

Dear Federal Trade Commission,

As a community pharmacist I all too often see first hand the repercussions of these vertical mergers in health care. There should be a process in place to more frequently and thoroughly evaluate these consolidations. There should also be stricter antitrust policies in place to protect patients from the repercussions of these mergers. These mergers make it more and more difficult for community pharmacies to exist. I have many patients whose insurance requires that they use a specific chain pharmacy. However, there is no local option for that chain so the patient has to either drive 60+ miles, utilize mail order, or pay cash price for their medications. This takes business away from community pharmacy and puts undo stress on the patient. More and more we are also seeing discriminatory contracts for community pharmacies from these vertical mergers. Increased DIR fees and decreased reimbursement mean that we lose money on many of the prescriptions that we fill through these insurances. There is very clear harm competing pharmacies as well as limiting patient options for health care.

I appreciate the opportunity to submit this comment on the Federal Trade Commission (FTC) and Department of Justice (DOJ)'s Draft Vertical Merger Guidelines (Draft Guidelines). I am writing to voice my concerns with the recent wave of consolidation in the healthcare market, which is now largely controlled by a concentrated number of vertically integrated for-profit companies. I am a community pharmacist who has been directly impacted by these vertical mergers, specifically in the pharmacy industry. I believe that the agencies should strengthen their approach to vertical merger enforcement beyond what has been outlined in the Draft Guidelines.

First, I urge the FTC and DOJ, as antitrust enforcers, to more frequently and thoroughly evaluate vertical consolidation in healthcare, as it has yielded significant anticompetitive effects without promised improvements in cost or quality. In the pharmacy sector, for example, the three largest pharmacy benefit managers (PBMs) now control approximately 85-89% of the market. Each of these PBMs has been combined with other, equally powerful companies in the healthcare value chain. In the past two years alone, CVS Caremark (which was already both the single largest pharmacy chain in the country and the second largest PBM) acquired Aetna, the third-largest health insurance company in the country; and Cigna, another of the so-called "big-five" health insurers, acquired Express Scripts (the largest PBM). The third major PBM (OptumRx) is already affiliated with the single largest health insurer in the country (UnitedHealthcare). Research continues to show that vertical consolidation in healthcare such as these has led to increased prices without offsetting improvements in quality.

Second, I ask the agencies to update their antitrust enforcement policies on healthcare consolidation rather than continue adhering to the status quo. Given the evidence of anticompetitive harm from vertical consolidation, the federal antitrust enforcement agencies should be considering renewed approaches to tackling concentration in the healthcare sector. Unfortunately, the Draft Guidelines largely restate conventional analytical approaches that have largely failed to protect competition and healthcare consumers.

Third, vertical merger enforcement policy in the healthcare sector must account for anticompetitive harm to healthcare access, quality, and service. Anticompetitive vertical consolidation can harm patients and competition in myriad ways, including the mechanisms identified in the Draft Guidelines:

- Network foreclosure and exclusionary steering;
- Enhanced bargaining leverage and raising rivals' costs;
- Unfair and anticompetitive conflicts of interest; and

- Anticompetitive exploitation of competitively sensitive information.

Continued vertical healthcare consolidation could further impede competition, leading to fewer choices and higher healthcare costs. Therefore, I respectfully ask the agencies to vigorously overhaul vertical merger enforcement policy.

Lastly, the agencies should rigorously scrutinize claimed efficiencies from vertical mergers, including whether any efficiencies will be passed on to consumers. Historically, the agencies' have assumed that vertical mergers yield significant procompetitive efficiencies. Without evidence that a proposed merger is likely to generate significant cost savings or other benefits that will be passed on to consumers, the agencies should not presume that theoretical efficiencies will occur. Using the CVS/Aetna merger as an example, despite claims of procompetitive benefits, Consumer Reports determined that CVS pharmacies often have the highest retail prices, which were found to be 400% higher than independent pharmacies' retail prices for the same prescription drugs.

In conclusion, although I appreciate the FTC and DOJ's efforts to reevaluate antitrust policy that has been guiding vertical merger review, I have seen first-hand the negative effects these mega mergers between plans and PBMs have on small business pharmacies like mine and on the patients I care for. I am no longer able to care for many of my patients who have been forced or heavily coerced into using a PBM owned pharmacy. I urge the agencies to look beyond what is proposed in the Draft Guidelines and significantly revamp vertical merger review to protect patient access and decrease healthcare costs.

Thank you,

Sincerely,

Lisa Wells

