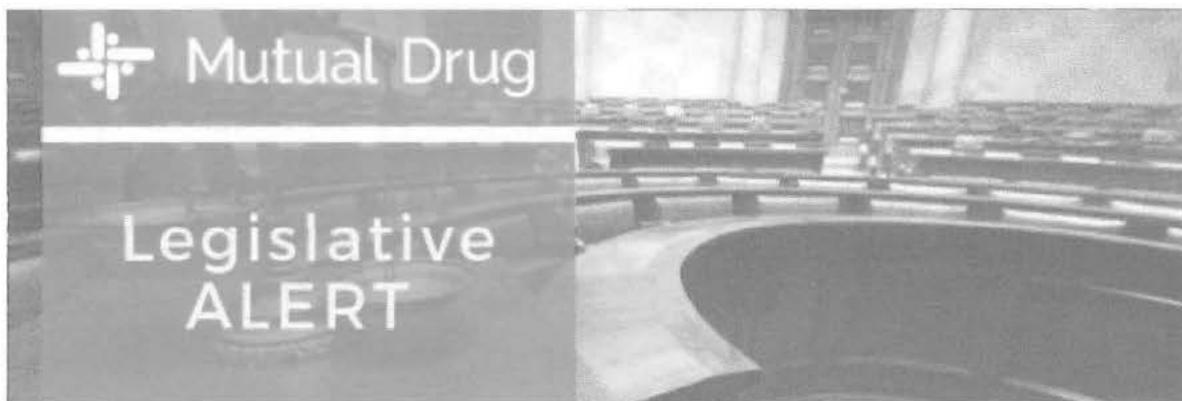
A handwritten signature in cursive script, appearing to read "Ellen Nedo".

Ellen Nedo
Palmer Pharmacy

Two solid black rectangular redaction boxes covering contact information, likely a phone number and an address.

Banner Elk Pharmacy

From: Mutual Drug [sfriedman@mutualdrug.com]
Sent: Wednesday, December 05, 2018 1:13 PM
To: B4121@SKYBEST.COM
Subject: Legislative Alert: How You Can Oppose the CVS-Aetna Merger



Mutual Drug Member:

As you may be aware the CVS-Aetna merger has been put on hold by Judge Richard Leon due to him being "less convinced" than the government that the companies had struck a deal that ensured the merger was legal under antitrust law, and that he had been treated as a "rubber stamp" in approving the deal.

As the merger has not been fully approved, your Legislative Advocacy team has put together the letter below which you are encouraged to personalize and send in support of stopping the merger. The letter must be received no later than December 14th so please consider sending this week.

The letter should be mailed to:
 Peter Mucchetti, Chief
 Healthcare and Consumer Products Section, Antitrust Division
 450 Fifth Street NW
 Suite 4100
 Washington, DC 20530

December 4, 2018

The Honorable Richard J. Leon
 Senior Judge
 U.S. District Court for the District of Columbia
 333 Constitution Avenue N.W.
 Washington, DC 20001

Dear Judge Leon,

My name is JOHN and I am the pharmacy owner of Banner Elk Pharmacy
 an independent pharmacy in Banner Elk, NC. I am writing on behalf of my pharmacy, my employees and my patients to
 express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger
 of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned,
 or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper
 between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

12/6/2018

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.

- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall;" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.

- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.

- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health cost until well into 2018.

- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it"—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation's largest pharmacy chain and pharmacy benefits manager with one of the largest health

insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they've had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,

Your Name
Your Pharmacy Name
City, State

JOHN OGBURN
Banner Elk Pharmacy
Banner Elk NC 28604
Mutual Drug | 816 Ellis Road, Durham, NC 27703

[Unsubscribe B4121@SKYBEST.COM](#)

[Update Profile](#) | [About our service provider](#)

Sent by sfriedman@mutualdrug.com in collaboration with

Constant Contact 

Try it free today

A 58 yo. independent pharmacist since 1988. I have personally witnessed the PBM's cut my profits & steal my customers. I don't mind competition; when it is fair. There is nothing fair ^{or level} ~~about~~ with the PBM's. They give free copays to my patients & strong arm them to switch to the mail order houses.

December 8, 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,

My name is Phyllis Pincus, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the owner of Clarkstown Pharmacy, Inc. in West Nyack, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a

“firewall” between its pharmacies and its CVS Caremark PBM, yet CVS routinely “markets” independent pharmacy patients with official letters stating that if the patient doesn’t switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers “deals” such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states’ investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS’ contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state’s Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

A handwritten signature in cursive script, appearing to read "Phyllis Pincus".

Phyllis Pincus
Clarkstown Pharmacy, Inc.

Two solid black rectangular redaction boxes covering the address information.

December 6, 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,

My name is Matthew J Ramos, am a pharmacy technician at Palmer Pharmacy in Johnstown, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't

switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug-makers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

A handwritten signature in cursive script that reads "Matthew Ramos".

Matthew J Ramos
Palmer Pharmacy

Two solid black rectangular redaction boxes covering contact information, likely a phone number and an address.

December 6, 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,

My name is Joan Rimkunas, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also work at Palmer Pharmacy in Johnstown, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan**

prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal

when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder

the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.

- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how

CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

A handwritten signature in cursive script that reads "Joan V. Rimkunas".

Joan Rimkunas, RPh

Palmer Pharmacy

Phone [REDACTED]
[REDACTED]

December 5, 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,

My name is Boris Royzen, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the owner of B&T Pharmacy in Staten Island, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a

"firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

I have attached a recent article about what the auditors in Ohio have found about issues in their state Medicaid.

Respectfully,

Boris Royzen

B&T Pharmacy

[REDACTED]

[REDACTED]

Ohio Auditor releases stunning Medicaid PBM audit report

Today, Ohio Auditor Dave Yost, in a presentation to the Joint Medicaid Oversight Committee, released the results of his audit of the Ohio Medicaid prescription drug program. To be blunt, the results are jaw-dropping.

To view the entire audit report, [CLICK HERE](#).

If you'll recall back in March, lawmakers called on Auditor Yost to audit the Medicaid program and the dealings of pharmacy benefit managers (PBMs) within it. Today marked the end of Yost's inquiry, but as you'll see from the report, there are still a litany of questions that remain.

Among the findings in Auditor Yost's report:



- **The difference between what pharmacies are paid and what pharmacy benefit managers (PBMs) report back to the plans, commonly referred to as "spread," has been growing and hit its peak in the fourth quarter of 2017.**
 - Context: This is exactly when members saw the deepest cuts in reimbursements from Medicaid PBMs. The numbers demonstrate that these cuts not only failed to translate into savings for the state, but also show that those cuts to local providers turned into PBM profits. Being that PBMs also own their own pharmacies, this essentially amounts to one pharmacy company reaching into the pockets of competitors, pulling out cash, and putting it right into their own. Regardless of the intent, this warped incentive has absolutely no place in a fair, competitive marketplace.
- **An overwhelming portion of PBM spread is occurring on generic drugs.**
 - Context: While the overall spread in 2017 was \$224.8 million, or 8.9%, an overwhelming majority of the spread occurred on generic drugs. This confirms our suspicions, and is incredibly important. Brand name drug prices are universally known. Next, specialty drugs are somewhat lesser known. But generic drug prices are changing almost daily and are rarely ever known. It should come as no shock that the more ambiguous the price is, the more comfortable the PBM is in taking hidden money out of it. These spread ratios reflect that perfectly.
- **Spread pricing totals wildly varied from region to region.**
 - Context: Due to the ambiguity of pricing, we assumed that spread would be extensive, but we were shocked to learn of spread differentials by region of the state. For example, the PBM generic spread from independent pharmacies was \$4.90 in southeast Ohio and \$6.71

auto-refill programs, medical-loss ratio, rebates, audits, conflicts of interest, anti-competitive practices, and sale of de-identified patient data. We could not agree more.

While we are still digesting the full 33-page report, it is abundantly clear that reform is needed for a myriad of reasons. The report highlights some deeply troubling issues not just for pharmacists, but taxpayers and patients as well. Check out the report on today's events from the *Columbus Dispatch's* Marty Schladen HERE.

"What we see in this report are the truly unfathomable lengths that these massive corporate middlemen will go to manipulate the prescription drug marketplace and hide their litany of revenue streams," said OPA government affairs director Antonio Ciaccia. "It is now overwhelmingly apparent that PBMs are operating the biggest shell game in modern history, and we are all paying for it."

"Today, we learned that at a fundamental level, we as taxpayers have been paying more for less," said OPA Executive Director Ernie Boyd. "But we know that Ohio is not alone. Every state and every payer in the country is grappling with these overinflated costs. The good news is that Governor Kasich and Ohio Medicaid are leading the way on the transparency necessary for true spending reform."

We applaud Auditor Yost for taking this issue on, and we thank the lawmakers who called on him to conduct this insightful audit. As we mentioned this week, we applaud the Ohio Department of Medicaid for their movement in the right direction on a more transparent program, and we will continue to work to ensure pharmacists can continue offering the highest level of care possible in Ohio.

[Printer-Friendly Version](#)



December 5, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,

My name is Darius Russell, and I am the pharmacy owner of Russell's Pharmacy & Shoppe, an independent pharmacy in Durham, NC. I am writing on behalf of my pharmacy, my employees, and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall;" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of

2116 Angier Avenue, Durham, NC 27703

(919)908-1060-phone / (919)908-6362-fax



secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.

- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health cost until well into 018.
- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it"—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation's largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only



serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they've had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,

A handwritten signature in black ink, appearing to read 'Darius Russell', with a long horizontal flourish extending to the right.

Darius Russell, PharmD,RPh.
Russell's Pharmacy & Shoppe
Durham, NC

December 10, 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,

My name is Darlene Ruzicka, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also work at Lakeview Pharmacy in Lynbrook, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan**

prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal

when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder

the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.

- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, if we are to have patients to serve we are forced to sign contracts with CVS. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how

CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,



Dr. Darlene Ruzicka, PharmD
Lakeview Pharmacy

[Redacted]
[Redacted]

December 2, 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,

My name is Don Sassman, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the owner of Waverly Pharmacy in Waverly, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a

"firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

Respectfully,

Don Sassman
Waverly Pharmacy



A handwritten signature in black ink, appearing to be 'D. Sassman', with a long horizontal flourish extending to the right.

WAVERLY PHARMACY
443 CAYUTA AVE.
WAVERLY, N.Y. 14892

December 6, 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,

My name is Danielle Schroeder, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am a pharmacist at Palmer Pharmacy in Johnstown, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan**

prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves**. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance**. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing**. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal

when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder

the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.

- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how

2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

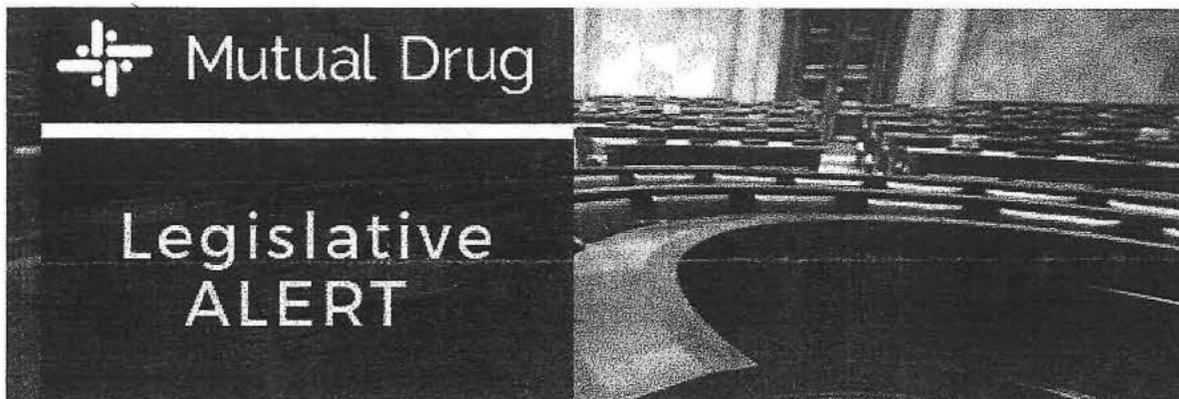
Handwritten signature of Danielle Schroeder, PharmD in cursive script.

Danielle Schroeder, PharmD
Palmer Pharmacy


dschroeder@palmerhealth.org

Brown-Gardiner Drug

From: "Mutual Drug" <sfriedman@mutualdrug.com>
Date: Wednesday, December 05, 2018 1:13 PM
To: <[REDACTED]>
Subject: Legislative Alert: How You Can Oppose the CVS-Aetna Merger



Mutual Drug Member:

As you may be aware the CVS-Aetna merger has been put on hold by Judge Richard Leon due to him being "less convinced" than the government that the companies had struck a deal that ensured the merger was legal under antitrust law, and that he had been treated as a "rubber stamp" in approving the deal.

As the merger has not been fully approved, your Legislative Advocacy team has put together the letter below which you are encouraged to personalize and send in support of stopping the merger. The letter must be received no later than December 14th so please consider sending this week.

The letter should be mailed to:
Peter Mucchetti, Chief
Healthcare and Consumer Products Section, Antitrust Division
450 Fifth Street NW
Suite 4100
Washington, DC 20530

December 4, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,

My name is Robert M. Shearin and I am the pharmacy owner of Brown Gardiner Drugs an independent pharmacy in Greensboro NC. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall," between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance

plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing’s mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health cost until well into 018.

- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it”—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation’s largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they’ve had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,

Your Name
Your Pharmacy Name
City, State

Robert H. Mean
Brown Garden Plus
Greensboro NC 27408

Mutual Drug | 816 Ellis Road, Durham, NC 27703

[Unsubscribe bqdrx@triadbiz.rr.com](mailto:unsubscribe_bqdrx@triadbiz.rr.com)

[Update Profile](#) | [About our service provider](#)

Sent by sfriedman@mutualdrug.com in collaboration with

December 2, 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,

My name is Andrew Silverman and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the owner at Sol's Pharmacy in the Bronx, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a

"firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS**. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

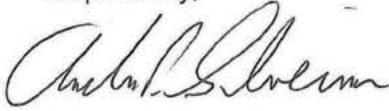
Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,



Registered Pharmacist

Andrew Silverman
Sol's Pharmacy



December 2, 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,

My name is Steve, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I am the Director of Pharmacy at two pharmacies in NY and due to fear of reprisal, I am keeping the names private. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" in regards to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS and some situations that impacted us:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a

"firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.

A letter was submitted to the NYSDOH specifically making the state representative aware of the situation and whether an investigation would be commencing to determine if taxpayer-money was being impacted. The response was that they were aware and that they were reviewing the issue. Subsequent letters were responded with a standard form letter response.

- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the

Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

A long time 70+ customer was forced into mail order by the school district and the mail order failed to process the customer's seizure medication. The customer contacted me to see if we could do a short fill to cover the gap. I contacted the plan for an emergency override of 7 days and was told absolutely not, we (independent pharmacy) are excluded from helping her and no payment would be permitted. The customer could travel 10+ miles to the nearest CVS if she needed the medication. There was over a foot of snow and the customer was unable to get out. The response was still no, even when I presented the situation as a patient safety concern.

Mail order is destroying communities by taking the dollars out of state and possibly out of the country. Money earned by the independent pharmacy is invested back into their respective communities through donations to local programs and charities, supports other local businesses such as delis and etc, helps pay for services through local taxes, keeps unemployment down, and provides for the health and stability of the community.

- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the U.S. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.
- Lastly, the appeals process for underpaid claims which run approximately 5-20%, is designed to fail. The PSAO's who submit claims on behalf of their member pharmacies rarely receive approvals and are reluctant to pursue the issue for fear of losing preferred contract status with the PBM's.

When you look at the overall process in independent pharmacy you wonder how you can survive when, you have a PBM setting the reimbursement rates which are below acquisition cost, deny approval for appeals, base DIR fees on unattainable PBM based standards with no exceptions for situations like allergies to statins, which are outside the control of the pharmacist, and then threaten legal action if you push back.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, if we are to have patients to serve we are forced to sign contracts with CVS. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, you may have previously received examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Steve

December 6, 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,

My name is Madeline Stone, I am a pharmacy technician at Palmer Pharmacy in Johnstown, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't

switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug-makers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, if we are to have patients to serve we are forced to sign contracts with CVS. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Madeline Stone
Palmer Pharmacy

[Redacted]

[Redacted]

A handwritten signature in black ink, appearing to read "Madeline Stone", with a long horizontal flourish extending to the right.

December 6, 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,

My name is Robert Sullivan, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am a pharmacist at Palmer Pharmacy in Johnstown, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan**

prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal

when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder

the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.

- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how

CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,



Robert Sullivan, RPh
Palmer Pharmacy

██████████
rxsully@nycap.rr.com

December 7, 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,

My name is Kumar Suraneni, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I am the owner and work at Melbran Pharmacy in New York City, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the

covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

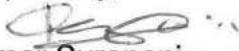
Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,


Kumar Suraneni
Melbran Pharmacy,
Ph: 

December 4, 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,

My name is Samir Sutaria, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the owner/work at 80-04 Baxter Avenue and 146-14 Jamaica Avenue at Queens Drugs and Surgical in Elmhurst and Jamaica, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a

"firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.

- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Samir Sutaria

Samir Sutaria
Queens Drugs and Surgical
[REDACTED]
[REDACTED]
queensdrugsandsurgical@gmail.com

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,

My name is Aaron S Tabi, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the owner at Luna Park Pharmacy in Brooklyn, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a

“firewall” between its pharmacies and its CVS Caremark PBM, yet CVS routinely “markets” independent pharmacy patients with official letters stating that if the patient doesn’t switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers “deals” such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states’ investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS’ contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state’s Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Aaron S Tabi

Luna Park Pharmacy

[REDACTED]

[REDACTED]

December 2, 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,

My name is Charles Tabouchirani, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also **am the owner** at Cherry's Pharmacy in New York City, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a

"firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

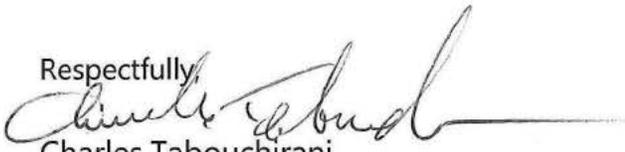
Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

A handwritten signature in cursive script, appearing to read 'Charles Tabouchirani', with a long horizontal flourish extending to the right.

Charles Tabouchirani

Cherry's Pharmacy

[REDACTED]

[REDACTED]

December 14, 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,

My name is Josephine A. Than, and I am the co-owner of Lone Star Pharmacy – Canyon Lake, an independent pharmacy in Canyon Lake, Texas. I am writing to express my full opposition to the CVS-Aetna merger. I am greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are “in the dark” with regard to the merger. We promise **you are**, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS’ in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna’s Medicare Part D business to WellCare only served to maintain CVS’ market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient’s pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs.** CVS defends this practice by claiming it maintains a “firewall” between its pharmacies and its CVS Caremark PBM, yet CVS routinely “markets” independent pharmacy patients with official letters stating that if the patient doesn’t switch to a CVS pharmacy his/her medication cost share will increase.

CVS also offers “deals” such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states’ investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS’ contract. Similar investigations are underway in Arkansas and Pennsylvania.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for **454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state’s Department of Insurance.** PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- **CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing.** Drugmakers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.
- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple

sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,



Josephine A. Than
Pharmacy Manager and Pharmacy Co-Owner
Lone Star Pharmacy

December 7, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,

My name is Ed Thornhill. and I am the pharmacy owner of, Family Discount Pharmacy, an independent pharmacy in Logan, West Virginia. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall;" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will

increase. CVS also offers “deals” such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a “firewall” between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies’ patient data information to solicit their medications?

- CVS has been the subject of some states’ investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this “spread pricing tactic” by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.

- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state’s Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing “trade secrets” and “proprietary information” that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.

- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients’ annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.

- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing’s mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.

- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health cost until well into 018.

- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it”—if we want to have patients to serve, we must take the

contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation’s largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they’ve had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ed G Thornhill', written in a cursive style.

Ed G Thornhill, RPH/PIC/Owner
Family Discount Pharmacy
Logan, West Virginia

December 4, 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,

My name is Neeraj Tirunagari, and I am a member of the Pharmacists Society of the State of New York, representing over 4,000 pharmacists and students of pharmacy in New York State. I also am the owner of Medicine Center Rx LLC in Bronx, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that **Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business.** As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, **CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into**

its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while **CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves.** The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug makers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.

- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this “squeeze and buy” practice, and as I write this, three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, **if we are to have patients to serve we are forced to sign contracts with CVS.** This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it” - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the “backbone” and the “engine” of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' “Squeeze and Buy” tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

A handwritten signature in black ink, appearing to read 'Neeraj', with a long horizontal stroke extending to the right.

Neeraj Tirunagari
Medicine Center Rx LLC

[Redacted]
[Redacted]

December 4, 2018

The Honorable Richard J. Leon
Senior Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon,

My name is Ijeoma Uwakwe and I am the pharmacy owner of WilsonValue Drug Store independent pharmacy in Wilson. I am writing on behalf of my pharmacy, my employees and my patients to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All three are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper between patients and pharmacy, medical providers and other sectors of the healthcare system.

Here are some of the significant issues to be aware of about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that WellCare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefit plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chains, mail-order and specialty pharmacies, and uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail-order programs. CVS defends this practice by claiming it maintains a "firewall;" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient does not switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS retail pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action. The question must be posed...if there is a "firewall" between the CVS Caremark PBM and their retail CVS operation, how does the CVS retail side obtain all of the independent pharmacies' patient data information to solicit their medications?
- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in The Columbus Dispatch since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest and drove many out of business, and others to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of the CVS contract in Ohio. Similar investigations are underway in Arkansas and Pennsylvania.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug manufacturers point to rebates as the main reason why drug prices continue to increase yet CVS

justifies this practice by claiming itself – not the patient, health plan sponsor or the dispensing pharmacy – as the buyer and therefore entitled to the rebate while never being invoiced, receiving or touching the product. The “rebate effect” was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients’ annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- CVS is one of the worst offenders in mandatory mail order pharmacy, a program that purports to save patients money but has consistently been found to cost health plan sponsors more while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. The National Community Pharmacists Association, the Association of Community Pharmacists and numerous state pharmacy associations have worked to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of – if they are allowed to opt at all – and almost always result in patients bringing months of unused “maintenance” medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed. A patient backlash against mandatory mail order pharmacy has begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing’s mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 – just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, CVS drastically cut reimbursements to independent and community pharmacies across the nation. These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to “a computer glitch” but refused to reimburse pharmacies at the pre-October 26 rates. CVS later walked back the “computer glitch” excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients’ health cost until well into 018.
- Adding insult to injury, CVS followed up these deep-4th-quarter cuts with letters offering to buy small pharmacies and citing “cuts to reimbursements” as one of the reasons pharmacy owners would consider selling their businesses to CVS. Many pharmacy owners have in fact sold their pharmacy to CVS citing loss in revenue due to aggressive cuts in reimbursements.

Judge Leon, you may be wondering, if it is so difficult for a small independent pharmacy to work within the CVS network, why would any of us choose to do so. The reality is, if we are to have patients to serve, we are forced to sign non-negotiated contracts with CVS. This also is true for the two other PBM giants Express Scripts and OptumRX. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are “take it or leave it”—if we want to have patients to serve, we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

We cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of taxpayers, patients, consumers, medical providers and small business pharmacies. We know small business is the “backbone” and the “engine” of the U.S. economy. Many of us in the nation’s healthcare system are small businesses that depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our major fear is the merger of the nation’s largest pharmacy chain and pharmacy benefits manager with one of the largest health insurers in the nation will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained and took the entrepreneurial risk to serve patients. Our fear is our patients will not be able to continue the relationships they’ve had with us for generations and be forced by the big conglomerate to their one brick and mortar pharmacy or mail order.

Thank you for your consideration of the information provided. My pharmacy and independent pharmacies across the nation urge you to rule against the merger and protect the relationship between the patient and their community pharmacy.

Respectfully,
Ijeoma Uwakwe
Ijeoma Uwakwe (PharmD)

WilsonValue Drug Store
404 Nash St East
Wilson, NC 27893

December 6, 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,

My name is Stacy Winnie, I am a pharmacy technician at Palmer Pharmacy in Johnstown, NY. I am writing on behalf of PSSNY and small business pharmacy owners everywhere to express our full opposition to the CVS-Aetna merger. We are greatly encouraged to know you are carefully considering the merger of these two excessively large corporations that together control a disproportionate share of the healthcare marketplace.

Sir, you mentioned feeling as though you are "in the dark" with regard to the merger. We promise you are, as are most Americans about the true nature of the pharmacy benefit manager (PBM) industry. CVS, along with Express Scripts and OptumRx, control nearly 80% of all prescriptions filled in the U.S. All 3 are either owned, or poised to be owned, by extremely large health insurance companies who also seek to control and serve as the gatekeeper to pharmacy, medical providers and other facets of the healthcare system.

Here are some things you may not know about CVS:

- To comply with federal requirements to complete the merger, Aetna sold its Medicare Part D business to WellCare Health Plans, Inc. What was not reported is that Wellcare uses CVS Caremark, CVS' in-house PBM, to administer the Medicare Part D portion of its business. As CVS is already the largest holder of Medicare Part D business, the sale of Aetna's Medicare Part D business to WellCare only served to maintain CVS' market share and render the point of the spin-off useless.
- CVS owns retail pharmacies that compete with the other pharmacies in the pharmacy networks it creates through its PBM business. While it should be flagged as a huge conflict of interest to allow the architect of a patient's pharmacy benefits plan to also provide plan prescriptions, CVS both fills plan prescriptions through its own massive retail chain, mail order and specialty pharmacies AND uses its proprietary platform as the plan designer to steer patients through financial incentives or misleading fear tactics into its stores or mail order programs. CVS defends this practice by claiming it maintains a "firewall" between its pharmacies and its CVS Caremark PBM, yet CVS routinely "markets" independent pharmacy patients with official letters stating that if the patient doesn't

switch to a CVS pharmacy his/her medication cost share will increase. CVS also offers "deals" such as lower prescription copays to incentivize patients to switch to a CVS pharmacy, but strictly prohibits other pharmacies from doing so under threat of legal action.

- CVS has been the subject of some states' investigations into questionable pricing practices, especially with regard to Medicaid managed care. An investigation in Ohio, extensively covered in *The Columbus Dispatch* since January 2018, found the State of Ohio was charged some \$225 million over and above the average price for Medicaid prescriptions while reimbursing other pharmacies at, or very often below, cost. The below-cost reimbursements hit small independent pharmacies hardest, and drove many to the brink of closure while CVS defended this "spread pricing tactic" by publicly stating in the media that they paid small business pharmacies more than they paid themselves. The findings resulted in the termination of CVS' contract. Similar investigations are underway in Arkansas and Pennsylvania. Enclosed with this letter are several examples demonstrating the extent to which CVS absolutely does NOT pay small pharmacies more than it pays itself.
- Earlier this year the State of Kentucky fined CVS \$1.5 million for 454 violations related to pharmacy reimbursement claims processing, including 38 violations in cases where Caremark provided inconsistent or inaccurate information to the state's Department of Insurance. PBMs like CVS are not required to be transparent in their reimbursement or other business practices, citing "trade secrets" and "proprietary information" that allow them to maintain a veil of secrecy on all aspects of business, including information that is critical to pharmacies attempting to serve patients in CVS plans.
- CVS Caremark negotiates and keeps millions of dollars in drug manufacturer rebates, cultivating what has become an accepted industry practice that results in inflated and purposely non-transparent drug pricing. Drug-makers point to rebates as the main reason why drug prices continue to increase yet CVS justifies this practice by claiming itself - not the patient, health plan sponsor or the dispensing pharmacy - as the buyer and therefore entitled to the rebate. The "rebate effect" was first made public in 2016 during the Epipen pricing scandal when Mylan CEO Heather Bresch pointed to the need to pay PBMs exorbitant rebates in order to have Epipen included on drug plan formularies. Included with this letter is an illustration of how PBM rebates drive up the price of Epipens, and by extrapolation, other drugs for which CVS and its fellow PBMs exact rebates.

- At the same time, CVS disallows the copay assistance drug makers offer low-income patients who need expensive specialty medications for conditions such as multiple sclerosis, rheumatoid arthritis, cancer, HIV and hepatitis to count toward those patients' annual deductible. Lower-income patients are penalized and end up paying more for their medications, without the benefit of the prescription benefit plan they pay for each month.
- **CVS is one of the worst offenders in mandatory mail order pharmacy**, a program that purports to save patients money but has consistently been found to cost health plan sponsors MORE while contributing to millions of dollars annually in damaged, unwanted and otherwise wasted medications. PUTT, along with the National Community Pharmacists Association and numerous state pharmacy associations, works to alert consumers and their employers to the dangers of subscription-model pharmacy programs such as CVS Maintenance Choice, which is sold to insurance plan payers as a cost-savings model but requires that members receive their medications exclusively by mail. These programs are notoriously difficult for patients to opt out of -- if they are allowed to opt out at all -- and almost always result in patients bringing months of unused "maintenance" medications to their local pharmacies that they hope can be recycled but which in reality must be destroyed (medicine is not "recyclable"). A patient backlash against mandatory mail order pharmacy has also begun, spearheaded by moms such as Loretta Boesing, whose son received a liver transplant at age 2 and who now depends on immunosuppressants to keep his body from rejecting the transplant. Heat-damaged medications from the Boesing's mandatory mail order plan (administered by CVS) sent her son into liver rejection and has made Mrs. Boesing an outspoken advocate against CVS and mail order pharmacy.
- On or about October 26, 2017 -- just 5 weeks prior to announcing its intended purchase of Aetna on December 3, 2017, **CVS drastically cut reimbursements to independent and community pharmacies across the U.S.** These cuts marked the third time in 12 months reimbursements had been cut and were made without any kind of prior notice to network pharmacies. CVS attributed these cuts to "a computer glitch" but refused to reimburse pharmacies at the pre-Oct. 26 rate during the period it claims reimbursements were accidentally cut. CVS later walked back the "computer glitch" excuse but pharmacies were left to shoulder the extra expense of medications and effectively subsidized their patients' health plan costs until well into 2018.
- Adding insult to injury, CVS followed up these deep 4th-quarter cuts with letters offering to buy small pharmacies and citing "cuts to reimbursements" as one of the reasons pharmacy owners would consider selling their businesses to CVS. Enclosed with this letter are news articles that document this "squeeze and buy" practice, and as I write this,

three community pharmacies - one in Connecticut and two in Central California - sold their practices to CVS, citing an inability to keep their doors open due to aggressive reimbursements cuts.

Your Honor, these are just a few examples of why independent and community pharmacies are vehemently opposed to the merger between CVS and Aetna. I promise there are many more reasons beyond those listed here.

You may be wondering why, if it's so difficult for a small business pharmacy to work within the CVS pharmacy benefits plan network, any of us would choose to do so. The reality is, if we are to have patients to serve we are forced to sign contracts with CVS. This goes for the two other PBM giants Express Scripts and OptumRx. These 3 PBMs alone hold nearly 80% of the covered lives in the U.S. and as such are our primary access to patients. The contracts we are offered are "take it or leave it" - if we want to have patients to serve we must take the contract as presented. We are in a caregiving profession and we wish to serve, so we take the contracts because we have no alternative.

Your Honor, we cannot understate the degree to which the giant corporate PBMs have abused the trust and goodwill of patients, consumers, taxpayers, medical providers and small business pharmacies. We speak of small business as the "backbone" and the "engine" of the U.S. economy. Many of us in the nation's healthcare system are small businesses who depend on the government to help keep the playing field level so we can effectively care for our patients and still compete with the mega-corporations.

Our fear is the merger of the nation's largest pharmacy chain and pharmacy benefits managers with one of the largest health insurers in the country will result in continued, possibly exacerbated abuse of small providers that only serve to drive us to the brink of closure and prevent us from being able to work in the profession for which we trained, and took the entrepreneurial risk to serve patients. Our fear is our patients will be forced to choose between the relationships they've had with us for generations and the seemingly better financial incentives (which in reality are perverse incentives) offered by a conglomerate who sees them not as people but as little profit centers to be exploited.

To further illustrate our point, enclosed are examples of the business practices mentioned here, including reports of CVS' "Squeeze and Buy" tactics; illustrations of how CVS reimbursed pharmacies around the country between September and November 2018; real-time examples of negative reimbursements from CVS plans and recent examples of spread pricing that happened in Arkansas and Florida.

Thank you for your consideration of the information provided here. On behalf of the small business pharmacies who are at the effect of CVS' anticompetitive business practices, we hope you will rule against the merger and protect the relationship between patients and their community pharmacies.

Respectfully,

Stacy Winnie

Stacy Winnie
Palmer Pharmacy

[REDACTED]

[REDACTED]