

**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.)
)
)
)
_____)

DOCKET NO. C-4357

COMPLAINT

The Federal Trade Commission, having reason to believe that CVS Caremark Corporation (hereinafter, "CVSC" or "Respondent") , through its subsidiary RxAmerica, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

- 1. Respondent is a Delaware corporation with its principal office or place of business at One CVS Drive, Woonsocket, Rhode Island 02895. Respondent acquired Longs Drug Store Corporation ("Longs") on October 30, 2008. Prior to October 30, 2008, RxAmerica LLC ("RxAmerica") was a subsidiary entity of Longs.
- 2. The acts and practices of Respondent as alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
- 3. Respondent advertises, markets, promotes, offers to sell, sells and distributes its products and services throughout the United States, including Medicare drug plans (as approved in accordance with the Medicare Prescription Drug Improvement and Modernization Act, 42 U.S.C. § 1395w *et seq.*) and covered Medicare Part D drugs (as defined in 42 U.S.C. § 1395w-102(e)).

FACTS

Background

4. Medicare Part D is a prescription drug benefit for consumers with Medicare coverage, primarily senior citizens and persons with disabilities (“beneficiaries”). To obtain Part D benefits, beneficiaries must enroll in a Medicare drug plan administered by an insurer or other private company approved by the Centers for Medicare & Medicaid Services (“CMS”). Each such insurer or other private company is responsible for creating a network of pharmacies where beneficiaries can fill their prescriptions.
5. Respondent currently owns subsidiaries, including RxAmerica, offering multiple Medicare drug plans.
6. Beneficiaries initially sign up for a Medicare drug plan when they first become eligible for Medicare by age or disability. Every year during a period known as “open enrollment,” beneficiaries have an opportunity to enroll in a new Medicare drug plan or remain in the same plan for the following calendar year.
7. Medicare drug plans differ in cost and offer a variety of benefits. Beneficiaries generally have cost sharing obligations until the total cost of their drugs reaches what is known as the coverage gap or “donut hole,” at which point the beneficiary pays the full cost of the drugs. If the beneficiary’s spending reaches a certain level, he exits the donut hole and enters a phase known as catastrophic coverage in which he is only responsible for paying a small copayment or coinsurance amount for each drug. Beneficiaries with low incomes are eligible for extra subsidies in the form of lower or no premiums, lower copayments or coinsurance, and coverage in the donut hole. 42 U.S.C. § 1395w-114.
8. Beneficiaries can shop for a Medicare drug plan by looking up plan benefits and drug costs on a provider’s website, by going onto CMS’ Medicare website and using the web-based tool known as Plan Finder, or by visiting other third-party websites where such information is posted. Every two weeks, Medicare drug plans are required by law to send their drug prices to CMS for posting on Plan Finder and to attest to the accuracy of those prices. Beneficiaries enter on Plan Finder the drugs they take and the pharmacy they use, and Plan Finder identifies potential Medicare drug plans based on information supplied to CMS by each Medicare drug plan.
9. Beneficiaries rely on the information posted on Plan Finder when selecting a Medicare drug plan because Plan Finder calculates the beneficiary’s estimated costs for any given plan and projects which plan will keep the beneficiary out of the donut hole the longest and which plan will have the lowest overall cost.

RxAmerica Incident

10. In 2007, RxAmerica owed money to CVS Pharmacy (a subsidiary of CVSC) and Walgreens. Rather than pay the pharmacies directly, RxAmerica instead decided to increase the reimbursement rate to those pharmacies for generic drugs purchased by plan beneficiaries. RxAmerica started reimbursing CVS and Walgreens at rates sometimes ten times as much as it was reimbursing other pharmacies for the same drugs. Because the total cost of a drug is comprised of the beneficiary's copayment plus the pharmacy's reimbursement rate, beneficiaries were adversely affected by this reimbursement structure, as described below.
11. The higher reimbursement rates were not reflected in the pricing data RxAmerica sent to CMS for posting on Plan Finder, nor were they included in the prices RxAmerica posted on its website or sent to third-party websites. Therefore, beneficiaries seeking a Medicare drug plan through Plan Finder (or on RxAmerica's website or third-party websites) during this period saw a set of estimates for prices of drugs at CVS and Walgreens that had no bearing on the actual prices charged at these pharmacies.
12. For example, during 2008, RxAmerica represented to beneficiaries through prices posted on Plan Finder, on its website, and on third-party websites, that the price of gabapentin 600mg, a generic drug used to treat epileptic seizures, at CVS was \$26.83. In reality, RxAmerica was paying CVS \$257.70, almost ten times that amount. Similarly, RxAmerica represented on its website, on third-party websites, and on Plan Finder, that the price of megestrol, a generic drug used to relieve breast cancer symptoms, at CVS was \$55.68, whereas RxAmerica actually was paying CVS \$305.89, more than five times that amount. In another example, during 2008, RxAmerica represented the price of omeprazole 20mg, a drug used to treat ulcers and gastroesophageal reflux disease, at Walgreens was \$22.04, whereas RxAmerica actually was paying Walgreens \$162.00, more than seven times that amount.
13. As a result of this reimbursement structure, many beneficiaries using CVS and Walgreens stores ran through their benefits coverage at faster rates than they would have based on the posted prices. Many beneficiaries, therefore, unexpectedly entered the donut hole and became responsible for the total cost of their prescription drugs, with no opportunity to change plans until the next calendar year. Further, when most beneficiaries filled a prescription at a CVS or Walgreens store, they would have paid only a copayment at the point of sale and may not have been aware of the pharmacy's reimbursement rate until they reached the donut hole.
14. In late 2007 and early 2008, RxAmerica beneficiaries harmed by this conduct began to complain to RxAmerica about the discrepancies between the prices listed on Plan Finder (as well as on RxAmerica's website and third-party websites) and the prices at CVS and Walgreens stores.

15. RxAmerica became aware no later than January 2008 that its reimbursement methods were forcing some beneficiaries prematurely into the donut hole. Nonetheless, the discrepancy between the prices posted online and the actual reimbursement rates to CVS and Walgreens continued until at least November 2008.
16. Respondent's conduct injured many beneficiaries.

VIOLATIONS OF THE FTC ACT

17. Through the means described in Paragraphs 10 through 16, Respondent has represented, directly or indirectly, expressly or by implication, that the prices of covered Medicare Part D drugs at various pharmacies as posted on Plan Finder and on the websites of RxAmerica and other third parties, were accurate estimates of the prices that beneficiaries would pay for those drugs in those pharmacies.
18. In truth and in fact, the prices of covered Medicare Part D prescription drugs in various pharmacies as posted on Plan Finder and on the websites of RxAmerica and other third parties, were not accurate estimates of the prices that consumers would pay for those drugs in those pharmacies. Rather, the prices charged to consumers who purchased their covered Part D drugs from CVS or Walgreens, were significantly higher than the prices posted on those websites.
19. Therefore, the representations set forth in Paragraph 17 of this Complaint were, and are, false or misleading, and the making of such representations constitutes a deceptive act or practice in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission this third day of May, 2012, has issued this Complaint against Respondent.

By the Commission, Commissioner Ohlhausen not participating.

Donald S. Clark
Secretary