NEW YORK STATE
DEPARTMENT of
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

September 17, 2018

Hon. Katharine L. Wade
Commissioner
Connecticut Insurance Department
153 Market Street, 7th Floor
Hartford, CT 06103

**Re: Issues for Consideration in Connecticut DOI's Review of the Proposed Acquisition of Aetna Inc. by CVS Health Corporation**

Dear Commissioner Wade:

I write to provide comments on behalf of the New York Department of Financial Services (NYDFS) regarding the proposed acquisition of control of Aetna Inc. (Aetna) and its subsidiaries by CVS Health Corporation (CVS)[1] in connection with the public hearing before the Connecticut Insurance Department scheduled for October 4, 2018. NYDFS has been reviewing this transaction, and we have identified several key issues that may be harmful to both New York and Connecticut consumers and markets, which we ask to be considered as the Connecticut Insurance Department evaluates this proposed acquisition.

NYDFS has regulatory approval authority regarding the proposed acquisition by CVS of Aetna Health Insurance Company of New York (Aetna-NY). In addition, Aetna has two managed care organizations subject to New York State's jurisdiction, and three Connecticut domestic insurers licensed to transact insurance business in New York, including Aetna Life Insurance Company (Aetna Life). NYDFS's interest in this proposed transaction is further substantial given the volume of Aetna's business in New York. In 2017, Aetna Life's direct business written in New York, approximately $3 billion, exceeded the direct premium writings of any other state or territory. Furthermore, Aetna Life's 2017 direct accident and health insurance premium writings in New York was 10.7% of its total direct accident and health insurance premium writings, making New York a significant market for Aetna.[2] The impact of CVS operating as a pharmacy benefit manager as well as a commercial enterprise is also a significant consideration in evaluating this proposed acquisition. In short, the decision on this acquisition of control will have a substantial effect on New York consumers and markets.

[1] The Connecticut domestic insurance subsidiaries of Aetna Inc. include Aetna Life Insurance Company, Aetna Insurance Company of Connecticut, Aetna Health and Life Insurance Company, Aetna Health Inc. (a Connecticut corporation), and Aetna Better Health Inc. (a Connecticut corporation).

[2] New York is the state where Aetna Life wrote the most Accident & Health (A&H) business in 2017, with approximately 10.7% of its total A&H direct business of $28.0 billion, compared to all other 49 U.S. states, four U.S. territories, Canada, and other alien territories. Furthermore, Aetna Life's A&H direct premiums written in New York represents approximately 33% of the A&H market share in New York.

Therefore, I respectfully request that NYDFS's concerns, discussed below, be considered and addressed during the upcoming hearing and in your regulatory review of the transaction.

## 1. Effects on Competition in Various Markets

- ***Unfair Competitive Advantage For Aetna.*** Pharmacy Benefit Managers (PBMs), such as CVS Caremark, have a tremendous impact on health insurance coverage and premiums, since pharmaceuticals are the leading cost of health care today. PBMs negotiate prices with drug companies, receive rebates from them, and act as suppliers to insurers, while also establishing networks and formularies for insurers. PBMs lack full transparency and regulation, despite their tremendous impact on health insurance products and prices. Particularly in this context, the proposed acquisition of a health insurer by a PBM raises significant market competition concerns, because CVS Caremark would have the power – and the financial incentive – to offer Aetna larger rebates or other significant discounts to draw policyholders away from other insurers, thereby increasing market share that is already significant, and causing anti-competitive effects in the rest of the market. An independent study conducted has already found that CVS makes up to fourteen times more per insurance policyholder compared to per PBM enrollee; therefore, CVS has financial incentives to offer Aetna this advantage if this transaction were to proceed.[3] As a result, small and regionally-based carriers, without an affiliated PBM, will be further disadvantaged, thereby harming markets and consumers. This creates significant competitive concerns for the health insurance market nationally.

- ***Concentration in PBM Market.*** The current PBM market is very concentrated, i.e., the top three PBMs control 70% of the business in this highly opaque industry. CVS Caremark is one of the three pharmaceutical drug suppliers with dominant market power, and this proposed transaction, if approved, would further cement their position by removing Aetna as a potential competitor in the PBM market. As the third largest health insurer in the U.S., Aetna is one of the few insurers with the resources and expertise necessary to enter and compete in a heavily consolidated market. By acquiring Aetna, CVS seeks to remove that significant competition, to the detriment of the rest of the market and consumers. This lack of competition, coupled with the absence of full transparency and regulation over PBMs, and the consolidation of existing PBMs with insurers, would make it increasingly difficult for new entrants to the market, and losing Aetna as a potential competitor creates a loss for all consumers in Connecticut and New York, as well as the rest of the country.

- ***Increase in Medicare Prescription Drug Plan ("Part D") Concentration.*** Both CVS and Aetna participate in the Medicare Part D market. NYDFS has concerns about the resulting concentration effect in New York's Part D market were the proposed CVS-Aetna transaction to be approved.[4] Economic studies have shown that increased market concentration and reduced competition for Part D plans will likely result in higher premiums. Research also indicates that Medicare enrollees tend to stick with their original plan of choice, even when there are relatively large premium increases. Armed

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[3] Neeraj Sood, Ph.D., Professor of Public Policy, Sol Price School of Public Policy, University of Southern California.

[4] CVS and Aetna have a 24% and 9% market share, respectively, of Part D enrollees in the U.S. In Connecticut, CVS and Aetna have a 30.1% and 7.6% market share, respectively, of Part D enrollees. Therefore, the resulting concentration effect would be significant in both New York and Connecticut.

with this consumer behavior knowledge and its large market share, post-merger CVS-Aetna would not have much incentive to lower insurance premiums or drug prices, or to pass on its PBM rebates to consumers. Even if divestitures were required, it may only slightly decrease Part D concentration, but it does not address the potential premium or drug price increases. This is very concerning.

2. **Harm to Consumers by Increased Premiums and Drug Prices, and Data Privacy Issues.**

- ***No Commitment to Lower Premiums or Pass Savings to Consumers***. CVS claims that this transaction would result in operational "synergies" and that the combined company would have an economic incentive to lower prices for Medicare Part D or its insurance premiums overall. However, CVS has not provided definitive support for the claimed synergies, nor offered any specific commitments that the acquisition in fact will benefit policyholders in the short term or long term. For example, CVS has claimed efficiency gains from its proposal to place "minute-clinics" in CVS pharmacies, where consumers can stop in without an appointment to see a nurse or physician assistant. However, sufficient details on the financial and operational aspects of this claim have not been provided. Moreover, we are concerned that such "minute-clinics" might provide unfair competition to other medical providers and hospitals, which when combined with CVS's proposed ownership of a major health insurer creates significant concerns for consumer choice and cost, as well as employment in the health care system overall.

- ***Drug Price Increases***. As noted, pharmaceutical costs are the single largest driver of premium increases today. Research indicates that prices that consumers pay for drugs may vary widely for the same product, depending upon where the consumer makes the purchase. Drug prices at independent pharmacies and online websites are generally lower than large national drug store chains, such as CVS. However, through this proposed transaction, Aetna may create cost-sharing structures, network designs, or other incentives for insureds to utilize CVS services over their competitors. This would not only increase CVS's market share in the retail pharmacy industry, but the reduction in competition would result in higher drug prices passed on to consumers. The anti-competitive nature of this transaction likely would lead to consumers paying more for the same drugs sold through other channels of distribution, thereby increasing their health care costs, particularly those covered by Aetna.

- ***Data Privacy Concerns***. CVS Caremark currently has access to drug claim data, patients' electronic medical records, and other member information from insurers that utilize its PBM services and compete with Aetna. NYDFS is very concerned about CVS' ability to protect consumers' data and ensure that data is not shared within the post-acquisition entities in order to increase market share and profits. We are concerned that consumer data will be used to further CVS enterprise initiatives, and that the accumulated data from across the enterprise (or portions of it) may be sold to third parties. In addition to anti-competitive concerns, the accumulation of this amount of consumer health data raises significant cybersecurity concerns. Were this transaction to proceed, CVS must commit to establishing strong safeguards to protect and prevent the sharing of consumers' data, both within the organization and outside of it, to the full satisfaction of regulators and on an ongoing basis.

3. **Effect of Substantial Financial Debt.** We are concerned with the considerable amount of debt – over $40 billion – that CVS is taking on to finance this transaction. S&P has stated that "CVS's financial risk profile will weaken considerably as a result of the significant increase in debt, given the scale of the acquisition as well as execution risks that could affect operating performance."[5] The uncertainty in CVS's ratings and financial risk profile is likely to increase the cost of existing and future debt, further exacerbating the repayment pressure on CVS, impacting Aetna policyholders and providers alike. NYDFS is concerned that this increased debt will create pressure on Aetna to raise premiums or take other actions that negatively impact consumers. The considerable pressure to repay debt would cause the resulting company to repay its substantial obligation before investing in other pro-market and pro-consumer measures, including infrastructure improvements that would be beneficial to consumers and/or provide relief to premiums for consumers.

**Conclusion**

The proposed acquisition of Aetna by CVS will affect millions of consumers in Connecticut and New York, as well as the rest of the country. The proposed transaction, if approved, would create an incredibly large market share in the health care market for the combined company, in an already concentrated marketplace, and is likely to increase prices for members and reduce options for consumers, without any discernible increase in quality. CVS already is a major player in the unregulated and opaque PBM market, which in itself creates real concerns as to the cost of prescription drugs and the reduction in competition. Moreover, CVS is a large commercial enterprise beyond health care, raising questions as to its commitment to health care service and quality. The size of the increased debt from this proposed transaction only amplifies these concerns, as the amount of debt may place undue pressure on consumers of Aetna's health insurance products. For these and other reasons, NYDFS has significant concerns about this proposed transaction and respectfully requests that you consider these concerns as you proceed with your upcoming hearing and transaction review.

Thank you for considering NYDFS's views.

Very truly yours,

Maria T. Vullo
Superintendent
Department of Financial Services

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[5] Ciara Linnane, *CVS's BBB-Plus Rating Placed On Creditwatch Negative By S&P After Aetna Deal*, MarketWatch (December 4, 2017, 11:32 am), https://www.marketwatch.com/story/cvss-bbb-plus-rating-placed-on-creditwatch-negative-by-sp-after-aetna-deal-2017-12-04.