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KEVIN A. CAHILL
Assemblymember 103rd District

CHAIR
Assembly Insurance Committee

August 24, 2018

The Honorable Jeff Sessions, Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C.
20530-0001

Mr. Makan Delrahim, Assistant Attorney General, Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C.
20530-0001

RE: Proposed merger of CVS Health Corporation and Aetna, Inc.

Dear Attorney General Sessions and Assistant Attorney General Delrahim:

I write regarding the proposed acquisition of Aetna Inc. (Aetna) by CVS Health (CVS). On June 4, 2018, the New York State Assembly Committees on Insurance and Health held a public hearing on the topic. Participating parties included Aetna, CVS, the Medical Society of New York State, the Pharmacist Society of the State of New York, Consumers Union and the Community Service Society of New York. Collectively, the panelists provided a clear and pertinent perspective on the proposed merger of CVS and Aetna and the effects of such an acquisition on the health insurance industry. I share with you a summary of the findings from that proceeding and express my ongoing concerns. This transaction has the potential to create an entity that will be too large and complex to properly regulate in the best interests of the public.

I. Allowing CVS and Aetna to Merge Creates a Conglomerate That Will Be Too Difficult to Regulate and Will Likely Harm Patient Care.

There are serious questions that arise when considering whether to accept a merger of this scale. The acquisition is not just between two major companies, but three key stakeholders in the healthcare industry. CVS is already one of the largest retail pharmacy chains in the United States and the company currently owns Caremark, the second largest pharmacy benefit manager (PBM) in the country. Aetna is the third largest health insurance company in America. While not a horizontal consolidation, the sheer magnitude of this vertical restructuring is likely the

biggest in healthcare and perhaps in the history of commerce in our nation. As such, the appraisal by the United States Department of Justice should proceed with the utmost of caution.

II. CVS and Aetna Have Failed to Prove That the Public Will Actually Benefit From the Merger.

At the Assembly hearing, representatives of CVS and Aetna testified that this amalgamation will increase efficiencies, lower costs and offer more consumer products. To achieve these goals, the companies have asserted that they plan to create a patient-centric model. However, as of today, neither CVS nor Aetna have been able to point to any study or source validating the claim that the merged business entity would provide certain benefits or that such services and approaches could not be reasonably provided by separate entities. Accordingly, the Department of Justice should not consent to this merger on the basis of such unsubstantiated claimed benefits.

III. Several Public Interest Concerns Have Not Been Adequately Addressed Including How the Companies Plan to Protect Patient Information and How Drug Prices Will Actually Be Lowered Once the Merger Significantly Decreases Market Competition.

Additionally, consumer advocacy groups and medical professionals who testified at the Assembly hearing raised serious considerations that are worthy of the Department of Justice review. Legitimate privacy questions result when one company has access to the personal data of millions of consumers. Those concerns multiply when that entity has irrefutable commercial interests that would benefit from the sharing of that information between internal divisions. The plan by CVS to establish “Minute Clinics” also deserves special evaluation as part of their overall goal for growth.

The entities have thus far failed to explain how the efficiencies CVS and Aetna tout will not result in the loss of customer service or compromise what would otherwise be federally protected privacy of patient information. There is also an apprehension that the merger of a newly monolithic business entity would limit the number of independent pharmacies and physicians that customers may use, thereby expanding control of the market in a single entity and diminishing competition overall. Moreover, there is real potential for Aetna to use its relationship with CVS to manipulate internal financial arrangements to impact the “Medical Loss Ratio”, resulting in more resources directed to CVS and an overall increase in total medical spending. Each of these contentions, raised at the Assembly hearing, should give pause prior to deciding on the proposal.

IV. The New York State Assembly Insurance Committee Is Considering Legislation to Protect Consumers In Our State.

At the conclusion of the proceeding, the Assembly Insurance Committee began a review of the record to evaluate what proactive legislative steps can be taken to protect healthcare at the State level. The Committee is examining measures to increase pharmacy benefit manager transparency, as well as creating state licensure and oversight of PBMs. Our work in this regard

is ongoing and serves as an example of aspects where the New York State Assembly identifies a requirement for caution and a need to additionally protect consumers.

V. New York State's Executive Agencies Have Failed to Be Vocal About the Merger's Risks to New York State Consumers.

While the New York State Assembly is not alone in the number of states actively reviewing the consolidation, our state government executive agencies were notably absent from our recent proceeding. The New York State Department of Financial Services (DFS) not only failed to attend the hearing but has also not taken an official position or, to the best of my knowledge, actively engaged in the federal process. Though, there has been some mention of "unease" in the press by Department officials, no formal or investigatory steps have been taken.

If the Department of Justice approves the transaction, DFS will then be obliged to regulate the merged entity and will have to determine if and how it may conduct business in New York State. Since the arrangement involves the acquisition of a New York domestic insurer by an entity that is not an authorized insurer in New York, DFS will exercise final authority in that regard. While the lack of public and early involvement by DFS is obviously troubling, it does not negate the reality that they and each of the states will serve a primary role in regulating the merged entity, should it be approved. I continue to urge DFS to engage the Department of Justice and participate on this matter. They possess unique and specific knowledge of the healthcare marketplace and are critical to maintaining its delicate balance.

VI. Conclusion: The United States Department of Justice Should Act in the Public's Interest and Block the CVS and Aetna Merger.

I call upon the Department of Justice to consider each of these elements. I have also attached a copy of the Assembly hearing transcript for review and inclusion in any formal record. I encourage the Department of Justice to take all necessary steps to block the merger on the basis of anti-trust concerns and the abject failure of the subject entities to establish any public benefit whatsoever. Authorizing a conglomerate of this magnitude will negatively impact health care delivery in New York State and the entire nation.

Sincerely,



Kevin A. Cahill, Chair
New York State Assembly Standing Committee on Insurance