

Testimony Regarding CVS Health Corporation’s Proposed Acquisition of Aetna Inc. in Utah

by

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Qualifications

I am a Distinguished Professor Emeritus of Health Economics and Public Policy at the School of Public Health and the Goldman School of Public Policy at the University of California, Berkeley. I hold the Chair in Healthcare Markets and Consumer Welfare endowed by the Office of the Attorney General for the State of California and am the founding director of The Nicholas C. Petris Center on Health Care Markets and Consumer Welfare.

I recently testified at the California Department of Insurance’s June 19, 2018 hearing on CVS Health Corporation’s proposed acquisition of Aetna Inc. Additionally, I testified at the January 22, 2016 hearing on Centene Corporation’s proposed acquisition of Health Net, Inc. and the California Department of Insurance’s March 29, 2016 hearing on Anthem, Inc.’s proposed acquisition of Cigna Corporation. I also testified at the Federal Trade Commission and Department of Justice Meeting: Examining Healthcare Competition in Washington D.C. (February 25, 2015).

For further background on the Medicare Part D market and a literature review on the impact of market power on Medicare Part D premiums, see the June 19, 2018 testimony I delivered before the California Department of Insurance.¹

I thank the American Medical Association for supporting my work that went into preparing this testimony. My testimony reflects my views and opinions, not necessarily the views of the American Medical Association.

Utah’s Medicare Part D Stand-alone Prescription Drug Plan (PDP) Market

In 2018, 43 million of the 60 million people with Medicare have prescription drug coverage under a Medicare Part D plan.² Of the 43 million, 25 million (58%) are covered under a stand-alone prescription drug plan (PDP) while the remaining 18 million (42%) are enrolled in Medicare Advantage prescription drug plans (MA-PDs).² In this testimony, I focus exclusively on the PDP market – the part of the Medicare Part D market where CVS Health Corporation and

¹ Scheffler, Richard M. “Testimony Regarding CVS Health Corporation’s Proposed Acquisition of Aetna Inc.” Expert testimony before the California Department of Insurance. June 19, 2018. Available from: <http://www.insurance.ca.gov/01-consumers/110-health/60-resources/upload/Scheffler-CVS-Aetna-Testimony-06-19-18.pdf>

² Cubanski, Juliette, Anthony Damico, and Tricia Neuman. “Medicare Part D in 2018: The Latest on Enrollment, Premiums, and Cost Sharing.” San Francisco, CA: Kaiser Family Foundation. May 17, 2018. Available from: <https://www.kff.org/medicare/issue-brief/medicare-part-d-in-2018-the-latest-on-enrollment-premiums-and-cost-sharing/>

Aetna Inc. have competing business. In Utah, just over 130,000 people are enrolled in a PDP in 2018.³

Table 1 shows Utah PDP market shares by plan sponsor in 2018. In 2018, Humana Inc. has the largest market share with just under 30% of PDP enrollment in the state. CVS Health Corporation and Aetna Inc. rank 4th and 6th, respectively, in terms of market share at 13.3% and 6.1%. A CVS Health Corporation acquisition of Aetna Inc. would give the combined company 19.4% market share and the 2nd most market share behind Humana Inc.

Table 1. Utah PDP Market Enrollment and Market Shares, 2018

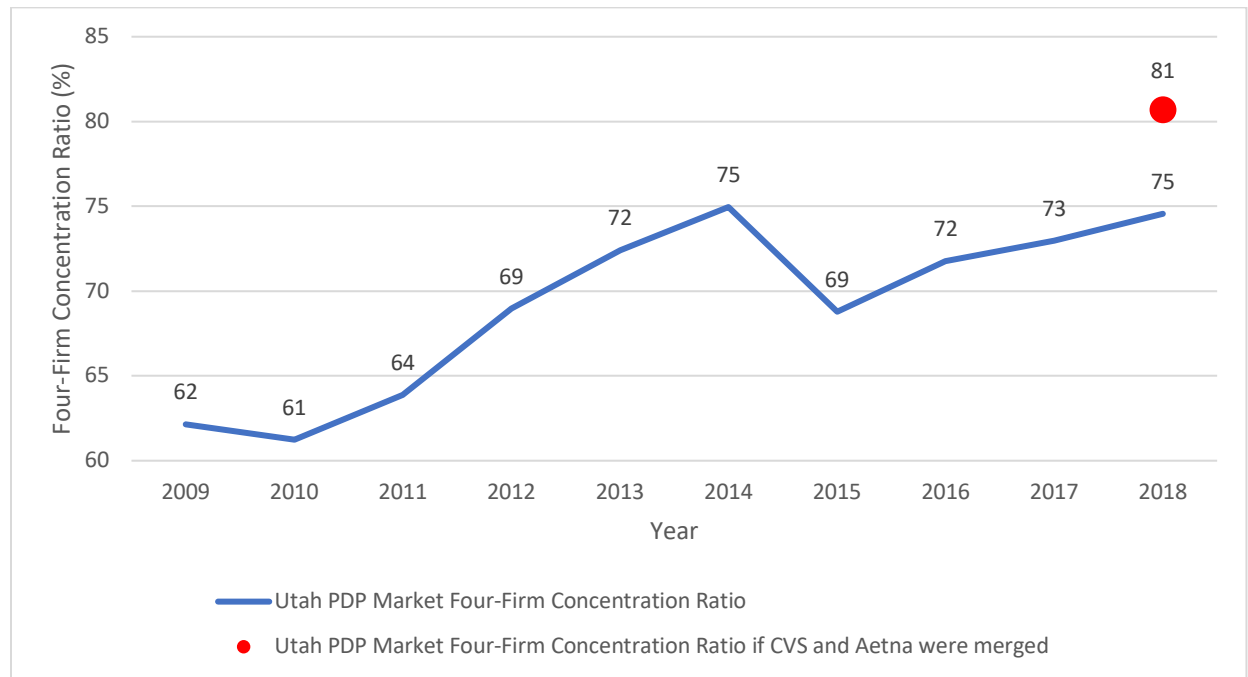
Plan Sponsors	Enrollment	Market Share
Humana Inc.	38,129	29.2%
UnitedHealth Group, Inc.	22,648	17.3%
Express Scripts Holding Company	19,193	14.7%
CVS Health Corporation	17,417	13.3%
Magellan Health, Inc.	9,936	7.6%
Aetna Inc.	8,012	6.1%
WellCare Health Plans, Inc.	3,858	3.0%
Cambia Health Solutions, Inc.	3,483	2.7%
CIGNA	3,291	2.5%
Rite Aid Corporation	2,600	2.0%
Educators Mutual Insurance Association	1,672	1.3%
TOTAL	130,239	99.7%*

Note: *Only plan sponsors with greater than 1% market share are included in the table.

Figure 1 shows the four-firm concentration ratio in the Utah PDP market from 2009 to 2018. The four-firm concentration ratio is simply the sum of the market shares of the four firms with the largest market shares. In 2009, the four-firm concentration ratio in the Utah PDP market was 62%. By 2018, the four firm concentration ratio was 75% -- an increase of 13 percentage points. According to section (4)(b)(ii) of U.C.A. 1953 § 31A-16-104.5, “a highly concentrated market is one in which the share of the four largest insurers is 75% or more of the market.” Thus, Utah’s PDP market is currently highly concentrated. A CVS Health Corporation acquisition of Aetna Inc. would increase the four-firm concentration ratio in Utah’s PDP market to 81% (the circle in Figure 1).

³ Author’s analysis of PDP enrollment data from the Centers of Medicare & Medicaid Services (CMS). Available from: <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MCRAAdvPartDEnrolData/Monthly-PDP-Enrollment-by-State-County-Contract.html>

Figure 1. Utah’s Medicare Part D Stand-alone Prescription Drug Plan (PDP) Four-Firm Concentration Ratio, 2009-2018



Note: A four-firm concentration ratio is the sum of the market shares of the four firms with the largest market shares.

The four-firm concentration ratio shown in Figure 1 is important because based on the current four-firm ratio of the Utah PDP market (75%) and the current market shares of CVS Health Corporation (13%) and Aetna Inc. (6%), the acquisition should be considered “prima facie evidence of violation of the competitive standards” according to section (4)(b)(i) of U.C.A. 1953 § 31A-16-104.5.

Additionally, the acquisition is a competitive concern under section (4)(c) of U.C.A. 1953 § 31A-16-104.5. Section (4)(c) is concerned with the trend toward increased concentration in markets. Specifically, it states there is a significant trend toward increased concentration when “the aggregate market share of any grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by 7% or more of the market over a period time extending from any base year 5 to 10 years before the acquisition up to the time of the acquisition.” Figure 1 establishes a significant trend toward increased concentration according to section (4)(c) – the market share of the largest four firms increased by 13 percentage points (or 21%) from 2009 to 2018.

Finally, section (4)(f) of U.C.A. 1953 § 31A-16-104.5 is also important. According to section (4)(f), “a party may establish the absence of requisite anticompetitive effect based upon other substantial evidence.” One of the relevant factors a party use to support its case is a “volatility of ranking of market leaders.” “Volatility of ranking of market leaders” has not occurred in the Utah PDP market. In fact, the current top two firms of the Utah PDP market (in terms of market

share) – Humana Inc. and UnitedHealth Group, Inc. – were also the top two firms of the Utah PDP market in 2009, the first year of the study period I analyzed.⁴

CMS’ Utah and Idaho PDP Region

The Centers for Medicare & Medicaid Services (CMS) divides states into 34 PDP regions.⁵ Utah and Idaho make up one of the 34 PDP regions. This section reproduces the analysis of the previous section, but under the assumption the Utah/Idaho PDP market is the relevant geographic market, rather than the state of Utah.

In 2018, the four-firm concentration ratio of the Utah/Idaho PDP market is 77% (2 percentage points higher than the Utah PDP market four-firm concentration ratio). Additionally, both CVS Health Corporation’s market share (15.9%) and Aetna Inc.’s market share (6.8%) are slightly higher in the Utah/Idaho PDP market than they were in my analysis of the Utah PDP market (see Table 2). A CVS Health Corporation acquisition of Aetna Inc. would give the combined company 22.7% market share in the Utah/Idaho PDP market. A CVS Health Corporation acquisition of Aetna Inc. would increase the four-firm concentration ratio in the Utah/Idaho PDP market to 84%.

Table 2. Utah/Idaho PDP Market Enrollment and Market Shares, 2018

Plan Sponsors	Enrollment	Market Share
Humana Inc.	82,166	32.5%
UnitedHealth Group, Inc.	43,268	17.1%
CVS Health Corporation	40,234	15.9%
Express Scripts Holding Company	29,468	11.7%
Aetna Inc.	17,220	6.8%
Magellan Health, Inc.	11,603	4.6%
WellCare Health Plans, Inc.	8,989	3.6%
CIGNA	6,593	2.6%
Rite Aid Corporation	5,772	2.3%
Cambia Health Solutions, Inc.	4,675	1.8%
TOTAL	249,988	98.9%*

Note: *Only plan sponsors with greater than 1% market share are included in the table.

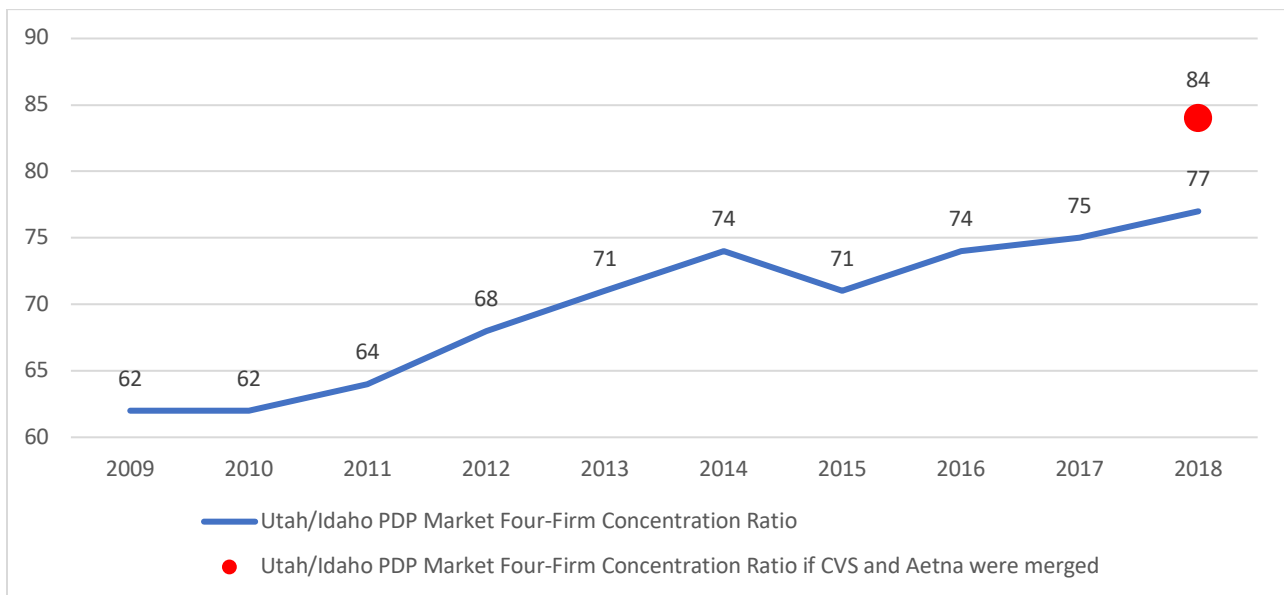
⁴ Humana Inc. and UnitedHealth Group, Inc.’s market shares in the Utah PDP market were 21% and 18%, respectively, in 2009.

⁵ <https://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovGenIn/downloads/PDPRegions.pdf>

Given the current four-firm concentration ratio of 77% in the Utah/Idaho PDP market and the current market shares of CVS Health Corporation (16%) and Aetna Inc. (7%) in the Utah/Idaho PDP market, the acquisition should be considered “prima facie evidence of violation of the competitive standards” according to section (4)(b)(i) of U.C.A. 1953 § 31A-16-104.5.

If the Utah/Idaho PDP market is determined to be the relevant market, the acquisition is a competitive concern under section (4)(c) of U.C.A. 1953 § 31A-16-104.5. Section (4)(c) is concerned with the trend toward increased concentration in markets. Figure 2 establishes a significant trend toward increased concentration according to section (4)(c) – the market share of the largest four firms increased by 15 percentage points (or 24%) from 2009 to 2018.

Figure 2. Utah/Idaho’s Medicare Part D Stand-alone Prescription Drug Plan (PDP) Four-Firm Concentration Ratio, 2009-2018



Note: A four-firm concentration ratio is the sum of the market shares of the four firms with the largest market shares.

Finally, section (4)(f) of U.C.A. 1953 § 31A-16-104.5 is again important. Similar to the previous section, “volatility of ranking of market leaders” has not occurred in the Utah/Idaho PDP market. In fact, the current top two firms of the Utah/Idaho PDP market (in terms of market share) – Humana Inc. and UnitedHealth Group, Inc. – were also the top two firms of the Utah/Idaho PDP market in 2009, the first year of the study period I analyzed.⁶

⁶ Humana Inc. and UnitedHealth Group, Inc.’s market shares in the Utah/Idaho PDP market were 26% and 17%, respectively, in 2009.