1 10-18-18
2 talking about the antitrust level of
3 unfair competition. I don't believe
4 that competition is unfair by its very
5 nature. I don't believe we need to
6 protect one business against another
7 one, trying to do a better job. That's
8 the very nature of, sort of, our
9 economic system. So, I mean, to answer
10 your question, if Aetna, as Mr. Logan
11 actually had indicated that perhaps,
12 you know, they're game, intent to be
13 here in New York and to grow, then so
14 be it. That's more choice for my
15 members. That's more choice for the
16 million employees that we represent. I
17 have no problem with that.
18 SUPERINTENDENT VULLO: Okay. All
19 right. Anybody? Go ahead, Troy.
20 MR. OECHSNER: So, thank you for
21 your testimony. You said -- okay,
22 competition is good. Unfair
23 competition presumably not so good. So
24 one of the things that we have been
25 concerned about is, of course, you have

1 10-18-18
2 Aetna now being acquired by CVS, CVS
3 has, of course, many clients who are
4 there -- the competitors to Aetna. CVS
5 has huge amounts of information data
6 about claims runs on the pharmacy side
7 which could be incredibly valuable to a
8 competitor. They have said we have
9 firewall agreements in place. Don't
10 worry, trust us, because it would be
11 bad for our business. Of course,
12 history, and we have lived through I
13 was here in 2008. We lived through
14 businesses promising, trust us, it will
15 be bad for our business if we don't --
16 we aren't on the level. Do you have
17 any concerns that there is no, zero
18 regulatory oversight to the firewall
19 protections?
20 MR. GINSBURG: Troy, I don't know
21 enough about the particulars of the
22 issues that you are talking about, and
23 I would probably say they would be best
24 addressed, you know, by the parties. I
25 just don't know enough to answer that.

1 10-18-18
2 MR. OECHSNER: Thank you.
3 SUPERINTENDENT VULLO: Thank you.
4 Appreciate it. Next, we have Amanda
5 Dunker from Community Service Society
6 of New York.
7 MS. DUNKER: So I am with the
8 Community Service Society of New York
9 but I am going to submit testimony on
10 behalf of the Healthcare for Rural New
11 York Coalition, so.
12 SUPERINTENDENT VULLO: Move that
13 closer.
14 MS. DUNKER: So Health Care For
15 Rural New York is a coalition of over
16 170 organizations statewide. We
17 advocate on behalf of the consumers.
18 Our goals are affordable health
19 coverage for all New Yorkers, quality
20 affordable health coverage for all New
21 Yorkers, and part of how we do that is
22 to make sure consumers are represented
23 at hearings like this and in other
24 policy discussions. So first I would
25 really like to thank the department for

1 10-18-18
2 holding the hearing and for the
3 investigation you described. All the
4 time and energy you're putting in to
5 understand the transaction would have
6 on New Yorkers. We have four areas of
7 concern with the transaction where we
8 feel like right now we are not sure how
9 much regulatory oversight the state
10 would be able to provide after the
11 transaction occurred. So one is one
12 that's been brought up before, which is
13 the data issue. The company's
14 insurance division will potentially
15 have access to data on millions of
16 consumers and the prices its rivals pay
17 for prescription drugs, and so I think
18 they have said, well, we will have a
19 firewall and we won't share that, but
20 we have also heard them say that that
21 merger of data is one of the ways in
22 which the public will benefit --
23 right -- because they will be able to
24 combine that data on prescription drugs
25 and medical records and leverage that

1 10-18-18
2 to coordinate care. So, you know, if
3 CVS is allowed to absorb and run an
4 insurance plan, unless safeguards are
5 put into place that the public sees
6 those safeguards, that it's not just a
7 firewall inside the company and they
8 are just telling us those safeguards
9 are there, it would potentially have an
10 unfair market advantage because it
11 would gain access to all that
12 information about its competitors'
13 pricing strategies and we have pushed
14 healthcare for all New York for much
15 greater transparency about prices that
16 insurance companies pay, that PBMs pay
17 on prescription drugs and all other
18 medical services, and we have heard
19 again and again, that is a trade
20 secret, we can't let the public know
21 about those prices, we can't let
22 regulators know about those prices
23 because we can't let our competitors
24 know about our pricing strategies. I
25 am not a lawyer but it seems strange to

1 10-18-18
2 me that they could then just buy access
3 to that data, and when the public wants
4 it and regulators want it for the
5 public good, it's a trade secret. And
6 now, when they want to buy it and use
7 it to -- probably against their
8 competitors now they should just be
9 allowed to buy access to it. And of
10 course, all the security issues you
11 mentioned before, I just don't think
12 that there is any cybersecurity
13 protocol that is safe enough to protect
14 people from this type of huge database.
15 A second area of concern is another one
16 that's been brought up before, that the
17 merger can create new incentives for
18 Aetna to limit the providers its
19 members may use and vice-versa. In
20 their public comments CVS Caremark and
21 Aetna talked about empowering
22 consumers, integrating care and
23 improving health outcomes while
24 lowering costs. They mentioned some
25 other examples too, but, you know, they

1 10-18-18
2 talked about using home devices to
3 monitor vital signs, discharge care,
4 transition planning, building community
5 health hubs, but I think, as
6 Superintendent Vullo argued earlier,
7 there is no reason that CVS and Aetna
8 have to merge to provide some of those
9 fairly straightforward health services.
10 The services they describe are already
11 offered by various players in the
12 healthcare sector. Aetna members can
13 already use MinuteClinics if they wish
14 to, but they can also use other urgent
15 care or walk-in clinics. The benefits
16 that will accrue to shareholders from
17 this acquisition likely depend on Aetna
18 members to use CVS clinics and
19 pharmacies over other choices. The way
20 that insurance companies do this is by
21 imposing financial penalties for
22 members who utilize other sources of
23 care. Navigating provider networks is
24 already a major headache for consumers.
25 It costs consumers a lot of money

1 10-18-18
2 because it is so easy to make mistakes.
3 I think this is just another way in
4 which people are going to have
5 difficulty navigating these networks.
6 And further, Aetna provides no
7 evidence that increasing its members'
8 use of walk-in clinics will mean better
9 integration or coordination. New York
10 State has worked for many years to
11 create health homes for consumers in an
12 effort to make sure that they receive
13 appropriate, coordinated medical care.
14 There are times when consumers may
15 prefer walk-in clinics to their primary
16 care doctors, and as a consumer
17 coalition we always want more choice
18 for our consumers. So it's not that
19 MinuteClinics should not exist, but I
20 don't think that there is a benefit to
21 a greater public of an insurance
22 company encouraging people to use
23 MinuteClinic over a regular primary
24 care doctor.
25 A third area which I think Chuck

1 10-18-18
2 provided a lot more data on -- I'm
3 sorry -- Chuck Bell from Consumers
4 Union provided a lot more data on is
5 this issue of competition and pharmacy
6 benefit managers. This would have
7 unpredictable effects on consumers. I
8 have seen some health economists have
9 argued that maybe this trend of
10 combinations of PBMs and insurers means
11 that this PBM model will go away, and
12 that would probably be a good thing for
13 everybody because it's not clear that
14 PBMs offer value to insurance companies
15 or consumers. I don't know how
16 convincing I find some of those
17 arguments but I just wanted to mention
18 it to be fair. It would be good if
19 insurance companies did this in-house
20 instead of using these PBMs that are
21 completely unregulated, if we can't get
22 legislation passed to better regulate
23 them. But it does remove -- on the
24 flip side it does remove an avenue of
25 competition because instead of, as

1 10-18-18
2 Chuck mentioned, instead of Aetna
3 forming its own PBM or doing it
4 in-house it's just being bought by the
5 PBM -- right -- so now there is no
6 longer that chance that maybe another
7 PBM will come to the market.
8 And the last area in which we
9 have concerns are about the medical
10 loss ratio requirements and so merging
11 an insurance company with a provider
12 undermines medical loss ratio
13 requirements, which is an important
14 strategy for keeping costs down for
15 consumers. So the medical loss ratios
16 are -- I think somebody -- PSSNY --
17 brought this up earlier. But the
18 medical loss ratio is a limit on how
19 much of its revenue an insurer can
20 spend on anything other than medical
21 care. So that definition of what is
22 medical care is very important. The
23 structure of the medical loss ratio,
24 because it's a percentage, it already
25 creates -- it lowers an insurer's

1 10-18-18
2 incentive to get good prices from
3 providers in some sense because as long
4 as they can define it as medical care
5 they can pay whatever prices they want
6 because they are allowed to -- that
7 sort of helps them a little bit --
8 right -- because it's a percent of a
9 bigger pie. So if they are allowed to
10 raise premiums to cover increased
11 medical costs the administrative costs
12 including profits goes up as well. In
13 other words, they can make more money
14 by paying higher prices to providers
15 for services and goods like drugs and
16 in turn charge consumers more without
17 running afoul of the medical loss ratio
18 regulations. A merger between a
19 provider such as the MinuteClinics and
20 the pharmacies CVS operates and an
21 insurer adds yet another incentive to
22 raise prices. If Aetna and CVS
23 Caremark merge, Aetna can pay higher
24 prices for services provided to members
25 through CVS Caremark, thus increasing

1 10-18-18
2 profits on the care providing side
3 because it's medical care. But all of
4 that money is going to the same huge
5 conglomerate company, so, you know, we
6 don't know what the size of that effect
7 would be but I think it's something to
8 think about. So we would argue that
9 the department reject the transaction,
10 and that if the transaction does go
11 forward that we a have a lot more
12 conversations about what types of New
13 York regulation and legislation might
14 need to pass to properly regulate such
15 a huge corporation.
16 SUPERINTENDENT VULLO: Okay,
17 thank you. Did you say that you will
18 be submitting something on behalf of
19 the Healthcare For Rural --
20 MS. DUNKER: Yes, we have written
21 comments.
22 SUPERINTENDENT VULLO: Written
23 comments -- just make sure you do that
24 in the next five days. If you could
25 we'd appreciate that. Thank you.

1 10-18-18
2 Anyone? Troy, do you have any? Great.
3 I appreciate it. Thank you.
4 We have next Donna Tempesta from
5 the AIDS Healthcare Foundation.
6 MS. TEMPESTA: Good morning,
7 everyone.
8 Like you said, my name is Donna
9 Tempesta. I am a vice president at
10 AIDS Healthcare Foundation or AHF. I
11 want to thank you for the opportunity
12 to speak today to you. AHF urges the
13 department to reject the Aetna CVS
14 merger. AHF is the largest nonprofit
15 provider of care and treatment to
16 people with HIV and AIDS in the world.
17 We serve over one million patients in
18 41 countries. In the US we have
19 healthcare centers and pharmacies in 12
20 states and have Medicaid and Medicare
21 managed care plans in California,
22 Florida, and Georgia. In New York we
23 have five healthcare centers serving
24 over 6,000 patients and operate five
25 pharmacies serving over 5,000 patients.

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2 Our mission is to treat and advocate
3 for people with HIV regardless of their
4 ability to pay. As a safety net
5 provider for vulnerable special needs
6 population we are very troubled by the
7 consolidations occurring in the
8 healthcare industry, especially when
9 the payers and the PBM and the
10 providers become one and the same, as
11 would be the case with Aetna and CVS.
12 We recognize that Aetna is divesting
13 its stand-alone Medicare Part D plan
14 but that doesn't mitigate our concerns.
15 My remarks will focus on five
16 concerns. We will be submitting a
17 letter after this hearing so this will
18 just be a brief summary of the five
19 concerns.
20 Our first concern is about
21 MinuteClinics which many have discussed
22 today in the CVS pharmacies.
23 MinuteClinics replace fundamental
24 elements of the patient-physician
25 relationship with cookie cutter

1 10-18-18
2 treatment administered by
3 nonphysicians. This can be an even
4 bigger problem with people with HIV.
5 Even a routine flu shot can be
6 dangerous for someone with a
7 compromised immune system. We are
8 especially concerned when the insurer
9 has a business incentive to drive
10 business to the MinuteClinic owned by
11 the same company. The more an insurer
12 is determining where a member should go
13 the greater the risk that the patient
14 may not get medically appropriate or
15 even safe care.
16 Our second concern is about
17 forced mail order and customer
18 foreclosure, which I know has been
19 discussed also by many today. To
20 remain healthy a person with HIV needs
21 to stay adherent to their medications.
22 The pharmacist is often the healthcare
23 provider closest to this individual
24 providing counseling, support and
25 refilling medications monthly. This is

1 10-18-18
2 especially true for HIV specialty
3 pharmacies like AHF. The woman who
4 spoke from Huntington -- we have many
5 patients that have been in our care for
6 30 years, and it's a shame when we
7 cannot fill them anymore. They have to
8 -- but they are being forced into CVS
9 and others and it's really
10 disheartening to see.
11 Our third concern is around
12 oppressive pharmacy reimbursements.
13 Again, many have discussed. Again, AHF
14 is concerned about CVS's aggressive
15 tactics in narrowing its networks to
16 exclude small and specialty pharmacies.
17 The merger only heightens our concern
18 because a combined CVS and Aetna will
19 be able to use its own increased
20 leverage to raise costs for independent
21 pharmacies. We fear they will drive
22 down reimbursement rates and dispensing
23 fees to uncompetitive levels. In fact,
24 this is already happening in Arkansas
25 where the state Attorney General is

1 10-18-18
2 currently investigating CVS Caremark
3 for allegedly providing unprofitable
4 reimbursement arrangements to
5 independent pharmacies, forcing them to
6 go under and then offering to buy these
7 out -- these pharmacies out for pennies
8 on the dollar. And again, you had
9 discussed that. As for AHF it has
10 experienced a form of oppressive
11 reimbursements by CVS in the form of
12 DIR fees imposed on pharmacies in
13 nontransparent and arbitrary manners.
14 Our fourth concern is about
15 anticompetitive effects in health
16 insurance markets. As your office
17 argued and you discussed earlier today,
18 in its September 17, 2018 letter to the
19 Connecticut Insurance Department, a
20 combined CVS Aetna would raise
21 significant market concerns because CVS
22 would have the power and financial
23 incentive to offer larger drug rebates
24 or other significant discounts. This
25 would lure policyholders away from

1 10-18-18
2 other insurers to Aetna.
3 Finally we have some significant
4 confidentiality concerns. CVS is
5 currently being sued for revealing the
6 HIV-positive status of up to 6,000
7 Ohioans through a mailing about
8 prescriptions to their homes. This
9 follows a 2017 breach by Aetna that
10 revealed the HIV status of patients
11 across several states including New
12 York State. AHF is concerned that
13 these episodes reflect an overall
14 insensitivity shared by both parties of
15 the merger to the special needs of
16 people with HIV and the stigma they
17 still face today.
18 For all these reasons AHF has
19 significant concerns about the
20 transaction and respectfully requests
21 that you consider these concerns as you
22 proceed with your review.
23 SUPERINTENDENT VULLO: Thank you.
24 And so you said you were going to
25 submit some written testimony.

1 10-18-18
2 MS. TEMPESTA: Yes.
3 SUPERINTENDENT VULLO: Can you
4 tell me more, and if you don't know it
5 now, you can submit it, on what you
6 said about some investigation in Ohio.
7 MS. TEMPESTA: Yes.
8 SUPERINTENDENT VULLO: Can you
9 explain that a little more?
10 MS. TEMPESTA: Yeah. So what
11 happened was -- my understanding is
12 scripts -- a mailing went out to --
13 through their database to patients and
14 in the window of the envelope it had a
15 their status, HIV, so I will definitely
16 follow up and get more clarification,
17 but that's pretty much what had
18 happened.
19 SUPERINTENDENT VULLO: Okay,
20 thank you. I appreciate it.
21 MS. TEMPESTA: You're welcome.
22 SUPERINTENDENT VULLO: Next is
23 Andre Barlow of Consumer Action.
24 MR. BARLOW: I would like to
25 thank you for the opportunity to

1 10-18-18
2 testify today regarding the competition
3 concerns presented by CVS's proposed
4 acquisition of Aetna and if the deal
5 goes forward, the need for the
6 Department of Financial Services to
7 impose significant behavioral remedies
8 to protect subscribers and market
9 participants. I am here on behalf of
10 Consumer Action, a national nonprofit
11 organization that has worked to protect
12 consumers for 47 years. The CVS Aetna
13 transaction combines the largest retail
14 pharmacy and one of the two largest
15 pharmacy benefit managers and the third
16 large health insurer in the United
17 States, all under one roof. The deal
18 creates a large vertically integrated
19 firm that operates in markets where
20 only a few meaningful rivals compete.
21 Last week, the Department of Justice
22 approved the acquisition on the
23 condition that it divest Aetna's
24 Medicare Part D plans, but did not
25 include any behavioral conditions on

1 10-18-18
2 the merging parties' future conduct.
3 Despite the proposed divestiture we are
4 concerned that CVS's acquisition will
5 harm consumers because the DOJ failed
6 to address the types of strategic
7 exclusionary conduct presented by the
8 merger. The DOJ also recently approved
9 Cigna Express Scripts, another vertical
10 integration between a health insurer
11 and PBM. The two vertical transactions
12 will dramatically change the healthcare
13 industry and how it will function going
14 forward because the three PBMs that
15 control 85 percent of the PBM market
16 are all integrated or will be
17 integrated with a health insurer. The
18 PBM market is anticompetitive. It
19 lacks choice, transparency, and is rife
20 with conflict. PBMs negotiate with
21 pharmacies yet they own their own mail
22 order and specialty pharmacies, and, in
23 the case of CVS, the largest retail
24 pharmacy. The PBMs control the
25 formularies so they determine what

1 10-18-18
2 drugs we are allowed to purchase, how
3 many times we can fill the
4 prescription, and the amount of our
5 copays. If PBMs such as CVS can design
6 the benefit in such a way that patients
7 will pay higher copays at rival retail
8 pharmacies. Vertical mergers don't
9 always benefit consumers. Let's just
10 look at CVS's acquisition of Caremark.
11 We know that CVS has market power
12 because it has been acting
13 anticompetitively since its 2000
14 acquisition of Caremark, a PBM giant.
15 CVS has used that power to exclude
16 competition by forming its exclusive
17 pharmacy networks that prevented
18 consumers from access to pharmacists of
19 their choice and increased their cost
20 for prescription drugs. In addition to
21 the exclusive arrangements CVS has
22 engaged in the strategy of squeezing
23 its rival pharmacies with
24 take-it-or-leave-it, nonnegotiable
25 contracts. Because they have no

1 10-18-18
2 bargaining power, CVS was able to
3 depress the dispensing fees to rival
4 pharmacies to uncompetitive levels,
5 while at the same time reimbursing its
6 own CVS pharmacies at higher rates. In
7 some cases these rival pharmacies were
8 not reimbursed enough to cover the cost
9 of filling the prescription. And in
10 many cases CVS was reimbursing the
11 rival pharmacies less than half of what
12 was being charged to the health
13 insurance plans. Moreover CVS has
14 successfully steered many of its PBM
15 customers to its mail order. But many
16 of these patient reportedly come back
17 to their independent and community
18 pharmacists to ask questions about
19 their prescriptions. In essence, CVS
20 is free-riding on these rival
21 pharmacists, and if it continues this
22 could eventually turn and run them out
23 of business. Before the merger Aetna
24 has the incentive to deal with all
25 pharmacies for its commercial insureds.

1 10-18-18
2 Post merger these incentives change
3 because CVS will have the increased
4 incentive and ability to steer Aetna's
5 patients to CVS mail order or its
6 retail pharmacy stores. CVS will be
7 able to cut off rival pharmacies'
8 access to Aetna insurance through a
9 variety of ways. The Department of
10 Justice has made clear that it is not
11 in the business of regulating merging
12 parties post merger. So it is up to
13 the state regulators to regulate the
14 PBM industry and CVS Aetna's
15 post-merger conduct to prevent
16 competitive harm and to protect
17 patients' access to the pharmacy of
18 their choice. These patients' access
19 concerns are particularly great in
20 underserved urban, inner city and rural
21 areas. Thus, the Department of
22 Financial Services should continue to
23 advocate for legislation to regulate
24 PBMs and seek comprehensive relief to
25 ensure that CVS will not have the

1 10-18-18
2 ability to foreclose rival pharmacy
3 competition, deny patients access to
4 their pharmacy of choice and deny the
5 medicines that patients need. Without
6 stringent regulations on the PBM
7 industry and the merging parties
8 patients can anticipate an increase in
9 prescription drug prices and
10 out-of-pocket costs. Less choice, poor
11 service, and less innovation.
12 Just a few recommendations in
13 terms of regulating the CVS future
14 conduct. The department should
15 prohibit CVS from creating pharmacy
16 networks that exclude rival pharmacies
17 and drug formularies that deprive
18 patients of the medicines they need,
19 prohibit CVS from entering into or
20 enforcing contracts with rival
21 pharmacies that make it financially
22 unattractive for them to fill
23 prescriptions for their patients.
24 Prohibit CVS from creating benefit
25 designs that discriminate against rival

1 10-18-18
2 pharmacies, and develop a process for
3 patients, pharmacies, and other
4 providers to file complaints related to
5 any CVS misconduct.
6 We appreciate the opportunity to
7 testify on this important merger.
8 Thank you.
9 SUPERINTENDENT VULLO: Thank you.
10 And just -- have you submitted written
11 testimony along with what your
12 proposals are?
13 MR. BARLOW: Yes.
14 SUPERINTENDENT VULLO: Great,
15 appreciate it. Anyone here? Great.
16 Thank you.
17 Last that I have on our list
18 unless something else has changed, is
19 Heidi Siegfried from New Yorkers for
20 Accessible Health Coverage.
21 MS. SIEGFRIED: So, hi, I'm Heidi
22 Siegfried. I am the health policy
23 director at Center For Independence of
24 the Disabled in New York, which is an
25 organization that helps people with all

1 10-18-18
2 kinds of disabilities -- mobility
3 impairments, hearing impairments,
4 sight, cognitive and -- so that they
5 can live in the community and not be
6 institutionalized. And then we have a
7 project, New Yorkers for Accessible
8 Health Coverage, which is a coalition
9 of groups that serve people with
10 serious illness and disabilities, who
11 need comprehensive care, need access to
12 comprehensive care, good formularies,
13 you know, all that kind of thing. So
14 we have worked -- we have worked a lot
15 on having access to complete
16 formularies. We have worked on, you
17 know, step therapy, prior approval, the
18 mail order drug issue, which are all
19 obstacles to people getting the
20 medications that they need. And we
21 have also worked on network adequacy
22 and most recently we helped office
23 groups around the state with Partners
24 in Healthcare For All New York to kind
25 of see how people are accessing the

1 10-18-18
2 care that they need, not just
3 MinuteClinics but, you know,
4 specialists and we heard some
5 incredible stories about people just,
6 you know, giving up on seeking care
7 because, you know, they just couldn't
8 get it. So I don't have written
9 remarks, but I just have a few remarks
10 about this merger which is -- which,
11 you know, it is a vertical merger which
12 is a new thing. It's kind of a hydra,
13 and it's been described as being part
14 insurance, part PBM, part drug store.
15 I mean, we barely know what it is and
16 some people feel that, you know, this
17 will act as a check on pharma and take
18 a bite out of their pricing. The
19 question is, what will happen with that
20 bite? Well, you know will we, see as
21 the business council believes, you
22 know, premium decreases or will this
23 somehow get lost in the maze, and, you
24 know, the MLR someplace. We don't even
25 know which side. So the other thing I

1 10-18-18
2 am concerned about is not just a pharma
3 issue but also the MinuteClinics. You
4 know, for people with disabilities, our
5 civil rights act entitles us to
6 accommodation and so it's really a
7 negotiation with a provider for them to
8 understand what your disability is and
9 what are the needs that they might need
10 to provide that they wouldn't provide
11 to a person without a disability. And
12 so it's a relationship that's important
13 and I don't see that -- I am concerned
14 about the rise in MinuteClinics just in
15 general because I believe in primary
16 care providers. So, I mean, most
17 recently the City Council had a hearing
18 where one of the younger City Council
19 members admitted he didn't have is a
20 personal care physician and was just
21 using MinuteClinics so you don't have
22 any kind of documentation of the
23 medical history. I mean it's just a --
24 it's a worrisome thing. But for people
25 with disabilities, they need access to

1 10-18-18
2 specialists. They -- there could be a
3 lot of mistakes made in a MinuteClinic
4 with a person who doesn't have the
5 expertise that you would get from a
6 primary care provider. So I don't like
7 -- I mean, of course it has to be a
8 choice, but I don't like to see them
9 being pushed.
10 I missed the first part of this
11 hearing which, I'm sorry that I missed
12 it, because at the end I heard the
13 questions that were being asked and I
14 really appreciated them. But the
15 reason was that I was at a continuing
16 legal education about lessons learned
17 from recent fraud and abuse cases in
18 medical care. And so we were looking
19 at fact patterns of, you know, medical
20 necessity procedures that were not
21 needed and that were billed and PBM
22 pharma kickbacks which -- we have
23 gotten so used to these rebates that we
24 don't call them kickbacks anymore. But
25 there were some attorneys that were

1 10-18-18
2 willing to use that word. And the
3 upcoding -- I mean, it's just amazing
4 to think about. It's kind of
5 mind-boggling, all the incentives that
6 exist in our current system now, that
7 are hidden from view and that have to
8 be investigated, and, I think with
9 vertical integration we are going to
10 have even more of these bad incentives
11 that are going to lead to bad outcomes
12 because it will become even more it
13 will all still be in-house and not
14 transparent, unless we figure out a way
15 to make it more transparent.
16 One of the things that I learned
17 was that a theme in this administration
18 at the national level is to be what
19 they said slightly more business
20 friendly and more practical and
21 pragmatic, and only insisting on a
22 monitor if dot dot dot. So I think we
23 really have to now appreciate the
24 scrutiny of New York State and that we
25 have to count on New York State to

1 10-18-18
2 protect us in situations -- protect
3 consumers since that's who I represent
4 -- in situations where maybe DOJ is not
5 taking as critical a look at things.
6 So I really appreciate this -- the
7 demands for plans, the demands for
8 transparency, and we really need to
9 make sure that these promises that are
10 being made about how this transaction
11 is going to be so wonderful are
12 secured. I for one have not drunk the
13 Koolaid. I don't think the premiums
14 going to necessarily come down as a
15 result of this, and I think we really
16 need to have oversight and monitoring
17 if this is permitted to go forward.
18 Thank you.
19 SUPERINTENDENT VULLO: Thank you.
20 Okay.
21 That is the end of the list of
22 people who had registered to speak, and
23 I am going to do this. If there's
24 anyone here who has not yet spoken but
25 wishes to be heard I will open the mike

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2 to you. Just want to make sure that
3 anyone has that opportunity, and for
4 those who may have thoughts in their
5 head but maybe don't want to come up in
6 a public forum and do so, you are more
7 than welcome to write to us in whatever
8 manner is easier for you, to provide us
9 with your comments, as I said at the
10 beginning of the hearing we will
11 continue to accept written submissions
12 within five business days of this
13 hearing. But again, before I go onto
14 my thing was there anybody who wants to
15 be heard who hasn't yet been heard?
16 Okay.
17 So that ends the oral testimony
18 at this public hearing, and, you know,
19 I said a lot in the beginning of this
20 hearing and I think, as we heard today
21 this is a very significant transaction
22 and there were some very strong views
23 on all sides. And I guess as I see it
24 you have the proponents of the
25 transaction arguing that the

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2 transaction will benefit the public in
3 reduced costs and better healthcare
4 access. Those are goals that we
5 strongly support. On the other side,
6 there are obviously significant risks
7 in the transaction where you have large
8 corporate for-profit conglomerates
9 which, you know, some may say don't
10 have a good history of serving the
11 public above their shareholders. And
12 we also have heard from independent
13 pharmacists, medical providers. You
14 also have the uninsured and you have
15 consumers who are suffering from too
16 high pharmaceutical costs that we have
17 heard about today, and certainly the
18 benefits that are being advocated by
19 the proponents of this transaction are
20 benefits that we fully believe in, in
21 the Department of Financial Services,
22 in the State of New York. But I do
23 think that, as we move forward in the
24 decision making phase, that companies
25 must be held accountable for any

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2 advocacy that they are promoting in
3 favor of the transaction to ensure that
4 any such thing, such advocacy, turns
5 into reality and is not nearly puffery
6 in the process of transaction approval.
7 And if, of course, as many have said,
8 and certainly I said in the beginning,
9 regulators including this department
10 would have to have full oversight going
11 forward. As I said in the beginning
12 there is a specific transaction that is
13 before us for approval and that is a
14 change of control application for one
15 Aetna New York domiciled company. As I
16 also said there are licensees that are
17 Aetna licensees that have licenses
18 before the department, and so we
19 consider that as well. And of course,
20 our authority is to consider the people
21 of the state. But as we all know, the
22 Department of Justice has come up with
23 its resolution, as has Connecticut. I
24 will assure everybody that this
25 department will take a full and

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2 thorough review of all of the testimony

3 that we've had, and as I said we have

4 been working for months on this

5 transaction and we will arrive at a

6 decision that is based upon the

7 authority that we have, and to protect

8 both markets and consumers. Again, we

9 will accept written submissions within

10 five business days of this hearing.

11 Please if you're going to do so,

12 I would encourage you to do it via the

13 e-mail address that is on the

14 Department's website. You can

15 certainly use the United States mail

16 but please note that that doesn't

17 always get to the addressee as quickly

18 as an e-mail might, and please use the

19 e-mail address that is on our website,

20 and look for our website in terms of,

21 you know, the posting of when we get

22 the transcripts and other things for

23 this public hearing.

24 The record will be closed on

25 October 25th. That's the five business

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2 days that we are allotting, and then
3 after that, the department will make
4 its determination. And as I said we
5 will do this considering all of what we
6 have heard and the concerns that have
7 been raised and in the context of the
8 authority that we have under the
9 insurance law and otherwise to assess
10 this transaction.
11 So with that, thank you all for
12 coming. I have somebody raising his
13 hand.
14 SPEAKER: Is that the same
15 address where we got for our
16 confirmation for the hearing?
17 SUPERINTENDENT VULLO: I have no
18 idea. Whatever it is, do not want send
19 it to me. Send it to that e-mail, and
20 yes.
21 Yes.
22 SPEAKER: Hi. Will you consider
23 stopping the merger in the jurisdiction
24 that you have or asking for more
25 conciliations from CVS and Aetna?

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2 SUPERINTENDENT VULLO: We
3 consider everything. We consider -- we
4 have made no decisions. We are looking
5 at this and this public hearing was an
6 effort to obtain public comments, and
7 we are continuing to do that again in
8 that five business days, but we will
9 consider everything and all options
10 available to us.
11 SPEAKER: (Inaudible).
12 SUPERINTENDENT VULLO: Can you
13 identify who you are?
14 SPEAKER: Sure, Tim Collier from
15 Tudor Investments.
16 SUPERINTENDENT VULLO: I am not
17 going to speak to people that are
18 investment advisors or anything like
19 that. I understand that, you know,
20 there are public companies involved
21 here. We are not going to give out any
22 information more than what we have done
23 there and that's not within our domain.
24 Okay, thank you.
25 (TIME NOTED: 12:52 P.M.)

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2 CERTIFICATION
3
4 I, STEFANIE KRUT, a Notary
5 Public in and for the State of New
6 York, do hereby certify:
7 THAT the foregoing is a true and
8 accurate transcript of my stenographic
9 notes.
10 IN WITNESS WHEREOF, I have
11 hereunto set my hand this 22nd
12 day of October 2018.
13
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15 ---------------------------------
16 STEFANIE KRUT
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