



UNIVERSAL HEALTH CARE
FOUNDATION OF CONNECTICUT

Connecticut Health Insurance Department
Written Statement on Proposed Acquisition of Aetna by CVS
October 2, 2018

Introduction

Universal Health Care Foundation of Connecticut offers these comments to highlight our concerns about the proposed acquisition of Aetna by CVS.

The Foundation of Connecticut is dedicated to achieving universal access to quality and affordable health care and to promoting health in Connecticut. We envision a health care system that is accountable and responsive to the people it serves.

We disagree with the fundamental argument put forth by CVS and Aetna that this merger will “deliver substantial public benefits such as improved health outcomes and lower health care spending,” (Form A, page 3).

And we are concerned that the regulatory process underway in Connecticut is not sufficiently dedicated to answering this important question, “Will consumers benefit?”

After reviewing the evidence, our answer is that we have strong doubts that consumers will gain from the proposed acquisition. For that reason, we are proposing several conditions, should the merger be approved. We are including in our comments excerpts from statements made by experts at an investigatory hearing held in June in California. We are also including excerpts from comments written by public officials from New York and California who both raise serious concerns about the merger.

Proposed Approval Conditions

If the acquisition of Aetna by CVS is approved despite the many concerns that exist about its potential to harm consumers, the Connecticut Insurance Department should at least consider imposing conditions on its approval. We suggest these three conditions, below:

- Connecticut passed a prescription drug transparency bill, PA 18-41, An Act Concerning Prescription Drug Costs, which begins to hold PBMs, insurers and drug companies accountable for high and rising prescription drug prices, by requiring each industry to provide information to state government. The merger takes Aetna and puts it under the control of CVS, a PBM. We would like to see assurances that this new combined entity will report as both a PBM and as an insurer.
- Aetna had announced previously that they were going to pass prescription drug rebates on to consumers at the pharmacy counter when customers are in their deductible period. The Insurance Department should require that they stick to this policy after the merger.

- CVS should be required to work with the Office of Health Strategy to expand and open Minute Clinics in underserved areas of the state where there is a demonstrated shortage of primary care. Minute Clinics should also be required to accept Medicaid patients, if this is not true already.

Expert Witness Testimony from California’s Department of Insurance Investigatory Hearing

In California, a much more extensive hearing was held on June 19, 2018 that included testimony from expert witnesses familiar with the downsides of health care mergers. (See <http://www.insurance.ca.gov/01-consumers/110-health/60-resources/Aetna-CVS-Merger-Information.cfm>) No such opportunity to hear from experts is happening in Connecticut. Instead, written comments can be submitted and speakers may make public comments, limited to 3 minutes each, on the day of the hearing.

Several of the comments from these experts are included below, along with links to their testimony, to ensure that they are included in the public record.

1. Lawton R. Burns, Ph.D., MBA The James Joo-Jin Kim Professor Department of Health Care Management, The Wharton School University of Pennsylvania “Proposed Merger of Aetna, Inc. into CVS Health Corporation,” June 19, 2018

<http://www.insurance.ca.gov/01-consumers/110-health/60-resources/upload/Burns-Testimony-of-Lawton-R-Burns-in-Aetna-CVS-Merger-June-2018.pdf>

- “The proposed merger is based on the corporate strategy of vertical integration. There is no prima facie evidence for consumer welfare benefits flowing from this strategy. Indeed, in the healthcare industry, this strategy usually leads to higher prices, higher costs, and higher utilization. Sometimes it also results in greater market power.”
- “The specific benefits of the merger espoused by company executives are unlikely to be achieved. The numerous benefits cited lack any documentation and are contradicted by the research evidence.
- Many of these benefits rely on retail pharmacies and in-store health clinics to ‘transform’ healthcare and serve as a healthcare hub for consumers. For a multitude of reasons, such outcomes are unlikely. In fact, pharmacy-based retail clinics are unlikely to improve quality, improve health outcomes, or reduce cost of care.
- I conclude that there are no apparent benefits from the proposed merger that compensate for welfare losses stemming from antitrust concerns.”

2. Thomas L. Greaney, Professor of Law, University of California Hastings College of Law, “Statement before the Investigatory Hearing on Merger of Aetna Inc. into CVS Health Corporation,” June 19, 2018

<http://www.insurance.ca.gov/01-consumers/110-health/60-resources/upload/Greaney-Statement-to-CA-Department-of-Insurance-6-19-18.pdf>

“My bottom line is this:

- Market concentration is a leading cause of high costs in health care;
- Antitrust enforcers have neglected the risks associated with vertical combinations;
- The CVS/Aetna merger is likely to lessen competition in the standalone prescription drug plan market;

- The CVS /Aetna combination, along with Express Scripts/Cigna merger will likely enhance incentives to stifle competition by foreclosing competition or raising rivals' costs."

3. Neeraj Sood, PhD, Professor of Health Policy at the University of Southern California, "Potential effects of the proposed CVS acquisition of Aetna on competition and consumer welfare," June 14, 2018

<http://www.insurance.ca.gov/01-consumers/110-health/60-resources/upload/Sood-AMA-finalv3.pdf>

"In summary, several segments of the pharmaceutical supply chain are highly concentrated and several players engage in practices that hurt consumers. The acquisition of Aetna by CVS will increase incentives for CVS to be a better PBM for Aetna but it will simultaneously create incentives for CVS to be a worse PBM for health plans competing with Aetna. These incentives will likely reduce competition in health insurance markets. In my opinion, the potential costs of reduced competition in insurance markets outweigh potential benefits of CVS being a better PBM for Aetna. The acquisition of Aetna by CVS will also likely reduce competition in the pharmacy and PBM markets, increasing drug spending and out of pocket costs for consumers. The potential costs of reduced competition in pharmacy and PBM markets due to the merger outweigh potential benefits, if any, of integration of medical and pharmacy data due to the merger."

4. Amanda Starc, Associate Professor of Strategy Kellogg School of Management Northwestern University, Comments on Selected Issues Re: The proposed mergers of Aetna and CVS, May 15, 2018

http://www.insurance.ca.gov/01-consumers/110-health/60-resources/upload/StarcReport-revised_070318.pdf

"Given the degree of concentration and horizontal consolidation in the insurance industry, it is reasonable to believe that any cost-savings will increase insurer profits, rather than reducing consumer costs. Empirically, there are reasons to be skeptical that the savings will be realized and ultimately captured by the consumer. Therefore, the potential for harm to consumers from this merger is likely to outweigh any gains."

Written Comments from Public Officials

Two public officials from other states, California's Insurance Commissioner Dave Jones and New York's Superintendent of the Department of Financial Services Maria Vullo, have also weighed in, expressing multiple concerns about the acquisition.

5. Decision Letter of California Insurance Commissioner Dave Jones, August 1, 2018

<http://www.insurance.ca.gov/0400-news/0100-press-releases/2018/upload/nr085LtrJonestoUSAGSessionsreCVS-AetnaMerger.pdf>

"I conclude that the proposed merger of CVS and Aetna will have anticompetitive effects and not be in the interest of consumers or health insurance and healthcare markets in California and nationally. The CVS and Aetna merger will harm Californians and our health insurance market, and is likely to increase drug prices for consumers rather than reduce them. The CVS and Aetna merger will harm consumers in markets across the United States.

Accordingly, I request that the United States Department of Justice sue to block the CVS-Aetna merger.”

6. Letter from Maria T. Vullo, Superintendent, New York State Department of Financial Services to Insurance Commissioner Katharine Wade, “Issues for Consideration in Connecticut DOI’s Review of the Proposed Acquisition of Aetna, Inc. by CVS Health Corporation,” September 17, 2018

“The proposed acquisition of Aetna by CVS will affect millions of consumers in Connecticut and New York, as well as the rest of the country. The proposed transaction, if approved, would create an incredibly large market share in the health care market for the combined company, in an already concentrated marketplace, and is likely to increase prices for members and reduce options for consumers, without any discernible increase in quality. VS already is a major player in the unregulated and opaque PBM market, which in itself creates real concerns as to the cost of prescription drugs and the reduction in competition. Moreover, CVS is a large commercial enterprise beyond health care, raising questions as to its commitment to health care service and quality. The size of the increased debt from this proposed transaction only amplifies these concerns, as the amount of debt may place undue pressure on consumers of Aetna’s health insurance products.”

Conclusion

In summary, CVS and Aetna describe this merger as “pro-competitive.” The reality is that it is anti-competitive. It increases barriers to entry in the multiple markets of specialty pharmacy, retail pharmacy, PBMs and health insurance. As the statements from experts and public officials cited in our comments show, the merger will lead to higher prices, not lower prices, and reduced choices. The data sharing and synergies promised by the applicant to improve quality of care and health are not likely to materialize. Adding a few more Minute Clinics in Connecticut, without specifying where primary care access is needed most, is not going to have a major impact on access to care. Finally, there are no assurances that any savings, should they be achieved, will actually be passed on to consumers.

At Universal Health Care Foundation of Connecticut, we believe it is important to elevate the concerns of real people – and ask for *real* solutions to the challenges of rising health care costs and limits on access to quality care. The acquisition of Aetna by CVS is *not* a solution. Instead, it represents the consolidation of monopoly power at the expense of consumers.