AMA

DOJ should block CVS-Aetna merger: Calif. insurance regulator

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California Insurance Commissioner Dave Jones has concluded that the proposed merger of CVS and insurance giant Aetna would have major anticompetitive effects and should be blocked. Following a recent public hearing featuring testimony from many experts, including the AMA, Jones is formally asking the U.S. Department of Justice to sue to block the proposed merger.

"The proposed merger of CVS and Aetna will significantly reduce competition in the PBM [pharmacy benefit management] and Medicare Part D markets, affecting millions of health care consumers throughout the country," Jones said.

"A merger of this size and type, according to experts on health insurer and health care mergers, will likely lead to increased prices and decreased quality. Further, partial divestiture or other remedies traditionally used by the Department of Justice will not adequately protect consumers or address the adverse consequences of a merger of CVS and Aetna," he added.

“Traditional methods to avoid market concentration will not address potential impacts on service quality, the power to charge excessive rates, or the creation of barriers to block a potential market participant with the resources to enter into new markets,” Jones said.

Another big worry is that the merger would remove Aetna "as a potential competitor from an already concentrated PBM market," Jones added. "In an era where the largest insurers increase barriers to entry by consolidating market power, the loss of a PBM entrant with the resources and expertise needed to expand into a heavily consolidated market would be a substantial loss for Californians as well as nationally."

Jones added that because Aetna does key PBM functions in-house, it is already a significant participant in the PBM market as a "self-supplier" given its share of the insurance market. In that way, Jones concluded, the "proposed merger with CVS has horizontal merger implications in the PBM market, as well."

The merger’s potential negative consequences for health care access, quality and affordability include:

- An expected increase in premiums due to a substantial increase in market concentration in 30 of 34 Medicare Part D regional markets.
- An anticipated increase in drug spending and out-of-pocket costs for patients as Aetna and CVS fortify their dominant positions in the health insurance, pharmaceutical benefit management, retail and specialty pharmacy markets that already lack competition.
- Reduced competition in health insurance markets that will adversely affect patients with higher premiums and contribute to a decline in the quality of insurance.
- A foreseeable failure to realize proposed efficiencies and benefits because the merger faces enormous implementation challenges, and those efficiencies have a questionable evidence base.

AMA President Barbara L. McAneny, MD, testified at Jones’ hearing and applauded his move. She urged other state regulators to follow his lead.

“The AMA agrees with Commissioner Jones that allowing this anticompetitive merger to proceed likely would harm consumers,” Dr. McAneny said. “If left unblocked, there is every indication that the merger would raise prices, reduce choice and stifle innovation in five poorly performing markets: Medicare Part D stand-alone prescription drug plan, pharmacy benefit management services, health insurance, retail pharmacy and specialty pharmacy.”

“Commissioner Jones extensively cited evidence presented by the AMA and prominent experts in antitrust law, economics and health policy demonstrating that there are no potential benefits of sufficient magnitude and certainty that would outweigh the anticompetitive effects of the proposed merger,” she noted.

Learn more about how the AMA protects patients and physicians by actively opposing anticompetitive health insurer mergers.