HEALTH ACCESS CALIFORNIA

May 17, 2018

Shelley Rouillard
Director, Department of Managed Health Care
980 9th Street, Suite 500
Sacramento, California 95814-2725
Via e-mail to: publiccomments@dmhc.ca.gov

RE: CVS-Aetna Merger

Dear Director Rouillard:

Health Access California, the state health care consumer advocacy coalition working for quality and affordable health care for all Californians, offers the following comments on the proposed acquisition of Aetna, Inc. by CVS Health Corporation. We strongly request the Department of Managed Health Care (DMHC) to heavily scrutinize this proposed merger and to evaluate whether it is actually good for patients and the public interest. If you do not reject it outright, we urge that you impose the needed and enforceable conditions to prevent negative competitive and consumer impacts.

As a consumer protection agency, the DMHC is tasked with protecting the public interest by ensuring California maintains a robust and competitive commercial health insurance market that delivers quality and affordable care. The stakes—for consumers and the health system as a whole—are high, and different sectors of the health care industry seeking to merge have the burden of showing that consumers will benefit from integration. As the DMHC evaluates each this merger, it must keep an eye on the larger picture and evaluate the cumulative effects of this vertical or even diagonal merger on patients and the health system we all rely on.

Aetna has a notable and troubling track record in California's commercial market, one that reflects a lack of respect for California law, as well as basic consumer protections. CVS has not offered any information on how it would correct Aetna's failures to abide by basic consumer protections. We are deeply concerned about giving more market power to Aetna, given its poor track record.

Aetna has repeatedly pursued unreasonable rate increases, which amounts to price gouging. Health care costs continue to be a major concern for consumers and purchasers. Aetna's egregious history of imposing rate increases deemed by regulators as unreasonable, undermines consumers' financial stability, especially those who live paycheck to paycheck. In addition, this deplorable practice has led to small business purchasers paying more for health coverage. We have no confidence that a consolidated company would act differently nor are we convinced that cost savings or efficiencies would be passed on to consumers and other purchasers.

Amidst ongoing excessive rate hikes, Aetna has continued to reject needed care for its enrollees – the very same people paying such high premiums. Since 2013, Aetna has been deficient in its grievances and appeals process for patients. DMHC's most recent 2018 follow-up report for a routine medical survey shows Aetna continues to have major deficiencies in its grievances and appeals and utilization management processes. At a systems level, Aetna has failed to show that it can operate a grievance process that allows it to identify and rectify patterns of grievances. Aetna's staff are also not properly trained or educated to identify, categorize, and process grievances and appeals. Aetna continues to wrongly process grievances specific to coverage disputes and disputed health care services that are medical necessary to patients. Aetna also does not follow required timeframes, which lead to enrollees not properly notified whether the plan has received their grievances, and if the plan has processed such requests. We question Aetna's conscious decision not to correct such deficiencies as a deliberate and systematic decision in order to reduce enrollee grievance and appeals submissions.

Lastly, Aetna does not make timely and consistent decisions on how it approves, modifies, or denies prescription drug requests by providers on behalf of patients. We question whether Aetna would continue this practice as it proposes to merge with CVS, a large pharmacy benefit manager and retail pharmacy. This limits patients' access to needed medication and would ultimately harm their health. We question how Aetna can promise greater access to care with this merger, when currently, the company's policies revolve around keeping coverage and care away from patients in order to keep their profits.

If the deal is not rejected outright, Aetna should be required to meet considerable undertakings to ensure that they not only correct ongoing major deficiencies, but also prove how its promises of innovation, efficiency, and value from such a merger would be actualized and benefit consumers. The DMHC has found Aetna provides deficient services and the Department must require Aetna to correct such failures and to improve care and services before it mergers with CVS. Aetna should be required to:

- Immediately correct deficiencies found in its Routine Follow-up Medical Surveys and maintain compliance with all Knox-Keene requirements over a sustained period;
- Submit plans for achieving value, efficiencies, and savings not only for the health care system as a whole, but for consumers. Aetna, with CVS, should be required to put forth a proposal that delineates how efficiencies and savings will be shared with consumers in the form of lower premiums and cost-sharing, quality improvements, and reductions in health disparities;
- Ensure affordability of coverage for consumers and purchasers by refraining from any rate increases deemed unreasonable by regulators pursuant to the annual rate review processes;
- Allocate and designate a certain percentage of profits earned from the merger to investing in California specific health care organizations and programs dedicated to improving access, quality, outcomes, and equity. Key investments should be made to state's safety-net, the

remaining uninsured, rural and other underserved populations, in order to move the state towards a near universal coverage system; and finally
- Include promised benefits as conditions in its contract to assure patients and our overall health care system would benefit from the merger.

Experience shows that that consumers do not actually benefit from mergers either through lowered costs and/or better access to care or quality of care. We are skeptical that the combination of CVS and Aetna will yield the benefits that the companies claim. Your review of this merger should focus on Aetna's past practices, whether this merger would allow Aetna's bad behavior to get worst, whether the companies would actually commit to the promises made, and whether consumers would actually benefit.

On behalf of California's health care consumers, we urge you to scrutinize the CVS-Aetna acquisition and make sure patients are not left with higher prices and unfulfilled promises. We appreciate your highest level of scrutiny and for protecting the interests of consumers in this process.

Sincerely,

Anthony Wright
Executive Director