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9TH DISTRICT, ILLINOIS

COMMITTEE ON ENERGY AND COMMERCE

HOUSE PERMANENT SELECT  
COMMITTEE ON INTELLIGENCE

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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-1309**  
May 12, 2009

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Chairman Jon Leibowitz  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Dear Chairman Leibowitz:

As vice chairwoman of the House Subcommittee on Commerce, Trade, and Consumer Protection, I write to bring to your attention a matter of serious concern to me.

I have learned, from health plans, health consumers, and others, that the recent merger between CVS and Caremark Corporation may present the possibility of serious harm to consumers of prescription drugs and prescription drug services. I have also become concerned about the merged company's use of individual medical information for a wide range of purposes, some of which may intrude on individual consumers' privacy and may also unfairly use consumers' personal information.

Since the CVS Caremark merger, there have been troubling signs that this merger may be harming consumers and competition. There are widespread complaints that CVS Caremark has engaged in exclusionary practices to prevent consumers from going to the pharmacy of their choice, and instead require them to use CVS or mail order services, despite claims at the time of the merger that that would not happen. It also appears that the company has used its access to plan member data as a vehicle to increase retail and prescription drug sales, which could not only raise costs for both consumers and health plans – but also compromise their choices, and ultimately, their health care. For example, I have learned that CVS Caremark may be switching patients' medications and transferring their prescriptions to CVS without the patients' knowledge or consent, and using their competitors' patient data for marketing purposes, despite assurances that a firewall would be put in place to prevent the cross-use of such information. Many Caremark members have also reported receiving solicitation calls from CVS urging them to switch their pharmacy business to CVS, often shortly after filling a prescription at a competing pharmacy.

In addition, CVS Caremark has been accused of unilaterally lowering reimbursement rates for Walgreens in the Midwest, resulting in more than one hundred thousand Caremark members losing the ability to fill prescriptions at Walgreens pharmacies. CVS Caremark has also been accused of excluding competing pharmacies from pharmacy networks in violation of Tennessee's Any Willing Provider law. Practices like those may explain why CVS Caremark's per prescription profitability is the highest of any of the big

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three pharmacy benefit managers (PBMs) – more than \$4.00, compared to \$2.87 and \$2.57 for Medco and Express Scripts respectively.

As you are aware, the pharmacy benefit management industry is highly concentrated, with three PBMs representing approximately 80 percent of the market for PBM services. The proposed sale of Wellpoint's PBM to Express Scripts would increase that concentration even further. While there are smaller and alternative types of PBMs, many larger health plans view the three biggest PBMs as the only PBMs with the scale and range of offerings necessary to provide full services to them. Moreover, much has been written about problems in the PBM industry, problems which suggest an imbalance of power between health plans and PBMs. Those problems, all exhibited by CVS Caremark Corporation, include repeated litigation over false claims, widespread allegations of switching patients to drugs that are more profitable for the PBM, lack of transparency in pricing and rebate arrangements with drug manufacturers, and unreasonable contracting measures such as severe restrictions on health plans' rights to audit the PBM.

CVS is the largest retail pharmacy chain in the country, in an industry that itself is also concentrated into just three big players. Although PBMs are supposed to save plans money, they already have well-documented conflicts of interest in accepting rebates and other forms of payments from drug manufacturers for promoting certain drugs. By combining a powerful PBM with a retail pharmacy chain, whose business model rests on selling more goods, CVS Caremark's conflicts of interest are further skewed against the health plan and patient, and in an industry in which there is already an apparent imbalance of power with the industry's consumers.

I am aware that in the past some FTC communications indicate that the FTC, and the Bureau of Competition in particular, has taken the view that market forces rather than regulation can and should remedy these imbalances. However, there is no evidence that this has occurred, and I believe the time has come to bring your agency's power to regulate such activities to bear.

In addition to fairness and competitiveness concerns, I am also concerned that, as some of the examples above suggest, CVS Caremark is exploiting its greatly expanded access to patient and consumer data for non-medical and non-essential purposes, some of which have a clear marketing bent to them, without an individual's knowledge or consent. Such activities have clear negative implications for consumer and patient fairness and privacy, and should be investigated by your agency.

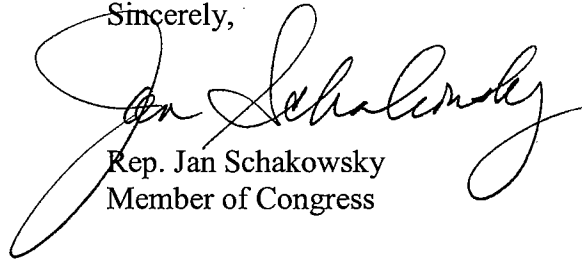
I am very concerned about the issues outlined above and the effects of the CVS Caremark merger on consumers. I strongly urge the Commission to investigate the actual and potential competitive effects of the merger, as well as CVS Caremark's use of consumer

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and patient data, and to take any action that is necessary to prevent current and future consumer harm from the merger.

If you have any questions, please contact Megan Shannon-Winterson on my staff at (202) 225-2111. I look forward to hearing your response and to working with you to solve these problems.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Schakowsky". The signature is fluid and cursive, with a large loop at the end of the last name.

Rep. Jan Schakowsky  
Member of Congress