

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



COMMENTS OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA

to

THE FEDERAL TRADE COMMISSION

In the Matter of CVS Caremark Corporation
File No. 112 3210

February 13, 2012

As the government official charged with enforcing the District of Columbia's consumer protection laws, the Attorney General for the District of Columbia applauds the FTC's work in investigating and bringing to a successful resolution charges against CVS Caremark pertaining to its posting of inaccurate estimates of prices for Medicare Part D drugs. As noted in the proposed complaint, Medicare beneficiaries rely on these price estimates in selecting Medicare Part D prescription drug plans. Using inaccurate price estimates adversely affects these selections.

The proposed Consent Order appropriately enjoins CVS Caremark from misrepresenting in any manner the price or cost of Medicare Part D prescription drugs, or other prices or costs associated with Medicare Part D prescription drug plans. Despite the best intentions of those involved, however, mistakes happen and there may again be instances where inaccurate price estimates are posted. Accordingly, we recommend that the Consent Order also require notification and remedial action when that happens.

The incident described in the proposed complaint exemplifies this need. The complaint notes that in 2007 RxAmerica (a CVS Caremark subsidiary) started reimbursing CVS Pharmacy and Walgreens "at rates sometimes ten times as much as it was reimbursing other pharmacies for the same drug." RxAmerica became aware, no later than January 2008, that payments to these pharmacies "were forcing some beneficiaries prematurely into the [Medicare Part D] donut hole." Nevertheless, the complaint recites, "the discrepancy between the prices posted online and the actual reimbursement rates to CVS and Walgreens continued until at least November 2008." Inaccurate prices thus continued to be posted for at least ten months, providing misleading information to those seeking to subscribe to a Part D prescription drug plan.

In addition to the prohibition now in the proposed Consent Order against misrepresenting the price or cost of Part D prescription drugs, we recommend that the Consent Order include a requirement that CVS Caremark, on its website: (1) clearly and conspicuously disclose that under its Medicare Part D plans it reimburses pharmacies at different rates for the same drug, and (2) explain how those different rates affect when a Part D plan subscriber will reach the "donut hole" coverage gap, the point at which the subscriber's drug costs will significantly increase.

We also recommend that when pricing errors result in prescriptions being paid or charged at higher rates than posted, CVS Caremark should be required to immediately notify the Centers for Medicare & Medicaid Services and the affected Medicare Part D beneficiaries, and refund the overcharges.

With these additions, we believe the proposed Consent Order would be stronger and would provide Medicare Part D beneficiaries better protection against pricing errors.

Respectfully submitted,

IRVIN B. NATHAN
Attorney General for the District of Columbia

ELLEN S. EFROS
Deputy Attorney General
Public Interest Division

BENNETT RUSHKOFF
Chief, Public Advocacy Section

GRANT G. MOY, JR.
Assistant Attorney General
Office of the Attorney General
441 4th Street, NW, Suite 600-S
Washington, DC 20001
(202) 727-6337