

## TESTIMONY

of the  
**American Medical Association**

before the

**California Department of Insurance**

**RE: CVS' Proposed Acquisition of Aetna**

**Presented by: Barbara L. McAneny, MD, President, American Medical Association**

On behalf of the American Medical Association (AMA) and its student and physician members, I appreciate the opportunity to provide our views regarding the proposed CVS-Aetna merger and its implications for California patients. We commend the California Department of Insurance and California Commissioner David Jones for holding this hearing. You have shown great leadership and I know that the rest of the country is listening to you today as you examine this massive health care merger. My comments will express my thoughts as a physician – an oncologist who has treated some of the most vulnerable of patients for over thirty years. I will end by briefly stating the AMA's position on the merger.

### **Statement in my personal capacity**

#### *Specialty Pharmacy*

I have practiced oncology in New Mexico for over thirty years. I am currently the President of the American Medical Association. I believe that, if approved, the CVS-Aetna merger could pose a very serious threat to the quality of care and safety of cancer patients in my practice and across the country because of the merger's potential impact on the specialty pharmacy market.

Oncologists rely heavily on specialty drugs to treat their patients—those drugs are invaluable in the fight against cancer and can literally make the difference between life and death. But oncology is not the only physician specialty that depends on specialty drugs--rheumatologists, ophthalmologists, gastroenterologists, neurologists and others do as well. Specialty drugs play a critical role in caring for patients, particularly those with very complex medical conditions like cystic fibrosis, autoimmune disorders, HIV/AIDS, etc.<sup>1</sup>

Data indicate that specialty pharmacies operate in a concentrated and oligopolistic market. Nearly 60% of all prescription revenues from specialty pharmaceuticals are collected by the three largest firms – owned by CVS Health, Express Scripts, and Walgreens Boots Alliance.<sup>2</sup> CVS' specialty pharmacy itself is the biggest player in the specialty pharmacy business, with a

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<sup>1</sup> Comments on Selected Issues re: The Proposed Merger of Aetna and CVS, Amanda Starc, PhD, Associate Professor of Strategy, Kellogg School of Management, Northwestern University, June 2018

<sup>2</sup> Id. citing Fein, Adam. "The 2017 Economic Report on U.S. Pharmacies and Pharmacy Benefit Managers." Pembroke Consulting, Inc. and Drug Channels Institute, 2017

25% market share measured by specialty pharmaceutical revenues.<sup>3</sup> And CVS' specialty pharmacy market share appears to be growing, as described in the "CVS Health 2017 Annual Report" where CVS specifically states:

We remain the largest specialty pharmacy by a considerable margin, resulting in greater scale and stronger purchasing economics . . . Looking at 2018, we expect to continue outpacing the marketplace by adding another \$4 billion in specialty revenue.

Specialty pharmacy is driving the pharmacy industry's revenue growth.<sup>4</sup> According to Pembroke Consulting, "the growth of specialty drugs is reshaping the pharmacy and pharmacy benefit management industries."<sup>5</sup> The specialty pharmacy market represents a growing proportion of drug costs.<sup>6</sup>

The proposed CVS-Aetna merger has worrisome ramifications in the specialty pharmacy market where CVS is the largest player. Already CVS' status as one of the two largest PBMs in an oligopolistic market<sup>7</sup> has allowed it to effectively force many patients and third-party payers to utilize CVS as their specialty pharmacy.<sup>8</sup> If approved, the merged CVS-Aetna would permanently extend this practice to Aetna-covered patients. There is tremendous incentive for CVS to do this—not only does the specialty pharmacy market represent a growing proportion of drug costs, many specialty pharmacy drugs are very expensive, and as a PBM, CVS (Caremark) makes a profit on the percentage of drug costs. CVS can maximize these profits by using financial incentives to force patients, as a practical matter, to utilize CVS' specialty pharmacy for the dispensing or administration of specialty drugs rather than a treatment setting such as a hospital or a physician office. For example, CVS-Aetna could set Aetna enrollees' copays for chemotherapy drugs at negligible levels when obtaining those drugs through the CVS specialty pharmacy, but impose a much higher, e.g., 20% copay, on enrollees if they obtain the same drugs in treatment settings such as physician practices or hospitals. Given the high cost of many specialty drugs, most Aetna patients will have no choice but to utilize CVS' specialty pharmacy. The potential for abuse is largest in the commercial market. However, Aetna's Medicare Advantage enrollees—for whom Aetna is responsible for drug utilization regardless of the site of administration—could be affected as well.

While the CVS specialty pharmacy might for some patients be a lower cost setting for obtaining and or administering drugs<sup>9</sup>, compelling patients to utilize CVS' specialty pharmacy as opposed to a hospital or physician practice raises quality of care and patient safety concerns. Patients' use of some specialty drugs requires medical monitoring. Take oral chemotherapy drugs, for example. Despite being in pill form, oral chemotherapy drugs are powerful and potentially

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<sup>3</sup> <https://www.drugchannels.net/2018/03/the-top-15-specialty-pharmacies-of-2017.html>

<sup>4</sup> Outlook for Specialty Pharmacy Prescription Revenues, Drug Channels (subsidiary of Pembroke consulting), April 11, 2017, <http://www.drugchannels.net/2017/04/our-exclusive-2021-outlook-for.html>

<sup>5</sup> Outlook for Specialty Pharmacy Prescription Revenues, Drug Channels (subsidiary of Pembroke consulting), April 11, 2017, <http://www.drugchannels.net/2017/04/our-exclusive-2021-outlook-for.html>

<sup>6</sup> Supra note 1

<sup>7</sup> <https://www.drugchannels.net/2018/03/the-top-15-specialty-pharmacies-of-2017.html>

<sup>8</sup> John Doe One et al v. CVS Health Corporation, case 2:18-CV-01280-RS WL-J PR, filed February 16, 2018; *Sentry Data Systems v. CVS Health et al*, Case 0:18-cv-60257, filed February 5, 2018

<sup>9</sup> See Dafny in the NEJM: <https://www.nejm.org/doi/full/10.1056/NEJMp1717137?query=TOC>

dangerous. Consequently, cancer patients taking oral chemotherapy have to be monitored by a physician trained in oncology to ensure that those drugs are properly dosed, and accordingly, there is a local market for dispensing and administration of oncology drugs. Compelling Aetna patients to utilize CVS' specialty pharmacy can make it difficult for an oncologist like me to perform this kind of monitoring.

Cutting out clinical settings such as a physician practice or hospital from the dispensing and administration of chemotherapy drugs raises other patient safety concerns. For example, with any chemotherapy drug, patient adherence to the medication regimen is essential to maximizing the chances of the drug effectiveness and consequently, patient survival. Removing clinical settings from the equation compromises an oncologist's ability to not only ensure adherence, but also to follow where the patient is in his or her chemotherapy cycle.

It is important to understand how this works in the real world. When chemotherapy medications are not dispensed or administered in the physician practice, all-too-often the patient's oncologist is not provided with key information such as: (1) when the medication has been delivered; (2) when, or if, the patient has started taking her medication; (3) if, and when, refills have been requested; and (4) if refill requests have been made that incorporate the oncologist's changes in dosage, dosage intervals, or other instructions. This lack of information greatly hinders my ability to protect my patients from dangerous or unwanted side effects, adverse patient reactions, or toxic drug levels.

Oral chemotherapy is just the beginning. CVS-Aetna could financially compel Aetna patients needing IV chemotherapy to have those drugs delivered at the patient's home, where CVS nurses would administer the chemotherapy. This practice raises even greater quality of care and patient safety concerns than those I just mentioned regarding oral chemotherapy. Patients can have very serious reactions to IV cancer drugs and in such cases not having a trained oncologist on hand to supervise patients is a recipe for disaster. What guarantees will there be that the person CVS sends to perform administration will be sufficiently trained to handle these life-threatening contingencies?

When quality of care issues arise between me and a PBM concerning one of my cancer patients, I take the problem to the insurer. Today, Aetna is free to weigh my patient quality demands against financial concerns. This weighing also occurs between Aetna and an independent CVS at contract renewal time. However, once Aetna has a permanent ownership interest in CVS, Aetna will have a financial interest in CVS' specialty pharmacy continuing to gain market share, and be less responsive to my patient demands.

Let me emphasize that the concerns I have voiced today are not unique to me, nor is it mere speculation. In fact, the likely harmful effect that a combined CVS-Aetna may have on the quality of patient care is described in an on-line article appearing in the Lancet, one of the world's pre-eminent medical journals. In the Lancet article entitled, "Major health-care companies merge in the USA," the author writes:

A substantial share of CVS Health's pharmacy revenues are derived from specialty pharmacies, which distribute expensive drugs, including chemotherapy

agents. The company might press patients to obtain drugs there that would be better provided through a physician's office. 'These are very expensive drugs and they can hurt you if they aren't managed closely,' explained Ray Dean Page (incoming chair of the clinical practice committee of the American Society of Clinical Oncology.)<sup>10</sup>

Finally, I ask that you not forget that CVS' tying of the purchase of its specialty drugs to reasonable access to its health insurance is among the allegations against it in a class action filed in a California federal court and entitled *John Doe One et al v. CVS Health Corporation*, case 2:18-CV-01280-RS WL-J PR, filed February 16, 2018. The suit claims that many enrollees in health plans where CVS controls and administers the pharmacy benefits are told they have to obtain their HIV/AIDS medications from CVS' California specialty pharmacy, a wholly-owned subsidiary of CVS. It is asserted in this lawsuit that patients allegedly are:

Told that they must either pay more out of pocket or pay full price with no insurance benefits whatsoever—thousands of dollars or more each month—to purchase their medications at an in network community pharmacy where they can receive counseling from a pharmacist and other services they may need to stay alive.

While these claims are not yet proven, similar allegations are being made in a Florida lawsuit, *Sentry Data Systems v. CVS Health*.<sup>11</sup> In *Sentry*, the plaintiff alleges that CVS forces "patients and third-party payers to utilize CVS as their specialty pharmacy."

In sum, CVS's acquisition of Aetna exacerbates the concerns I have described personally as an oncologist, as well as the allegations raised in these lawsuits.

Thank you again for allowing me to present my opinions as a practicing oncologist strongly opposed to this health care merger that would impede my caring for cancer patients.

Also, as President of the AMA, I can report that the AMA has been painstakingly analyzing this merger, an analysis that started almost as soon as the merger was officially announced. The AMA has sought the views of prominent health economists, health policy and antitrust experts – some of whom you heard from today. After very carefully considering this merger over the past months—the AMA has come to the conclusion that this merger would likely substantially lessen competition in many health care markets, to the detriment of patients. What we heard today corroborates this conclusion. From my vantage point as a physician, the reduction in competition threatens to have real-life consequences for patients struggling for survival. Accordingly, based on the mutually confirming analyses and conclusions presented by the nationally recognized experts heard from today and other experts, as well as extensive research, the AMA is now convinced that the proposed CVS-Aetna merger should be blocked.

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<sup>10</sup> Major health-care companies merge in the USA, Alcorn, Ted, *The Lancet Oncology*, Volume 19, Issue 5, 598 (May 2018)

<sup>11</sup> *Sentry Data Systems v. CVS Health et al*, Case 0:18-cv-60257, filed February 5, 2018