UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
Mark R. Meador

In the Matter of **Caremark Rx, LLC;** **Zinc Health Services, LLC;** **Express Scripts, Inc.;** **Evernorth Health, Inc.;** **Medco Health Services, Inc.;** **Ascent Health Services LLC;** **OptumRx, Inc.;** **OptumRx Holdings, LLC;** and **Emisar Pharma Services LLC.**	**Docket No. 9437**

DECISION AND ORDER AS TO RESPONDENTS EXPRESS SCRIPTS, INC., EVERNORTH HEALTH, INC., MEDCO HEALTH SERVICES, INC., AND ASCENT HEALTH SERVICES LLC

The Federal Trade Commission ("Commission") having issued its administrative Complaint alleging certain methods of competition and acts and practices of Respondents Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc., and Ascent Health Services LLC (collectively, "Respondent") named above in the caption violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and the Respondent having been served with the Complaint, together with a notice of contemplated relief, and having filed their answers denying said charges; and

Respondent and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing: (1) an admission by Respondent of all the jurisdictional facts set forth in the Complaint; (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the Complaint, or that facts as alleged in the Complaint, other than jurisdictional facts, are true; (3) waivers and other provisions as required by the Commission's Rules; and (4) a proposed Decision and Order; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication with respect to Respondent in accordance with Section 3.25(c) of the Commission's Rules, 16 C.F.R. § 3.25(c); and

The Commission having thereafter considered the matter and having accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments in conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

Findings

1. Respondent Express Scripts, Inc. ("ESI") is a Delaware company with its principal place of business at One Express Way, St. Louis, Missouri. ESI is engaged in the business of providing pharmacy benefit management services. ESI is a wholly owned direct subsidiary of Evernorth Health, Inc.

2. Respondent Evernorth Health, Inc. ("Evernorth") is a Delaware company with its principal place of business located at One Express Way, St. Louis, Missouri. Evernorth is a wholly owned direct subsidiary of The Cigna Group ("Cigna").

3. Respondent Medco Health Services, Inc. ("Medco") is a Delaware corporation with its principal place of business at One Express Way, St. Louis, Missouri. Medco is a wholly owned subsidiary of Evernorth. Medco supports ESI's functions providing pharmacy benefit management services.

4. Respondent Ascent Health Services LLC ("Ascent") is a Delaware limited liability company with its principal place of business at Mühlentalstrasse 36, 8200 Schaffhausen, Switzerland. In 2019, Cigna established Ascent as a group purchasing organization ("GPO") to facilitate rebate contracting with pharmaceutical manufacturers for its participants, which includes ESI.

5. ESI, Medco, Evernorth, and Ascent are referred to collectively as "Respondent."

6. The Complaint charges Respondent with engaging in unfair methods of competition and unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

ORDER

Definitions

For purposes of this Order, the following definitions apply:

A. "ESI" means Express Scripts, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Express Scripts, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Evernorth" means Evernorth Health, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Evernorth Health, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Medco" means Medco Health Services, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Medco Health Services, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. "Ascent" means Ascent Health Services LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Ascent Health Services LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

E. "Agent" means any entity acting on behalf of a Plan Sponsor including consultants and brokers.

F. "Clearly and Conspicuously" means that a required disclosure is easily noticeable (i.e., difficult to miss) and easily understandable by reasonable Plan Sponsors and Retail Community Pharmacies, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented.

2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

3. The disclosure must use diction and syntax understandable to reasonable Plan Sponsors and Retail Community Pharmacies and must appear in each language in which the representation that requires the disclosure appears.

4. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

G. "Drug Manufacturer" means any company, or its parent, subsidiaries, divisions, groups, and affiliate entities, that manufactures or markets a prescription drug that has been approved for sale by the Food and Drug Administration.

H. "Drug Product" means a pharmaceutical product approved by the Food and Drug Administration to be prescribed and offered for sale in the United States with a particular combination of: active ingredient(s) or biological product(s); dosage form; route of administration; and strength.

I. "Non-Dispensing Services" means all pharmacist-performed direct patient care services, other than dispensing Drug Products, permitted by state law that a Plan Sponsor has elected to provide coverage for under a Pharmacy Benefit Plan, including diagnostic testing, immunizations and other injections, medication counseling, medication therapy management, wellness and screening services, and other services.

J. "Fully Insured Health Plan" means a health benefit plan where the insurer assumes the financial risk of payment for medical and pharmaceutical benefit claims in exchange for a premium payment.

K. "High-Deductible Health Plans" has the meaning set forth for such plans in the Internal Revenue Code, 26 U.S.C. § 223(c)(2).

L. "High-WAC Version" means a version of a Drug Product that has a higher per-unit List Price than another product with the same active ingredient(s)/biological products(s), dosage form, route of administration, and strength manufactured or marketed by the same Drug Manufacturer (*e.g.,* under the same New Drug Application/Biologics License Application or through a combination of New Drug Applications, Biologics License Applications, and abbreviated applications referencing the same Drug Product).

M. "Implementation Date" means the earlier of (i) the date Respondent provides written certification to the Commission that it has fully implemented all requirements of this Order, or (ii) January 1, 2027.

N. "Insulin Product" means each insulin Drug Product for the treatment of diabetes.

O. "List Price" or "Wholesale Acquisition Cost" or "WAC," means the Drug Manufacturer's price for a drug to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates, or reductions in price, as reported in wholesale price guides or other publications of drug pricing data.

P. "Low-WAC Version" means a version of a Drug Product that has a lower per-unit List Price than another product with the same active ingredient(s)/biological product(s), dosage form, route of administration, and strength manufactured or marketed by the same Drug Manufacturer (*e.g.,* under the New Drug Application/Biologics License Application or through a combination of New Drug Applications, Biologics License Applications, and abbreviated applications referencing the same Drug Product).

Q. "Member" means any individual whose health insurance plan includes a Pharmacy Benefit Plan serviced by Respondent.

R. "Net Unit Cost" means the List Price per unit less any Rebate per unit paid by the Drug Manufacturer and does not include any adjustment or deduction related to Members' Out-Of-Pocket Costs.

S. "Out-Of-Pocket Costs" means Drug Product costs not covered by the Respondent or a Plan Sponsor, including payments made by Members such as co-pays, coinsurance, and deductibles, or other payments.

T. "Patient Assurance Program" means an Express Scripts program available to Plan Sponsors that caps Member responsibility for participating Drug Products at set dollar levels.

U. "Pharmacy Benefit Plan" means a plan that provides insurance coverage to a Member for Drug Products and related pharmacy services.

V. "Pharmacy Spread" means the difference between the amount paid to Respondent by a Plan Sponsor for a Drug Product and the amount Respondent pays to a pharmacy.

W. "Plan Sponsor" means the entities (e.g., self-funded employers, insurance companies, union health plans) that provide a Pharmacy Benefit Plan to Members and purchase the services of pharmacy benefit managers.

X. "Preferred Drug List" means a list of prescription drugs preferred by a Plan Sponsor.

Y. "Rebate" means any discount, including a retrospective discount, paid to Respondent by a Drug Manufacturer with respect to a Drug Product directly or indirectly attributable to the utilization of the Drug Product by a Member or Plan Sponsor, but excludes manufacturer administrative fees, data fees, and other fees for administrative services rendered or data provided to a Drug Manufacturer by Respondent.

Z. "Rebate GPO" means a GPO that negotiates for Rebates off of List Price of branded prescription drugs for its participants. Ascent is a Rebate GPO.

AA. "Retail Community Pharmacy" means a retail pharmacy business that includes three or fewer retail stores and which is not affiliated with Respondent.

BB. "Spread Pricing" means that a Pharmacy Spread exists between the amount paid to Respondent by a Plan Sponsor for a Drug Product and the amount Respondent pays to a pharmacy.

CC. "Standard Formulary" means Respondent's National Preferred Formulary, Basic Formulary, High Performance Formulary, National Preferred Flex Formulary, and any other drug formulary offered by Respondent to commercial Plan Sponsors now or in the future that is adopted by a Plan Sponsor and that has not been customized at the request of the adopting Plan Sponsor.

DD. "Standard Offering to Plan Sponsors" means Respondent's package of products, services, features, or terms that Respondent will offer to all Plan Sponsors pursuant to this Order.

EE. "Standard Offering to Retail Community Pharmacies" means Respondent's package of products, services, features, or terms included in agreements Respondent will offer to all

Retail Community Pharmacies directly or via Pharmacy Services Administrative Organizations pursuant to this Order.

I. Non-Discrimination of Low-WAC Versions of a Drug

IT IS ORDERED that, no later than the Implementation Date, when a Drug Manufacturer markets a High-WAC Version and a Low-WAC Version of a Drug Product, Respondent shall not offer or administer any Standard Formulary on which the High-WAC Version is covered and a Low-WAC Version is (i) omitted; (ii) placed on a less favorable tier (*i.e.,* on a tier with greater Member Out-of-Pocket Costs) than the High-WAC Version; or (iii) has additional restrictions (*e.g.* prior authorization/pre-authorization or step therapy) relative to the High-WAC Version. Once a Low-WAC Version of a Drug Product is offered, Respondent's National Pharmacy & Therapeutics Committee will review the Drug Product at its next following July mid-year or January annual meeting, and, if that Low-WAC Version meets the conditions of this Section I, Respondent shall place the Low-WAC Version on its Standard Formularies as soon as commercially practicable after such meeting.

Provided, however, that: (i) the Drug Manufacturer offers the Low-WAC Version of a Drug Product at a Net Unit Cost that is equal to or lower than the Net Unit Cost of the High-WAC Version the Drug Product; and (ii) the Drug Manufacturer is able to supply the Low-WAC Version of the Drug Product in sufficient quantities to meet expected demand for the Low-WAC Version.

II. Relationship between Patient Out-Of-Pocket Costs and the Net Unit Cost

IT IS FURTHER ORDERED that, no later than the Implementation Date, and for the term of this Order, (i) Respondent will enter into an agreement with Connecticut General Corporation and its affiliated health plans, whereby all of Cigna Healthcare's Fully Insured Health Plans and (ii) Respondent's Standard Offering to Plan Sponsors:

A. Shall provide that Member Out-Of-Pocket Costs for each covered drug are no higher than the Net Unit Cost of each drug regardless of plan type (e.g., including High Deductible Health Plans);

B. Shall not base Member Out-Of-Pocket Costs on the List Price, or any other benchmark that is higher than the Net Unit Cost; and

C. Shall provide full access to programs that reduce Out-Of-Pocket Costs for Members, including but not limited to the Patient Assurance Program and a Preferred Drug List with first-dollar coverage for insulin and other drugs.

Respondent shall not offer a Plan Sponsor or any Agent terms that deviate from the Standard Offering as required by Paragraphs II.A-C and Paragraphs V.A-C unless Respondent complies with the provisions in Section XI of this Order.

III. Standard Offering to Plan Sponsors Regarding Access to TrumpRx

IT IS FURTHER ORDERED that, no later than the Implementation Date, and provided legislative or regulatory changes are made to exempt direct-to-consumer purchases from the

calculation of rebates under the Medicaid Drug Rebate Program in Section 1927 of the Social Security Act and Section 340B of the Public Health Service Act, Respondent's Standard Offering to Plan Sponsors shall ensure that Members receive the benefit of direct-to-consumer pricing through the TrumpRx platform, *see* Executive Order No. 14,297, Delivering Most-Favored-Nation Prescription Drug Pricing to American Patients (May 12, 2025), and shall count Member payments made through the TrumpRx platform toward Member deductible and Out-Of-Pocket Cost maximum accumulations.

IV. Specific Requirements for Insulin Products

IT IS FURTHER ORDERED that, no later than the Implementation Date, when a Plan Sponsor adopts a formulary that includes an Insulin Product covered by the Patient Assurance Program, Respondent shall provide full access to the Patient Assurance Program for such Insulin Products to all Members purchasing such an Insulin Product unless a Member's Plan Sponsor has opted out in writing. For the term of this Order, the Patient Assurance Program for Insulin Products will ensure that Members' Out-Of-Pocket Costs for participating Insulin Products will be lower than Members' Out-Of-Pocket Costs for Insulin Products pursuant to Members' Pharmacy Benefit Plan.

V. Standard Offering to Plan Sponsors Regarding Compensation and Rebates

IT IS FURTHER ORDERED that, as soon as commercially feasible but no later than January 1, 2028, Respondent shall include the following terms in the Standard Offering to Plan Sponsors:

A. Respondent will enable Members to receive the benefit of any Rebate or discounts applicable to any Drug Product directly at the point of sale, and will not charge a fee for providing or administering such point-of-sale rebate program, other than its actual cost to pre-fund any rebate, if applicable;

B. Respondent will not provide a guarantee to the Plan Sponsor of a pre-determined amount of compensation, including Rebates, from Drug Manufacturers; and

C. Respondent will not employ Spread Pricing.

VI. Compensation From Drug Manufacturers

IT IS FURTHER ORDERED that, as soon as commercially feasible but no later than the Implementation Date, compensation received by Respondent from Drug Manufacturers (including any administrative fees, data fees, or other fees) related to the Standard Offering to Plan Sponsors will not be based, directly or indirectly, on the List Price of any Drug Product or any related benchmark.

VII. Increased Transparency for Plan Sponsors

IT IS FURTHER ORDERED that, as soon as commercially feasible but no later than January 1, 2028:

A. Respondent will provide as part of its Standard Offering to Plan Sponsors additional automated reporting for Plan Sponsors including an annual report disclosing each Drug Product costs and pharmacy claim-level reporting;

B. Respondent will provide Plan Sponsors with any data or other information necessary for Plan Sponsors to comply with the Transparency in Coverage regulations, 85 Fed. Reg. 72158 (Nov. 12, 2020), and any successor regulation or amendment thereto; and

C. To the extent that Respondent pays or facilitates compensation to consultants or brokers in connection with Respondent's provision of pharmacy benefit services to Plan Sponsors, Respondent will fully disclose to each Plan Sponsor any such compensation paid or facilitated.

VIII. Standard Offering to Retail Community Pharmacies

IT IS FURTHER ORDERED that, as soon as commercially feasible but no later than January 1, 2028, Respondent shall include the following terms in its Standard Offering to Retail Community Pharmacies:

A. Respondent will compensate each Retail Community Pharmacy based upon its actual cost of acquiring prescription drugs plus a dispensing fee so long as each Retail Community Pharmacy provides to Respondent on a quarterly basis the data necessary and sufficient to validate its cost of acquiring prescription drugs dispensed to Members of a Pharmacy Benefit Plan administered by Respondent, but if any Retail Community Pharmacy represents to Respondent that it is unable to provide to Respondent the data necessary and sufficient to validate its cost of acquiring prescription drugs, then Respondent will disclose to that Retail Community Pharmacy the methodology Respondent used to approximate that Retail Community Pharmacy's cost of acquiring prescription drugs;

B. Respondent will agree to make additional payments for all Non-Dispensing Services performed by Retail Community Pharmacies; and

C. Respondent will not exclude any Retail Community Pharmacy willing to agree to the terms and conditions for participation in Respondent's Standard Offering to Retail Community Pharmacies from participating in Respondent's Standard Offering to Retail Community Pharmacies.

IX. Promoting the Standard Offerings to Plan Sponsors and Retail Community Pharmacies

IT IS FURTHER ORDERED that, as soon as commercially feasible but no later than the Implementation Date, Respondent shall:

A. Spend a minimum annual amount of $10 million to advertise, market, and otherwise promote the Standard Offering to Plan Sponsors and the Standard Offering to Retail Community Pharmacies and their potential benefits for five years following the Implementation Date;

B. Disclose, Clearly and Conspicuously, the existence and availability of Respondent's Standard Offering to Plan Sponsors in any material created by Respondent to advertise, market, or otherwise promote its products and services to Plan Sponsors;

C. Disclose, Clearly and Conspicuously, the existence and availability of Respondent's Standard Offering to Retail Community Pharmacies in any material created by Respondent to advertise, market, or otherwise promote its products and services to Retail Community Pharmacies;

D. Disclose, Clearly and Conspicuously, in response to any request for proposal to Respondent for a Pharmacy Benefit Plan from a Plan Sponsor or any entity acting on behalf of a Plan Sponsor, an explanation of the benefits of Respondent's Standard Offering to Plan Sponsors attached herewith as Exhibit A;

E. Not disparage Respondent's Standard Offering to Plan Sponsors in any material created by Respondent to advertise, market, or otherwise promote its products and services to Plan Sponsors;

F. Not disparage Respondent's Standard Offering to Retail Community Pharmacies in any material created by Respondent to advertise, market, or otherwise promote its products and services to Retail Community Pharmacies;

G. Not require or coerce any Plan Sponsor to adopt a Pharmacy Benefit Plan that includes terms that differ from Respondent's Standard Offering to Plan Sponsors; and

H. Not require or coerce any Retail Community Pharmacy to adopt terms that differ from Respondent's Standard Offering to Retail Community Pharmacies.

X. Reshoring Rebate GPO Functions and Increasing Rebate GPO Transparency

IT IS FURTHER ORDERED that, by July 1, 2028:

A. All activities, employees, functions, and assets used by Respondent Ascent for the purpose of rebate negotiating and contracting will be moved from Switzerland to the United States.

B. Any Rebate GPO owned or controlled by Respondent will comply with the GPO Safe Harbor reporting and disclosure obligations as set forth in 42 C.F.R. § 1001.952.

XI. Meeting Competition

IT IS FURTHER ORDERED that nothing in Sections II, III, IV, V, and VIII shall prevent Respondent from responding to a written request:

A. By a Plan Sponsor or its Agent for calculations, offerings, and other terms that differ from Respondent's Standard Offering to Plan Sponsors so long as Respondent makes its Standard Offering to Plan Sponsors available to that Plan Sponsor. If Respondent and a Plan Sponsor ultimately agree to terms that differ from Respondent's Standard Offering to Plan Sponsors, then Respondent must obtain an acknowledgement from the requesting Plan Sponsor that the requesting Plan Sponsor has received, read, and understood the explanation of benefits of Respondent's Standard Offering to Plan Sponsors attached herewith as Exhibit A; *provided, however*, that this Section XI shall not apply with respect to Cigna Healthcare's Fully Insured Health Plans; or

B. By a Retail Community Pharmacy for terms that differ from Respondent's Standard Offering to Retail Community Pharmacies so long as Respondent makes its Standard Offering to Retail Community Pharmacies available to that Retail Community Pharmacy.

XII. Monitor

IT IS FURTHER ORDERED that:

A. Respondent shall appoint, with the consent of the BC and BCP Bureau Directors, which consent shall not be unreasonably withheld, a Monitor to observe and report on Respondent's compliance with its obligations as set forth in this Order. Within 30 days of the date this Order is issued, Respondent shall notify the BC and BCP Bureau Directors via email at bccompliance@ftc.gov of the identity of three proposed Monitor candidates. The BC and BCP Bureau Directors will have 30 days after Commission staff has completed conflicts checks on all three Monitor candidates to select a Monitor. If, after vetting, the BC and BCP Bureau Directors have determined to disapprove the candidacy of the initial three monitor candidates, then the BC and BCP Bureau Directors will notify Respondent in writing of that denial. Upon a receipt of written denial, Respondent shall have 15 days to propose a new set of three Monitor candidates, at which point the BC and BCP Bureau Directors will have another 30 days to give or deny consent. This process will repeat until a monitor is appointed. If after three months the BC and BCP Bureau Directors and Respondent cannot agree on the appointment of a monitor, the roles will reverse, with the BC and BCP Bureau Directors proposing and Respondent consenting, and Respondent will not unreasonably withhold consent. Respondent and the Monitor shall enter into an agreement relating to the Monitor's services and such agreement shall be reviewed and approved by the Commission ("Monitor Agreement"). Any such agreement:

    1. Shall not limit, and the signatories shall not construe it to limit, the terms of this Section XII, and to the extent any provision in the agreement varies from or conflicts with any provision in this Section XII, Respondent and the Monitor shall comply with the provisions of this Section XII; and

    2. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit, the terms of this Order, and to the extent any provision in the agreement varies from or conflicts with any provision in this Order, Respondent and the Monitor shall comply with this Order.

B. The Monitor shall:

1. Have the authority to monitor Respondent's compliance with the obligations set forth in this Order;
2. Receive complaints from nonparties regarding Respondent's compliance with this Order;
3. Act in consultation with, make reports to, and conduct inquiries on behalf of the Commission or its staff;
4. Serve without bond or other security;
5. Notify BC and BCP Bureau Directors, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional or personal conflict. If the Monitor becomes aware of such a conflict only after it has arisen, the Monitor shall notify the BC and BCP Bureau Directors as soon as the Monitor becomes aware of the conflict; and
6. Report in writing to the Commission at ElectronicFilings@ftc.gov concerning Respondent's compliance with this Order annually on a date determined by Commission staff. Respondent's Chief Legal Officer shall certify in any such report that Respondent has complied with its obligations with respect to the monitor in Paragraph XII.E.

C. The Monitor shall begin serving as soon as feasible after the date of this Order and serve for a period of 3 years after the Implementation Date, provided however, that the Chairman of the Commission may at any time terminate the requirement to have a Monitor if he concludes that a Monitor is no longer necessary to accomplish the purposes of this Order.

D. The Monitor shall report to the Chief Legal Officer of Respondent. If the Monitor raises a concern about Respondent's compliance with this Order to the Chief Legal Officer and the Monitor is not satisfied with the Chief Legal Officer's response, the Monitor shall notify the Board of Directors.

E. Respondent shall:

1. Cooperate with and assist the Monitor in performing his or her duties for the purpose of reviewing Respondent's compliance with its obligations under this Order, including as requested by the Monitor, providing the Monitor full and complete access to personnel, information and facilities;
2. Not interfere with the ability of the Monitor to perform his or her duties pursuant to this Order;
3. Pay the Monitor fees and expenses as set forth in the Monitor Agreement;
4. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under this Order, except to the extent the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitor; and

5. Not terminate the Monitor except (a) with the consent of the BC and BCP Bureau Directors or (b) for serious misconduct, such as the disclosure of confidential information to external parties other than the Commission. Upon such termination, or the departure of the Monitor for another reason, Respondent will have 30 days to propose a replacement monitor, restarting the process detailed in Paragraph XII.A.

F. Respondent may require the Monitor to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on Respondent's compliance with this Order.

XIII. Compliance Reports

IT IS FURTHER ORDERED Respondent shall file verified written reports ("compliance report") in accordance with the following:

A. Respondent shall submit:

1. An interim compliance report 30 days after the date this Order is issued, and every 90 days thereafter until the Implementation Date;

2. Annual compliance reports, to be filed on the anniversary of the date this Order is issued; and

3. Additional compliance reports as the Commission or its staff may request.

B. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent is in compliance with the Order. Conclusory statements that Respondent has complied with its obligations under this Order are insufficient.

C. For a period of 5 years after filing a compliance report, Respondent shall retain documents that are within its custody or control and contain relevant information concerning whether Respondent is fulfilling or has fulfilled its obligations under this Order, including written communications (or notes of communications) with third parties, and non-privileged internal memoranda and reports. Respondent shall provide copies of these documents to Commission staff upon request.

D. Respondent shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondent shall file its compliance reports electronically with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondent shall provide a copy of each compliance report to the Monitor.

XIV. Change in Respondent

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least 30 days prior to:

A. The dissolution of Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc., or Ascent Health Services LLC;

B. The acquisition, merger, or consolidation of Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc., or Ascent Health Services LLC; or

C. Any other change in Respondent, including assignment and the creation, sale, or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

XV. Access

IT IS FURTHER ORDERED that for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 business days' notice to Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative of the Commission and at the expense of Respondent; and

B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

XVI. Cooperation with Litigation

IT IS FURTHER ORDERED that, in connection with any legal proceedings involving the Commission relating to or arising out of the allegations in the Complaint in this matter against

any other person ("Continuing Litigation"), Respondent shall cooperate with the Commission and its staff and shall:

A. Use reasonable best efforts to authenticate documents promptly upon request;

B. Accept service of process of any FTC-issued subpoenas;

C. Produce up to five (5) additional employees the FTC selects for deposition, investigational hearing, or other testimony;

D. Make three (3) employees the FTC selects available to testify at trial or any hearing;

E. Bear Respondent's full costs, expenses and fees associated with cooperation pursuant to this Section XVI;

F. Nothing herein prevents the FTC from seeking additional discovery or cooperation from Respondent or any other party beyond what this Section XVI requires; and

G. Consent to jurisdiction in D.D.C. for enforcement of this agreement.

XVII. Order Termination Date

IT IS FURTHER ORDERED that this Order will remain in effect for a term of 10 years following the Implementation Date.

By the Commission, Commissioner Meador recused.

April J. Tabor

Secretary

SEAL:

ISSUED:

EXHIBIT A

As you may know, the US Federal Trade Commission ("FTC") alleged that certain aspects of pharmacy benefit plans sponsored by Express Scripts ("ESI") and other large PBMs violated the law. As part of resolving that lawsuit, ESI agreed to the terms of a Decision and Order ("Order") issued by the FTC on [DATE]. The full text of the Order is available at [insert link to issued version of the Order].

Under the terms of the Order, ESI agreed, among other things, to certain commitments in its Standard Offering to Plan Sponsors. This Standard Offering is the set of products, services, features, and terms that ESI offers to all current and potential Plan Sponsors, some features of which are described in the FTC Order. The features of the Standard Offering to Plan Sponsors described in the FTC Order offer significant benefits to consumers, several of which are highlighted below.

Section I of the Order provides that ESI's Standard Offering to Plan Sponsors will include drugs with lower list prices where identical drugs are offered under different names at high and low list-prices. Access to drugs with lower list prices can benefit patients by reducing out-of-pocket costs.

Section II of the Order provides that ESI's Standard Offering to Plan Sponsors will not calculate patient out-of-pocket costs based on list prices or other benchmarks that exceed the price of a drug net of any rebates. This design feature benefits patients by reducing out-of-pocket costs, which will not be based on list prices that do not reflect the actual cost of a drug net of rebates. Section II also ensures that patients will not pay more for a drug than the net cost of that drug as negotiated by the plan.

Together, these features of ESI's Standard Offering to Plan Sponsors will help ensure your Members are treated fairly at the pharmacy counter. Plans that do not include these features may lead to higher Out-Of-Pocket Costs to Members. To the extent that you have requested, in writing, that ESI offer or administer a plan that does not include the Standard Offering features described above, please acknowledge that you have received, read, and understood the content of this letter in order to proceed with a plan that differs from these features of ESI's Standard Offering to Plan Sponsors.

Acknowledgement: