



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

May 3, 2012

The Honorable Irvin B. Nathan
Attorney General for the District of Columbia

*Re: In the Matter of CVS Caremark Corporation
File No. 112 3210, Docket No. C-4357*

Dear Attorney General Nathan:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

We appreciate your support of the FTC's investigation and proposed consent order resolving the Commission's complaint against CVS Caremark ("CVSC"). We value your input and look forward to partnering with you in the future on enforcement and policy matters affecting consumers and competition. Your comment recommends that the Commission revise the proposed consent order to require CVSC to post on its website information about different reimbursement rates to pharmacies and that in the event of a future pricing error, CVSC should be required to immediately notify the Centers for Medicare & Medicaid Services ("CMS") and affected consumers and refund any overcharges.

The proposed complaint alleges that CVSC, through its Medicare Part D health plan subsidiary, RxAmerica, misrepresented prescription drug prices. Specifically, the complaint alleges that CVSC violated Section 5(a) of the FTC Act by submitting generic drug price estimates for posting on CMS' Plan Finder¹ and on the websites of RxAmerica and other third parties that were significantly lower than the prices being charged at CVS and Walgreens stores. This caused many elderly and disabled consumers to pay significantly more than they expected for their medications when filling their prescriptions at CVS or Walgreens stores. As a result, some of these consumers ended up in the Medicare Part D coverage gap commonly known as the "donut hole," where they had to pay the full cost of their drugs.

¹ Plan Finder is a web-based tool where beneficiaries can shop for a Medicare Part D drug plan by looking up plan benefits and drug costs.

The Commission's proposed order prohibits CVSC from misrepresenting the price or cost of Medicare Part D prescription drugs, or other prices or costs associated with Medicare Part D prescription drug plans. It also requires CVSC to pay \$5 million in consumer redress, to be distributed to Medicare Part D beneficiaries affected by CVSC's conduct. The order also includes provisions that require CVSC to keep records relating to the challenged conduct, including its pricing; to report to the Commission; and to enable the Commission to monitor its compliance with the order.

We believe the proposed consent order appropriately resolves the Commission's complaint against CVSC, provides redress to affected consumers, and should deter CVSC from repeating the misconduct that gave rise to the FTC's complaint. It is our belief that additional disclosures are not necessary because the proposed order provision prohibiting misrepresentations by CVSC and the ability to seek civil penalties for order violations protect consumers from similar harm in the future. Accordingly, to the extent that CVSC and/or any of its subsidiaries, including RxAmerica, violates the terms of the Commission's final order, such as by misrepresenting the price or cost of Medicare Part D prescription drugs, it would be liable for civil monetary penalties of up to \$16,000 per violation, pursuant to Section 5(l) of the FTC Act. After carefully examining the facts and circumstances of this case, the Commission believes that the proposed order provides comprehensive relief to consumers and our ability to seek civil penalties creates a strong deterrent against any future misrepresentations related to Medicare Part D drug pricing by CVSC or any of its subsidiaries.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. Thank you again for your comment.

By direction of the Commission, Commissioner Ohlhausen not participating.

Donald S. Clark
Secretary