

BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

In the Matter of:

CAREMARK, L.L.C.
CAREMARKPCS HEALTH, L.L.C.

Administrative Proceeding No. 22-IC-02419

CONSENT ORDER

In lieu of proceeding with an administrative complaint proceeding, the parties hereto have reached a resolution of the matter related to pharmacy reimbursement pursuant to W.Va. Code § 33-51-9(f) for fully insured Aetna plans in West Virginia from January 1, 2022 through March 30, 2022 and desire that a Consent Order be entered accordingly. Caremark, L.L.C. and CaremarkPCS Health, L.L.C. (“Caremark”), understand and agree that by agreeing to the entry of this Consent Order it waives all rights to an administrative hearing and to judicial review of this matter. Further, Caremark understands and agrees that by agreeing to the entry of this Consent Order it also agrees to the administrative action as is reflected in the Consent Order. Finally, the Insurance Commissioner for the State of West Virginia (“Commissioner”) believes the entry of this Consent Order is appropriate and in the public interest.

JURISDICTION

Caremark is a licensed Pharmacy Benefit Manager (“PBM”) in the State of West Virginia and the Commissioner/West Virginia Offices of the Insurance Commissioner (“WVOIC”) has jurisdiction over the subject matter of this action and over Caremark pursuant to W.Va. Code §33-51-1, *et seq.*

W.Va. Code § 33-51-9(f) (2021) states:

A pharmacy benefit manager may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the national average drug acquisition cost for the prescription drug or pharmacy service at the time the drug is administered or dispensed, plus a professional dispensing fee of \$10.49: Provided, That if the national average drug acquisition cost is not available at the time a drug is administered or dispensed, a pharmacy benefit manager may not reimburse in an amount that is less than the wholesale acquisition cost of the drug, as defined in 42 U.S.C. § 1395w-3a(c)(6)(B), plus a professional dispensing fee of \$10.49.

In addition, the West Virginia Code of State Rules provides for penalties against a PBM for failing to comply with the law. W.Va. Code R. § 114-99-8.1 states:

If the Commissioner finds that a licensed PBM has violated any provisions of this rule or Article 51, Chapter 33 of the West Virginia Code that are applicable to the PBM, the Commissioner may, in addition to or in lieu of a licensure suspension or revocation, order the PBM to pay a penalty in a sum not to exceed \$ 10,000 per violation. If the PBM fails to pay the penalty within 30 days after notice of the penalty, the Commissioner may revoke or suspend the license of the PBM. This section shall not affect the right of a PBM to make a written demand for a hearing before the Commissioner pursuant to the provisions of W. Va. Code § 33-2-13.

EFFECT ON THIRD PARTIES

This Consent Order does not vest standing in any third party with respect to the terms hereof, nor create for any person, other than the Commissioner, a right to enforce its terms.

ALLEGED FACTS

The Commissioner received complaints that Caremark was not complying with W.Va. Code § 33-51-9(f) while performing “pharmacy benefits management” for Aetna’s commercial insurance plans. Caremark reimbursed pharmacies less than the amount required by W.Va. Code § 33-51-9(f), being NADAC plus ten dollars and forty-nine cents (\$10.49). Based upon representations made by Caremark, Caremark was in violation of W.Va. Code § 33-51-9(f) for a period of twenty-seven (27) weeks from January 1, 2022 until July 13, 2022. Caremark maintains that as of July 13, 2022, the pharmacies at issue have been properly reimbursed based upon the requirements of W.Va. Code § 33-51-9(f) and the issue has been remediated.

AGREED ACTION

By agreeing to and executing this Consent Order, Caremark agrees to and requests the entry of this Consent Order. Caremark acknowledges that the Commissioner could prevail at a hearing against Caremark resulting in a civil penalty not to exceed Ten Thousand Dollars (\$10,000.00) **per violation** pursuant to W.Va. Code R. § 114-99-8.1. The facts, as stated above, describe numerous violations lasting for a period of twenty-seven (27) weeks.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation in this matter, Caremark consents and agrees to the imposition of and payment to the Commissioner of an administrative fine in the amount of Two Hundred Seventy Thousand Dollars (\$270,000.00), which constitutes \$10,000.00 per week for twenty-seven (27) weeks, to be paid within 30 days of the entry of this Order.

Caremark provided the WVOIC documentary evidence showing that the pharmacies at issue were properly reimbursed on or about July 13, 2022.

FINAL DISPOSITION

This Consent Order constitutes the final disposition and entire agreement between the parties relating to the matter herein, except for any enforcement actions with respect to the failure to pay the administrative fine under this Consent Order as may be necessary, of Administrative Proceeding No. 22-IC-02419.

MISCELLANEOUS PROVISIONS

Jurisdiction of this matter is retained by the Commissioner for enforcement of this Consent Order. Any party hereto may apply to the Commissioner for such further orders and directions as may be necessary or appropriate with respect to the construction and enforcement of this Consent Order. The remedies in this Consent Order are cumulative and in addition to any other remedies the Commissioner may have at law or equity. Subject to Caremark's full payment of the agreed upon administrative fine, the Commissioner releases Caremark from any further enforcement actions against Caremark based on the facts as described in this Order. However, nothing herein shall be construed to prevent the Commissioner from taking any action for conduct not addressed in this Consent Order.

Caremark understands that this Consent Order will be reported to the database maintained by the National Association of Insurance Commissioners (NAIC) and otherwise be made public in accordance with law.

ORDER

Inasmuch as the Commissioner finds and concludes, based upon the foregoing, that Caremark was not in compliance with W.Va. Code § 33-51-9(f), it is **ORDERED** that a civil penalty in the amount of Two Hundred Seventy Thousand Dollars (\$270,000.00) be, and the same is, hereby, assessed against Caremark, and that such civil penalty shall be paid within 30 days of the entry of this Consent Order.

ENTERED on this 27th day of December 2022.



Allan L. McVey
CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner

Prepared by:



on behalf of Jeff Black (SBI #11059)

Jeffrey C. Black (WVSB #8188)
Attorney Supervisor, Regulatory Compliance
Legal Division
West Virginia Offices of the Insurance Commissioner
Post Office Box 50540
Charleston, West Virginia 25305-0540
Reviewed and agreed to by:

CAREMARK:

By: **Thomas S. Moffatt**
~~Vice President and Corporate Secretary~~
Print Name

Its: _____

Signature: 

Date: 12/23/22