

JIM GERLACH

6TH DISTRICT, PENNSYLVANIA

HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND
GOVERNMENT SPONSORED ENTERPRISES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND
CONSUMER CREDIT
SUBCOMMITTEE ON DOMESTIC MONETARY POLICY AND
TECHNOLOGY
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON AVIATION
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND
HAZARDOUS MATERIALS

Congress of the United States
House of Representatives
Washington, DC 20515-3806

308 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4315
FAX: (202) 225-8440

UKRAINIAN CAUCUS, CO-CHAIR
PROFESSIONAL SPORTS CAUCUS, CO-CHAIR
LAND CONSERVATION CAUCUS, CO-CHAIR

May 21, 2009

The Hon. Jon Leibowitz
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: CVS Caremark Corporation merger

Dear Chairman Leibowitz:

I am writing to ask the Commission to reopen its investigation of CVS Corporation's acquisition of Caremark Corporation. The merger, cleared by the FTC in November, 2007, combined CVS, the largest pharmacy chain, with Caremark, the second largest Pharmaceutical Benefit Manager ("PBM").

I am concerned that CVS Caremark may be engaging in business practices that could cause harm to both consumers and local independent community pharmacies. Examples of such business practices brought to my attention include:

- Caremark members being told they can only obtain their chronic-use prescription medications from either a Caremark mail order pharmacy, or a CVS retail pharmacy. This can reduce patient choice and create potential quality of care problems if the consumer does not have all their medications managed by one pharmacy.
- Caremark members having to pay higher co-payments for prescription drugs for maintenance medications, as compared to much lower co-payments at the Caremark mail order pharmacy or the CVS retail pharmacy. This means that the patient must drive a long distance, may be forced to use mail order, or must pay the higher co-payment to use their regular independent pharmacy.
- Steering of patients to CVS pharmacies through the use of personal identifiable health information generated by another pharmacy. CVS pharmacists are notified by their electronic prescription processing system if a consumer has filled prescriptions at another non-CVS pharmacy. In these situations, the CVS pharmacist is instructed to inform the consumer of the dangers of using multiple pharmacies. The CVS pharmacy would likely attempt to transfer the non-CVS filled prescriptions to the CVS pharmacy.

DISTRICT OFFICES:

BERKS COUNTY
840 NORTH PARK ROAD
WYOMISSING, PA 19610
(610) 376-7630
FAX: (610) 376-7633

CHESTER COUNTY
111 EAST UWCHLAN AVENUE
EXTON, PA 19341
(610) 594-1415
FAX: (610) 594-1419

MONTGOMERY COUNTY
580 MAIN STREET, SUITE 4
TRAPPE, PA 19426
(610) 409-2780
FAX: (610) 409-7988

These examples cause me sufficient concern to ask you to investigate these and other CVS/Caremark practices which may be harmful to consumers and violate any firewalls that the two companies were required to institute in order for the merger to be approved.

I encourage the FTC to reopen the CVS Caremark merger investigation and determine if the acquisition poses a threat of reducing competition or whether CVS is engaging in any unfair or deceptive practices. I appreciate your consideration of this important matter.

With kind regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Gerlach", with a long horizontal flourish extending to the left.

Jim Gerlach
Member of Congress

JG:kg