UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the Chair

Statement of Chair Lina M. Khan
In the Matter of Caremark/ESI/Optum
Commission File No. 2410005

January 17, 2025

This week FTC staff filed petitions to enforce compliance with civil investigative demands ("CIDs") the FTC issued to The Cigna Group ("Cigna") and CVS Health Corporation ("CVS") more than a year ago. The CIDs were issued as part of an investigation into the potentially unlawful pharmacy-related business practices of the healthcare conglomerates that own the three dominant pharmacy benefit managers ("PBMs"): Cigna and its subsidiary Express Scripts, CVS and its subsidiary Caremark, and UnitedHealth and its subsidiary Optum. In the year since the CIDs were issued, Cigna and CVS each have produced only a fraction of the documents required and have refused to provide basic information about their compliance efforts.

Unfortunately, this noncompliance appears to be part of a broader pattern of disregard for Commission orders.

Take, for example, the recent actions of CVS. Following nearly a year of negotiations on the CID that is the subject of one of the petitions filed today, FTC staff sought testimony from CVS on its compliance efforts. CVS moved to quash the FTC's subpoena request. On December 3, 2024, the Commission denied CVS's petition to quash and ordered that CVS provide the requested testimony on December 20, 2024, "or at such other date, time, and location as the Commission staff may determine."[1] Commission staff offered CVS several additional dates, including in early January. CVS refused these dates, seeking instead to delay the investigational hearing even further. Since Commission staff rejected CVS's request for additional delays, CVS has failed to engage on either the subpoena for testimony or the CID. Having been denied its requested relief by the Commission, CVS has blatantly ignored the Commission's order.

"FTC orders are not suggestions."[2] Permitting CVS to disregard the Commission's order would risk undermining the Commission's authorities and convey to subjects of FTC investigations that compliance is optional. In cases where the FTC is investigating unlawful conduct, it is especially critical to enforce formal process. Unlike in merger cases, where the parties usually have an incentive to comply in a timely manner so they can get clarity on the fate of their proposed mergers, firms engaging in unlawful conduct have incentive to delay.

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[1] Order Denying Petition to Quash Subpoena Ad Testificandum, *In re Subpoena Ad Testificandum to CVS Health Corporation* (Dec. 3, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/2410005caremarkesioptumptqorder.pdf.
[2] Commissioner Rohit Chopra, Memorandum re: Repeat Offenders (May 14, 2018), https://www.ftc.gov/system/files/documents/public_statements/1378225/chopra_-_repeat_offenders_memo_5-14-18.pdf.

In addition to pursuing today's petitions to enforce its CIDs, the Commission should consider whether CVS's counsel's disregard of the Commission order issued on December 3, 2024, merits additional recourse. For example, Rule 4.1(e) provides that the Commission may "publicly reprimand, suspend, or disbar" attorneys who engage in "obstructionist, contemptuous, or unprofessional conduct."[3]

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[3] 16 C.F.R. § 4.1(e).