

Nicholas Lloyd McQuaid
Direct Dial: 1.202.637.2296
nicholas.mcquaid@lw.com

555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: +1.202.637.2200 Fax: +1.202.637.2201
www.lw.com

LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES

Austin	Milan
Beijing	Munich
Boston	New York
Brussels	Orange County
Century City	Paris
Chicago	Riyadh
Dubai	San Diego
Düsseldorf	San Francisco
Frankfurt	Seoul
Hamburg	Silicon Valley
Hong Kong	Singapore
Houston	Tel Aviv
London	Tokyo
Los Angeles	Washington, D.C.
Madrid	

September 10, 2024

HIGHLY CONFIDENTIAL

VIA EMAIL

The Honorable James Comer
Chairman
Committee on Oversight and Accountability
2157 Rayburn House Office Building
Washington, D.C. 20515

Re: CVS Caremark Response to August 28, 2024 Letter

Dear Chairman Comer:

On behalf of CVS Caremark, I write in response to your August 28, 2024 letter. As President of CVS Caremark, David Joyner, made clear when he testified before your Committee on July 23, CVS Caremark is committed to bringing down the cost of prescription medicines for millions of Americans. In his testimony before your Committee, Mr. Joyner described the ways that CVS Caremark and its employees have made substantial progress in achieving that goal, with CVS Caremark members paying \$7.26 on average per 30-day supply of medication.¹ Mr. Joyner's testimony before the Committee was accurate and CVS Caremark fully stands behind it.

The Federal Trade Commission ("FTC") Interim Staff Report, to which your letter repeatedly cites, has been criticized by multiple independent experts and two FTC Commissioners as lacking sufficient empirical data and analytical rigor to support any meaningful conclusions.² The report

¹ CVS Caremark, Ensuring Access and Affordability to Critical Medications, <https://business.caremark.com/insights/2024/ensuring-access-affordability-critical-medications.html>.

² See, e.g., Drug Channels Roundup (July 30, 2024) (Adam Fein, President, Drug Channels Institute: "The plural of anecdote is data. And in my opinion, the FTC didn't pile up enough anecdotes to generate sufficient data...These omissions should be noticeable to anyone with some economics training. If the FTC ever publishes a final report, I hope it includes a more comprehensive, data-based economic analysis of the PBM market[.]"); K. Adams, Marketplace, Why the FTC Is Looking at PBMs and Their Role in Drug Pricing (July 11, 2024) (Ge Bai, John Hopkins Professor: "I do not believe the report has evidence showing PBMs harmed patients and plan sponsors."); Comm'r Holyoak Dissenting Statement (July 9, 2024) ("The standard of these reports has been nothing short of excellence....But today's Report fails to meet that rigorous standard."); Comm'r Ferguson Concurring Statement (July 9, 2024) (The Report "relies,

itself often does not draw conclusions and instead recites claims that “may” (or may not) be true based on unsubstantiated assertions, including comments by anonymous persons and self-interested lobbying groups.³ Moreover, the limited data analysis discussed in the FTC Interim Staff Report is notably incomplete.

CVS Caremark has filled this information void in the public discourse by engaging independent outside economists and consultants to conduct extensive analyses using the same data submitted to the FTC for the 6(b) study along with more than a million documents.⁴ The data and other evidence discussed in the reports demonstrate that, contrary to the insinuations in the FTC Interim Staff Report, CVS Caremark substantially reduces drug costs for clients and patients.

Whereas the FTC Interim Staff Report discusses only two drugs, CVS Caremark’s outside consultants have analyzed all drugs in the dataset across billions of prescriptions processed by CVS Caremark. This comprehensive analysis shows that in aggregate, CVS Caremark reimburses CVS pharmacies at lower rates than unaffiliated pharmacies. Overall, the analysis shows CVS Caremark would have reduced annual drug reimbursement costs by more than \$3 billion for clients and patients if these prescriptions were filled at CVS pharmacy rates compared to unaffiliated pharmacy rates.

Your letter purports to raise concerns about statements made by Mr. Joyner during the hearing that CVS Caremark reimburses non-PBM owned pharmacies at a higher rate than CVS-affiliated pharmacies, and in doing so you cite to the FTC Interim Staff Report. Such concerns are without factual basis. Mr. Joyner’s statements are accurate and supported by comprehensive analyses of CVS Caremark’s data by an outside economist, as noted earlier, which is attached.

Separate internal data analyses further confirm that CVS pharmacies are consistently reimbursed at lower rates than unaffiliated pharmacies, with CVS ranked at the bottom or next to the bottom compared against independent pharmacies’ bargaining groups (which consistently receive the highest reimbursement rates of all pharmacies) and other chain pharmacies. Multiple state audits have reached similar conclusions.

throughout, in large part on public information that was not collected from the PBMs or their affiliates during the 6(b) process....But public comments are rather beside the point of the 6(b) study.”).

³ The FTC Interim Staff Report cites 5.0% of the 160 public comments submitted by anonymous persons without any verification but only a handful of the more than 1.2 million contemporaneous business documents submitted by CVS Caremark.

⁴ See Prof. Dennis Carlton, Compass Lexecon, *An Economic Analysis of Criticisms Levied Against Pharmacy Benefit Managers* at 15-16 (July 19, 2024), <http://www.carltonreport.org>. (providing a comprehensive analysis of the data from CVS Caremark, Express Scripts, and Optum Rx submitted to the FTC); CVS Caremark FTC Data Summaries (July 3, 2024), https://business.caremark.com/content/dam/enterprise/business-caremark/insights/pdfs/2024/data_deck_drug_prices.pdf.

Your letter also questions Mr. Joyner’s statement during the hearing that CVS Caremark does not steer patients to CVS-affiliated pharmacies. Again, his answer is fully supported by the facts. CVS Caremark administers hundreds of different pharmacy network designs requested by its plan sponsor clients.⁵ The most popular network chosen by CVS Caremark clients is the National Choice Network, which includes almost all U.S. pharmacies. In 2023, more than 68,000 pharmacies participated in the National Choice Network, including more than 28,000 independent pharmacies accounting for more than 42% of all locations in the network.

All CVS Caremark clients have the option to offer this National Choice Network to their members. Alternatively, clients may decide that a narrow network design will help them achieve greater drug cost savings for the plan and its members by fostering competition among pharmacies. For example, a client adopting a narrow network design may decide to exclude high-priced pharmacies that are redundant from a geographic access standpoint. Pharmacies that participate in this type of narrow network may charge the client a lower reimbursement rate in exchange for the increased volume, resulting in substantial savings for patients in the form of lower premiums, copays, coinsurance, deductibles, or other out-of-pocket costs. Plan sponsors may opt for plan or pharmacy network designs that increase utilization of less expensive pharmacies (including CVS-affiliated pharmacies, as shown above) to reduce costs for their patients and plans.

Such contracting is common in the healthcare industry and has been shown to reduce costs. As research co-authored by two FTC staff economists concluded in a study published in 2020, “the cost savings associated with selective contracting may be substantial” and laws that force plan sponsors to use open networks (e.g., any-willing-provider laws) “reduc[e] competition by inhibiting the ability of insurers to move demand across competing pharmacies.”⁶

The materials cited in your letter, some of which do not relate to CVS Caremark, do not undermine this conclusion. CVS Caremark has and will continue to provide a multitude of pharmacy network options for its client plans, but the ultimate decision of which of those options to use rests with its clients. It is important to protect the ability of employers and other plan sponsors to continue to make these choices based on their own budgets and needs.

* * * * *

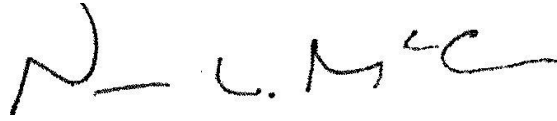
We trust this additional information addresses the concerns raised in your letter. Thank you for the opportunity to respond.

⁵ As the FTC Interim Staff Report observes, “To meet health plan client demands, some PBMs manage as many as several thousand pharmacy networks in any given year, each with varying pharmacy compositions and features.” FTC Interim Staff Report at 11.

⁶ Daniel Hosken, David Schmidt, and Matthew C. Weinberg, “Any Willing Provider and Negotiated Retail Pharmaceutical Prices,” *Journal of Industrial Economics* 68, no.1 (2020): 1-39 at 1-2.

LATHAM & WATKINS^{LLP}

Best regards,

A handwritten signature in black ink, appearing to read "N. L. McQuaid". The signature is written in a cursive, slightly stylized font.

Nicholas L. McQuaid
of LATHAM & WATKINS LLP

cc: Hon. Jamie Raskin
Ranking Member