July 25, 2019: Advocacy spotlight on Scrutiny of CVS-Aetna deal shows AMA's powerful impact

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The word "unprecedented" is used frequently in news reports to describe the CVS-Aetna merger, a $69 billion deal approved by the Justice Department last year.

Forbes called the merger an unprecedented "concentration of power in the health care system." *Modern Healthcare* and *The Hill* both used the word "unprecedented" to describe U.S. District Court Judge Richard Leon's continued investigation of the deal after it had already formally closed last November. And the *Wall Street Journal* said Leon's move to schedule a hearing last month with live testimony was without precedent.

The AMA has opposed this merger in which the nation's third-largest health insurer, Aetna, gets absorbed by CVS Health Corp., a sprawling conglomerate that includes the largest retail pharmacy chain and specialty pharmacy in the U.S. and the largest pharmacy benefit manager (PBM), Caremark.

The deal would lead to the "formation of a vertically integrated PBM tight oligopoly of CVS-Aetna, Express Scripts/CIGNA and United Health/OptumRx," the AMA told U.S. Assistant Attorney General Makan Delrahim in a 2018 letter (PDF).

The DOJ approved the merger last fall subject to Aetna divesting its prescription drug plan (PDP) business. That business was subsequently sold to WellCare Health Plans, which the AMA argued served only to further reduce competition among PDPs.

Judge Leon also criticized the divestiture, saying it represented "less than one-tenth of 1%" of the CVS-Aetna deal.

The loss of competition in the PBM market is just one of the angles from which the AMA has argued against the deal, backing its arguments with loads of data obtained from nationally recognized antitrust experts who have evaluated the merger.

Other reasons to oppose the CVS-Aetna merger include:

- The benefits of the merger are speculative.
- There are likely anti-competitive impacts in the PDP, health insurance, retail pharmacy, specialty pharmacy and PBM markets.
- The merger is likely to raise health insurance premiums.
- Any efficiencies resulting from the merger are unlikely to be passed along to consumers.

For a hint at what PBM market concentration makes possible, look to Ohio's Medicaid managed care program. According to the *Columbus Dispatch*, PBMs "transferred $224 million from taxpayers' wallets" directly to theirs through "spread pricing" where the PBMs reimbursed pharmacies almost 9% less than they were paid by the state.

The paper also reported that, as PBMs cut payments to pharmacies struggling to remain open, the parent company of one of them, CVS, sent their owners letters "sympathizing with their financial woes and offering to buy them out."

The AMA outlined in a recent 141-page analysis why the proposed CVS-Aetna merger would run afoul of federal antitrust law, noting how it would likely harm patients. CVS is one of the two largest players in the retail pharmacy market and operates the largest pharmacy benefit manager. The merger also would reduce competition in certain pharmaceutical benefit markets, leading to higher premiums and lower-quality insurance products. The merger faces enormous implementation challenges and is unlikely to realize efficiencies that benefit patients.

Learn more about the AMA's competitive concerns with this merger.

Kai Sternstein, JD, vice president of the AMA Advocacy Resource Center discusses the CVS-Aetna merger and its implications in a brief video.

More articles in this issue

- July 25, 2019: National Advocacy Update
- July 25, 2019: State Advocacy Update
- July 25, 2019: Judicial Advocacy Update