April 2, 2021

Attorney General Karl A. Racine
Office of the Attorney General for the District of Columbia
400 6th St. NW
Washington, DC 20001

Dear Attorney General Racine:

We, the undersigned organizations, write in regard to the process that pharmacies in the District of Columbia—in particular, CVS pharmacies—are using to distribute COVID-19 vaccines. We are specifically concerned about the collection and use of personal data for commercial purposes unrelated to the administration of these life-saving vaccines. Pharmacies are requiring patients seeking access to the vaccine to register through their existing customer portals, which in turn exposes patients to broad personal data collection and marketing. The line between the public health task of administering vaccines and the commercial practices of the administering companies is being blurred. State and federal governments share a common public health goal of promoting vaccinations and should seek to remove barriers to accessing the COVID-19 vaccine and promote public trust in the distribution process.

We request that your office promptly investigate the data collection practices for the CVS vaccine distribution program in the District of Columbia. Pharmacies should not require individuals to submit to systems that broadly use the personal information of patients as a prerequisite for receiving the COVID-19 vaccine. There are already reports that some pharmacies plan to use this personal information to market their products to COVID-19 vaccine recipients. Patients should not have to trade unrestricted use of their sensitive personal information for a life-saving vaccine. We believe these practices are unfair and deceptive and should be halted immediately. In order to promote a robust and effective vaccine distribution program, we believe pharmacies should do the following: refrain from automatically enrolling vaccine registrants in their marketing databases; collect and use only the minimum personal data that is necessary to facilitate administration of the vaccine; and segregate vaccine registrant data from all commercial and marketing databases.

The FDA issued the first emergency use authorization for the COVID-19 vaccine on December 11, 2020.¹ The rollout for this long-awaited vaccine proved slow, with only 2.8 million patients receiving the first dose by the end of 2020—far short of the federal government’s goal of 20 million.² Every state experienced supply and distribution issues, leading

to a “chaotic scramble” to vaccinate patients.\textsuperscript{3} These issues, combined with accessibility concerns\textsuperscript{4} and hesitancy around the vaccine,\textsuperscript{5} led to fewer vaccinations than projected by the end of 2020. On February 11, 2021, the Biden Administration announced a federal program to deliver vaccines directly to retail pharmacies.\textsuperscript{6} The program initially included CVS, Walgreens, Walmart, and Kroger as distribution sites for tens of millions of doses per month,\textsuperscript{7} meaning that “[t]he job of vaccinating large swaths of the population [would] fall largely on retail pharmacies[.].”\textsuperscript{8}

According to recent press reports, pharmacies “are collecting data from millions of customers as they sign up for [vaccine] shots, enrolling them in patient systems and having recipients register customer profiles.”\textsuperscript{9} But this data is not only being used for vaccine distribution—these retailers, charged with distributing vaccines to protect the health of millions, are using personal information to promote their products and services, tailor marketing, and keep in touch with customers.\textsuperscript{10} We understand that some information is necessary to establish vaccine eligibility and schedule appointments. But certain pharmacies appear to have plans to use patients’ sensitive personal information for purposes beyond the limited scope of vaccine distribution. For example, CVS executives “plan to stay in touch with vaccine recipients beyond receiving their second shot and use information gleaned in the process to better market to them.”\textsuperscript{11} This would be a misuse of personal data and would constitute an unfair and deceptive

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\item (“The U.S. fell far short of its initial goal of inoculating 20 million people by the end of 2020, with health departments, hospital systems and long-term-care facilities beset by supply-chain bottlenecks, vaccine hesitancy and confusing, scattershot systems for making appointments.”).\textsuperscript{3}
\item Alexander Smith, Covid Vaccines: Rollout in Disarray in U.S. and Abroad, NBC News (Jan. 31, 2021), https://www.nbcnews.com/news/world/covid-vaccines-rollout-disarray-u-s-abroad-n1256144 (“All 50 states in the U.S. are reporting shortages as America's fragmented administrative and health care systems struggle to distribute even the limited vaccine stocks that have been produced.”).\textsuperscript{4}
\item Rebecca Heilweil, A Big Hurdle for Older Americans Trying to Get Vaccinated: Using the Internet, Vox (Jan. 27, 2021), https://www.vox.com/recode/22250606/older-americans-seniors-computer-literacy-skills-internet-digital-divide (“Many states and localities across the US are offering online tools like websites and apps as the primary way to register for vaccine appointments. . . That means snagging an appointment quickly involves computer skills and internet access, or at least help from someone else. But America’s digital divide is getting in the way: Nearly 30 percent of people in the US over the age of 65 do not use the internet, and more than 40 percent did not have broadband access at home[,]”).\textsuperscript{5}
\item Terlep & Kang, supra note 2.
\item \textit{Id.} (“CVS says it can vaccinate 20 million to 25 million people a month once supplies are available. Walmart said in January that it would be able to vaccinate 10 million to 13 million a month.”).\textsuperscript{7}
\item \textit{Id.}\textsuperscript{8}
\item \textit{Id.}\textsuperscript{10}
\item \textit{Id.}\textsuperscript{11}
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trade practice. And as states expand eligibility in the coming weeks to teenagers 16 years old and above, and later to children and teens, secondary uses of data collected for vaccine registration purposes especially warrants close examination and restriction. We ask that you investigate the matter promptly.

Several other pharmacies, including Walmart, Walgreens, Hartig, and Kroger, have similarly engaged in unfair trade practices by marketing to patients who attempt to obtain the COVID-19 vaccine. Walmart requires patients to set up patient profiles with Walmart’s online system in order to receive the vaccine, which means patients are automatically enrolled to receive marketing emails from Walmart unless they opt-out. Walgreens requires patients to sign up for a Walgreens account in order to schedule an appointment. Patients who sign up for a Walgreens account in order to receive a vaccine are automatically enrolled in marketing emails unless they opt out, and they also agree to allow Walgreens to “automatically collect information about [them] and [their] use of [Walgreen] Services, including without limitation, your real-time location, MAC address, and IP address.” Hartig Drug Stores analyzes data on what patients buy when they receive vaccinations and has urged staff to highlight aftercare items, such as ibuprofen and ice packs, to patients. Hartig’s CEO noted that the vaccination process has brought in new customers, stating “[w]e encourage the products we have in the store and encourage [customers] to purchase those[.]” Kroger is reportedly trying to work with brands to offer products during vaccinations and “sees opportunities to promote using food as medicine.” In order to promote accessibility and increase the number of vaccinated people, we urge your office to investigate the practice of marketing to patients who attempt to receive the COVID-19 vaccine. Patients should not be subject to marketing emails and data collection in order to receive a vaccine that protects their own health and the health of those around them. Vaccine recipients may be under the impression that the information they submit to these pharmacies is covered by the Health Insurance Portability and Accountability Act (HIPAA) or other privacy laws, but unfortunately, that is not the case. No U.S. privacy law covers the data collected under these pharmacy customer portals.

Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce.” Every state and the District of Columbia have similarly adopted laws that prohibit at least some categories of unfair or deceptive practices (UDAP laws), many of which are based

12 Id.
13 Sara Morrison, You Got a Vaccine. Walgreens Got Your Data., Vox (Mar. 4, 2021), https://www.vox.com/recode/22310281/covid-vaccine-walgreens-cvs-rite-aid-walmart-data (“Walmart... offers patients the ability to opt out of receiving marketing emails when they register[.]”).
14 Terlep, supra note 9.
15 Id.
16 Id.
17 Id.
18 Id.
on the FTC Act. The above-described practices violate the D.C. Consumer Protection Procedures Act. Pharmacies that collect personal data for marketing purposes from those seeking to obtain the COVID-19 vaccine deprive patients of control over their own personal data. Patients have no meaningful opportunity to avoid this data collection and associated marketing if they wish to receive a life-saving vaccine. There are no benefits to consumers that might outweigh the significant privacy harms suffered by patients receiving vaccinations through the pharmacies in question. In fact, these practices carry a risk of impeding vaccine distribution by discouraging people from seeking out the vaccine. Pharmacies may not exploit the public health necessity of the COVID-19 vaccine by forcibly subjecting patients to data collection and marketing.

Pharmacies are responsible for providing life-saving vaccines to millions of Americans. And during this emergency, pharmacies should not be deploying systems that make vaccine access contingent on registration for unrelated commercial pharmacy services or the collection of personal data for unrelated purposes. We encourage your office to require that pharmacies in the District of Columbia halt the practice of using the personal information collected from COVID vaccine recipients for secondary purposes. Pharmacies should not further hinder the vaccine distribution by engaging in unfair or deceptive practices that will lead to greater public mistrust of the vaccine and less accessibility. The vaccine should be accessible to all qualified patients without a barrier that collects unnecessary data about patients for marketing purposes.

Pharmacies’ collection of personal data from vaccine recipients also poses special risks for marginalized populations. We are concerned that data collection will create an additional barrier to vaccine access and exacerbate existing racial and ethnic disparities in distribution rates. Further, the exploitation of personal data causes disproportionate harms to communities of color. Pharmacies should not be permitted to collect and use personal data in ways that will

giving a state agency the authority to enforce these prohibitions, and all now also provide remedies that consumers who were cheated can invoke.”)

21 Id. at 12.
22 D.C. Code § 28-3904 (“It shall be a violation of this chapter for any person to engage in an unfair or deceptive trade practice[.]”).
harm marginalized communities. We urge your office to remove barriers to access the vaccine and promote an equitable vaccine distribution process by protecting the personal data of vaccine recipients.

We ask your office to investigate CVS pharmacies’ unfair and unlawful collection and use of personal data from patients seeking the COVID-19 vaccine. We seek to promote a robust and effective vaccine distribution program. Accordingly, we urge you to require CVS pharmacies to:

1. Refrain from automatically enrolling vaccine registrants in any marketing database;

2. Collect and use only the minimum data that is necessary to facilitate administration of the vaccine; and

3. Segregate vaccine registrant data from all commercial and marketing databases.

Sincerely,

Center for Digital Democracy
Common Sense Media
Constitutional Alliance
Consumer Action
Consumer Federation of America
Defending Rights & Dissent
Electronic Privacy Information Center
Media Alliance
The National Workrights Institute
New America's Open Technology Institute
Oakland Privacy
The Parent Coalition for Student Privacy
Privacy Rights Clearinghouse
Privacy Times
Public Citizen
U.S. PIRG

APPENDIX

Please provide details

We want to help you spend less time in person, so let’s take care of intake details now. We’ll ask for your insurance card(s), Social Security number and/or driver’s license.

All fields are required, unless marked optional.

Patient information

First name

Last name

Date of birth

**Enter without slashes: MMDDYYYY**

Age restrictions may vary depending on state and/or vaccine.

Sex assigned at birth

- Female
- Male

How do we use this?

Street address

Unit, apartment, etc (optional)

City

State

ZIP code

Select

Contact information

Contact info will be added to your patient record.

Email address (optional)

Mobile number
Screenshots of the Patient Info webpage from CVS, which collects personal information that CVS has said it plans to use to market to patients after they have received COVID-19 vaccines.