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

10/11/2018

Dear Mr. Mucchetti

I am writing on behalf of my membership to share their feelings about the approval of both the CVS/Aetna and Cigna/ESI mergers that were approved by the Department of Justice.

As part of your decision you have mandated that both Aetna & CVS Health divest themselves from owning any Medicare Part D Plans. They have both announced that they will sell their Part D plans to Wellcare which you approved. Do you realize that these plans will still be administered by CVS/Caremark that will allow CVS Health to continue their deceptive practices that enrich their treasuries? **We may not completely understand the Antitrust Regulations, but we feel this continues to be an Antitrust problem.**

With your decision, CVS Health will still be able to mandate the use of CVS retail stores and Cigna will still be able to mandate the use of their "preferred partners". They will also be able to mandate the use of their PBM owned mail-order and specialty pharmacies. We see this as a continued threat to Independently owned pharmacies throughout the country. **We may not completely understand the Antitrust Regulations, but we feel this continues to be an Antitrust problem.**

I would think by now by seeing what has been brought to light in Arkansas, Ohio, West Virginia, and Iowa that you would have come up with a different decision.

Arkansas – CVS Health paying their CVS retail stores 60% higher reimbursements than they pay Independent Pharmacies.

Ohio – Renegotiating Pass-Through contracts after they discovered on audit that they paid some \$235 million more than they should due to "Spread Pricing"

West Virginia – Cancelled the use of PBMs in their Medicaid program because of "Spread Pricing"

Iowa – showed the county prison was billed over \$15,000 for prescriptions while the pharmacy servicing the prison was paid \$3,500.

As you continue to allow the PBMs to operate without any oversight and now allow them to control the whole insurance/pharmacy business class from beginning to end – FOLLOW THE MONEY!

Healthcare costs are rising and because of your decision the profits of CVS Health and Cigna will continue to rise at the expense of all payers.

As more and more Independent pharmacies close, access will be diminished.

Oversight of the PBM's must be initiated to stop the deceptive practices which I list here below.



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Sincerely,

Mel Brodsky
Executive Director

PBM Deceptive Practices

1. Underpayments to Pharmacy due to low Maximum Allowable Costs set by the PBM without regard to pharmacy invoice costs.
2. The use of Generic Equivalent Rates (GER's) that are administered without any documentation available to the stores that result in claw-backs – This causes stores not to be able to know what they are actually being reimbursed.
3. "Take it or Leave contracts" – There are no real negotiations on a store-by-store level.
4. Gag Clauses – where stores cannot tell the consumer that a prescription would be cheaper if they did not use their insurance card.
5. Spread Pricing – where the PBM bills the payer a much higher price than they paid the pharmacy.
6. Underpaying stores and then sending them a letter to ask if they are interested in selling.
7. Mandating more accreditation than State Board of Pharmacy requires.
8. Mandating to stores that they can only deliver no more than 5% of the prescriptions they fill while they institute a new delivery service in their retail stores.
9. Mandating to stores that they cannot accept manufacturer coupons to save the patient money.
10. Mandating use of Brand name drugs when generic becomes available because PBM is receiving significant rebates which are not passed on to consumer.
11. Proprietary contracts where stores cannot see actual verbiage other than reimbursement rates.
12. Initiating "Preferred Contracts" with specific Chains that actually result in higher pricing to the payer.
13. PBM paying their retail stores 60% higher reimbursements than Independent pharmacies.
14. Amend their manual so the PBM can drop a store from their network WITH or WITHOUT cause.
15. Mandating the use of the PBM owned mail-order, retail store or Specialty Pharmacy.
16. Charging an administration fee to the pharmacy on top of the administration fee to the payer.