United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510–6200

September 30, 2024

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Chair Khan,

We write to commend the Federal Trade Commission (FTC) for its recent lawsuit challenging the unfair methods of competition by pharmacy benefit managers (PBM) that lead to increased costs Americans must pay for pharmaceutical products. As the agency continues this effort, which is a culmination of more than two years investigating the business practices of this industry, we urge the FTC to examine new PBM tactics that appear to create further barriers to competition and harm the ability of consumers to access lower cost prescription drugs.

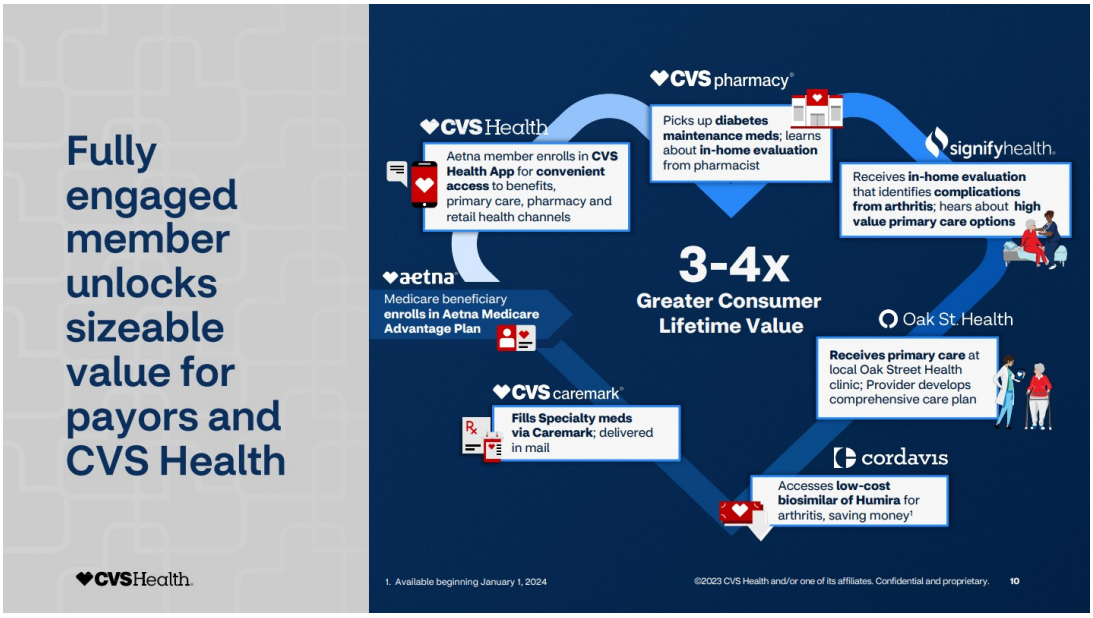
The lawsuit clearly outlines the harmful tactics that the largest PBMs have been using to thwart competition and force inflation of insulin drug costs to boost their own profits at the expense of the American consumer[1]. The lawsuit underscores the need for Congress to pass the type of PBM reforms that were voted out of the Finance Committee last year with overwhelming bipartisan support. These reforms will require PBMs to delink their compensation from manufacturer list prices in order to protect consumers and taxpayers from higher prescription drug costs. We also urge the FTC to take all actions within its authority to address the harm to community pharmacies and the American people detailed in the report.

Since the FTC announced its study of PBM industry practices, PBMs have continued to evolve their business practices. Specifically, two of the largest PBMs, CVS/Caremark and Cigna/Express Scripts (ESI) each recently announced the creation of wholly-owned subsidiary "manufacturers" that purport to co-manufacture certain biosimilars of Humira® (adalimumab). CVS's subsidiary, Cordavis, claims to co-manufacturer Sandoz's Hyrimoz® (adalimumab-adaz) while ESI's subsidiary, Quallent Pharmaceuticals (Evernorth), claims to co-manufacturer Boehringer Ingelheim's Cyltezo® (adilimubab-adbm).[2]

[1] "Grassley, Wyden Release Insulin Investigation, Uncovering Business Practices Between Drug Companies and PBMs That Keep Prices High." Jan. 14, 2021. https://www.finance.senate.gov/chairmans-news/grassley-wyden-release-insulin-investigation-uncovering-business-practices-between-drug-companies-and-pbms-that-keep-prices-high

The nature of the "co-manufacturing" agreements between PBMs and pharmaceutical companies is not clear. Based on available information, a number of the "manufacturing" services provided by PBMs are merely consulting services to the pharmaceutical manufacturers they are partnering with (Sandoz and Boehringer Ingelheim respectively). For example, a recent white paper by CVS's Chief Medical Officer describing the CVS/Cordavis arrangement, suggests that Cordavis does not undertake any actual manufacturing but instead provides consulting activity to manufacturers.[3] The concern with these "co-manufacturing" agreements is that they are a veiled attempt by PBMs to control additional parts of the supply chain which has resulted in additional harm to consumers in the form of fewer drug choices and higher drug costs.

Vertical integration of PBMs into yet another aspect of the health system intensifies our concerns about the ability of PBMs to markup the cost of biosimilars and steer patients to their higher cost "co-manufactured" products while limiting access to products from non-affiliated manufacturers. Steering patients in this manner would effectively ensure PBMs capture a larger share of the market for "co-manufactured" products and reduce competition among manufacturers. Notably, CVS, in a recent earnings call, validated these concerns by providing the following graphic to investors:[4]



[2] CVS Health "CVS Health launches Cordavis." Aug. 23, 2023. https://www.cvshealth.com/news/pbm/cvs-health-launches-cordavis.html; Evernorth. "Evernorth announces Humira biosimilar available at $0 out of pocket for Accredo patients in June." Apr. 25, 2024. https://www.evernorth.com/articles/evernorth-announces-humira-biosimilar-available-0-out-pocket-accredo-patients-june.

[3] CVS. Cordavis: *Bringing to Life the Promise of High-Quality Biosimilars.* Apr. 2024. https://www.cvshealth.com/content/dam/enterprise/cvs-enterprise/pdfs/2024/Biosimilar-Cordavis-Whitepaper.pdf.

[4] CVS Health. *Investor Day 2023*. https://s2.q4cdn.com/447711729/files/doc_downloads/2023/investor-day/05/CVS_Health_Investor_Day_2023_Presentation.pdf.

This graphic clearly shows the benefits that CVS and its shareholders reap by capturing patients and directing them through the vertically integrated array of CVS subsidiaries. CVS admits that this generates significant profits for shareholders: the phrase "sizeable value for payors and CVS Health" makes clear the value is not to consumers or competition, but rather to CVS itself. Moreover, the phrase "3-4x Greater Consumer Lifetime Value" does not mean value to the member or consumer over their lifetime. Instead, it refers to CVS gaining significant monetary value throughout the consumer's lifetime due to its vertically integrated services.

We strongly urge the FTC to examine this business practice by PBMs and its impact on competition in the health care industry and costs for consumers by opening a new 6(b) study.

The impressive work of the FTC in examining anti-competitive practices of this massive industry is a promising step toward lowering health care costs for all Americans. It is important we keep a watchful eye on the evolving tactics of PBM megafirms as they proceed with owning more and more of the prescription drug supply chain. We will continue to push Congress to act in alignment with the FTC lawsuit and pass bipartisan legislation to curb PBM attempts to take control of the prescription drug supply chain and create undue harm to consumers.

Sincerely,

Ron Wyden
United States Senator
Chairman, Committee on Finance

Sherrod Brown
United States Senator