

Blog Post

States Begin to Hold Hearings on the Proposed CVS/Aetna Merger

July 23, 2018

In December of 2017, CVS Health and Aetna announced their intention to merge. The transaction, if approved by regulators, would combine the country's second largest pharmacy benefit manager (PBM), Caremark – a CVS subsidiary – and the nation's third largest commercial health insurer, Aetna, and has been valued at \$69 billion. Since the announcement, federal and state regulators have been investigating whether this “vertical merger” raises any significant antitrust concerns, and a hearing at the federal level – before a United States Judiciary Committee subcommittee – was held in late February. More recently, a good deal of activity has started to occur at the state level.

Specifically, on June 19, California Insurance Commissioner Dave Jones held a lengthy hearing on the deal, inviting over ten witnesses to appear and express their views on the deal. Commissioner Jones heard from representatives from the merging parties, academia, various provider groups (including the AMA and the California Medical Association), and consumers (including Consumers Union and Consumer Watchdog) regarding their views of the proposed deal.

Representatives from CVS and Aetna reaffirmed the views that the parties had previously expressed about the deal when testifying before Congress. They stated that the merger will allow the combined

Related Work

[Antitrust and Trade Regulation](#)

[Health Insurers and Managed Care Organizations](#)

[Healthcare Licensure and Compliance](#)

[Healthcare M&A and Joint Ventures](#)

[Pharmacy, Drugs, and Medical Devices](#)

Related Offices

[Washington, D.C.](#)

Health Law Rx Blog

[Akerman Perspectives on the Latest Developments in Healthcare Law](#)

[Visit this Akerman blog](#)

company to become more efficient, reducing over \$700 million in costs, and permitting the parties to deliver greater benefits to consumers (both enhanced services and better rates). In addition, in further support for the deal, Thomas Moriarty, General Counsel for CVS Health, emphasized that “the healthcare sector will not be losing a pharmacy, it will not be losing a health plan, and it will not be losing a PBM . . . No player leaves the field.”

Some of the other witnesses at the hearing were less positive about the transaction. Dr. Barbara McAneny, president of the American Medical Association, urged that the deal be blocked, contending that it would “substantially lessen competition” in several healthcare markets. Other witnesses expressed skepticism about the parties’ ability to deliver the consumer benefits that they claim they can achieve. At the close of the hearing, Commissioner Jones did not express his views on the merger, and instead provided all interested parties until June 22 to submit additional written comments for his consideration. Commissioner Jones’s views on the merger are likely to be announced in the coming weeks, and could prove influential to others as they reach decisions on the proposed transaction.

Similarly, a hearing on the transaction was also held in New York on June 4 by the New York Assembly Health and Insurance Committees. As explained in the hearing notice, the purpose for the hearing was to consider “the impact of a merger of this magnitude on (1) costs to consumers, (2) the viability and independence of healthcare providers, and (3) the integration of insurer-pharmacy-healthcare providers (including MinuteClinic walk-in clinics)” in the state.

Notably, like the federal hearing in late February, the New York hearing was solely informational, since the New York Assembly members play no direct role in the review or approval of the proposed merger. Nevertheless, the Committee members heard from a collection of witnesses. Significantly, however, no

representative from the New York Superintendent of the Department of Financial Services appeared at the hearing, notwithstanding that Superintendent Maria Vullo will ultimately have to issue a decision on the transaction, since it involves the acquisition of a New York domestic insurer by an entity that is not an authorized insurer in New York. Her decision is expected in the coming months.

This information is intended to inform clients and friends about legal developments, including recent decisions of various courts and administrative bodies. This should not be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this email without seeking the advice of legal counsel.