

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
J. Thomas Rosch  
Edith Ramirez  
Julie Brill  
Maureen K. Ohlhausen

In the Matter of

CVS CAREMARK CORPORATION,  
a corporation.

DECISION AND ORDER

DOCKET NO. C-4357

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Respondent named in the caption hereof, and the Respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the Respondent with violation of the Federal Trade Commission Act, 15 U.S.C. § 41 et seq.;

The Respondent, its attorney and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), an admission by the Respondent of the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by the Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waives and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the

Commission hereby issues its Complaint, makes the following jurisdictional findings and enters

8. "Enrollee" means any beneficiary enrolled in the RxAmerica prescription drug plans who was not eligible for a full low-income subsidy as set forth in 42 U.S.C. § 1395w-114(a)(1).
9. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
10. The terms "and" and "or" in this order shall be construed conjunctively or disjunctively respectively as necessary, to make the applicable sentence or phrase inclusive rather than exclusive.

## I.

**IT IS ORDERED** that Respondent, directly or through any corporation, partnership, subsidiary division, trade name, or other device, and those persons in the concert or participation with them who receive actual notice of this order by personal service or otherwise, in connection with the marketing, advertising, promotion, distribution, offer for sale, sale, or administration of Medicare Part D prescription drugs and Medicare Part D prescription drug plans, in or affecting commerce, shall not misrepresent, or assist others in misrepresenting, in any manner, expressly or by implication, the price or cost of Medicare Part D prescription drugs or other prices or costs associated with Medicare Part D prescription drug plans.

## II.

**IT IS FURTHER ORDERED** that Respondent shall pay the Federal Trade Commission the sum of \$5 million. This payment shall be made in the following manner:

- A. This payment shall be made by wire transfer made payable to the Federal Trade Commission, the payment to be made not later than five (5) days after the date that this order becomes final.
- B. In the event of default on any obligation to make payment under this order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment.
- C. All funds paid to the Commission pursuant to this order shall be deposited into an account administered by the Commission or its agents to be used for equitable relief, including but not limited to consumer redress, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after the redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Respondent's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disbursement. Respondent shall have no right to challenge the Commission's

choice of remedies under this Section. Respondent shall have no right to contest the manner of distribution chosen by the Commiss

expenses; (4) the total amount the enrollee would have paid if his or her generic prescription drug purchases at CVS Pharmacy Walgreens had been adjudicated at the RMA America MAC price applicable for the day the claim adjudicated instead of at the actual adjudicated price; this amount shall include but not be limited to copayments, coinsurance, deductibles, and Medicare Part D coverage gap expenses; (5) the difference between Subsection (3) and Subsection (4) in enrollee cost sharing amounts, including but not limited to copayments, coinsurance, deductibles, and Medicare Part D coverage g

- D. All pricing data for adjudicated claims and complaints and any other communications with consumers with governmental or consumer protection organizations that contradict, qualify or call into question the representations set forth in Sections V(A)-IV(C) of this order, or the basis relied upon for such representations; and
- E. All acknowledgments of receipt of this order obtained pursuant to Section V.

**V.**

**IT IS FURTHER ORDERED** that Respondent shall deliver copies of the order as directed

## VII.

**IT IS FURTHER ORDERED** that Respondent within six (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

## VIII.

This order will terminate on May 3, 2032, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without accompanying consent decree) in federal court alleging any violation of the order which ever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. any Section in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Section.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal then the order as to Respondent will terminate according to this Section as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner Ohlhausen not participating.

Donald S. Clark,  
Secretary

SEAL  
ISSUED: May 3, 2012