

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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December 12, 2024

Mr. David Joyner
President & CEO
CVS Health
1 CVS Dr.,
Woonsocket, RI 02895

Dear Mr. Joyner:

The Committee on the Judiciary is responsible for examining the sufficiency of federal competition laws to protect against monopolies and other unfair restraints on trade.¹ In September 2024, the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust convened a hearing to examine the role of Pharmacy Benefit Managers (PBMs) in the healthcare industry, including a PBM's ability to control access to and pricing of pharmaceutical products.² During this hearing, expert witnesses testified that PBMs could prevent independent pharmacies from working with innovative companies, including pharmaceutical hubs.³ By foreclosing a pharmacy's access to pharmaceutical hubs, a PBM can choke off would-be competitors before they enter the market and lower prices for consumers.⁴ Accordingly, the Committee is writing to investigate whether CVS Caremark is engaged in activities that harm competition, stifle innovation, and may violate the antitrust laws.

Three PBMs reportedly control nearly 80 percent of the market for pharmacy benefit management services,⁵ with CVS Caremark alone controlling over 30 percent of the pharmacy benefit management services for Medicaid and Medicare.⁶ With this market power, PBMs like CVS Caremark can influence independent pharmacies because losing "in-network" status with

¹ Rules of the U.S. House of Representatives, R. X (2023).

² *The Role of Pharmacy Benefit Managers, Hearing Before the Subcomm. on the Administrative State, Regulatory Reform, and Antitrust, of the H. Comm. on the Judic.*, 118th Cong. (2024).

³ *Id.*

⁴ See Steven C. Salop, *The Raising Rivals' Cost Foreclosure Paradigm, Conditional Pricing Practices, and the Flawed Incremental Price-Cost Test*, 81 ANTITRUST L. J. 371 (2017).

⁵ Dima M. Qato, et al., *Pharmacy Benefit Manager Market Concentration for Prescriptions Filled at US Retail Pharmacies*, 332 JAMA 1298 (2024).

⁶ *Id.*

one of the large PBMs can mean that an independent pharmacy can no longer afford to serve the community that relies on its services.⁷

Recently, innovative companies have created technology capable of helping doctors, pharmacies, and patients manage care and lower prescription drug costs for consumers. Digital pharmacy services including pharmaceutical hub services, prescription workflow services, patient management services, independent patient access solutions, or other patient solutions can all help patients save money.⁸ Pharmaceutical hubs, for example, claim to help patients by simplifying the process of obtaining their medications, increasing adherence to a therapeutic regimen, and helping manage out-of-pocket costs.⁹

In the Subcommittee's hearing in September 2024, Chairman Jordan asked the panel of witnesses, "Can a large PBM tell an independent pharmacy, 'if you work with some new innovative company to bypass our network, we will cut off your pharmacy from our network and subject you to fees and audits?'"¹⁰ The witnesses said that PBMs likely do have the power to stifle innovation in that way, and in particular, one witness replied that this type of conduct "probably happens."¹¹ If CVS Caremark is eliminating opportunities for patients to access such services through an independent pharmacist, this practice raises significant concerns for patient welfare and innovation across the nation.

To conduct oversight of this issue to inform potential legislative reforms, the Committee respectfully requests CVS Caremark to produce the following documents and information for the period January 1, 2019, to the present:

1. All documents and communications sent by CVS Caremark to an independent or specialty pharmacy requesting or requiring the pharmacy to cease certain practices with regards to pharmaceutical hubs;
2. All documents and communications between CVS Caremark and an independent or specialty pharmacy referring or relating to an independent pharmacy's interactions with pharmaceutical hubs; and
3. All documents and communications referring or relating to CVS Caremark's policies or guidance, formal or informal, against independent pharmacies working with pharmaceutical hubs.

⁷ See *Nearly 1 in 3 Retail Pharmacies Have Closed Since 2010, Widening Health Disparities*, USC SCHAEFFER CENTER (Dec. 3, 2024).

⁸ See *Hubs, Digital Pharmacies, and Specialty Pharmacies: What Pharma Access Teams Should Know*, PHIL, <https://phil.us/hubs-digital-pharmacies-and-specialty-pharmacies-what-pharma-access-teams/> (last accessed Dec. 4, 2024).

⁹ *Understanding the Role of Pharmacy Hub Services*, PAYSIGN (Jan. 5, 2021).

¹⁰ *The Role of Pharmacy Benefit Managers*, *supra* note 2.

¹¹ *Id.*

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Please produce documents responsive to the above requests as soon as possible but no later than 5:00 p.m. on December 30, 2024.

The Committee on the Judiciary is authorized by Rule X of the Rules of the House of Representatives to conduct oversight of and legislate on matters relating to the “[p]rotection of trade and commerce against unlawful restraints and monopolies.”¹² If you have any questions about this matter please contact Committee staff at (202) 225-6906. Thank you for your attention to this matter.

Sincerely,



Jim Jordan
Chairman



Thomas Massie
Chairman
Subcommittee on the Administrative State,
Regulatory Reform, and Antitrust

cc: The Honorable Jerrold L. Nadler, Ranking Member

The Honorable J. Luis Correa, Ranking Member, Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

¹² Rules of the U.S. House of Representatives, R. X (2023).