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. 25-IC-179343

AMENDED ORDER ASSESSING PENALTY AND VACATING MARCH 27, 2025 ORDER ASSESSING PENALTY AND ORDER STAYING PROCEEDINGS

This matter is before the Insurance Commissioner ("Commissioner") pursuant to W.Va. Code § 33-2-9(*l*)(3) and W.Va. Code R. § 114-99-8.1 because the Commissioner has determined that regulatory action is appropriate as a result of the market conduct examination which was conducted against Caremark, L.L.C. and CaremarkPCS Health, L.L.C. ("Caremark").

On March 27, 2025 the Commissioner entered an *Order Assessing Penalty* which contained a civil penalty against Caremark. Upon further review, the Commissioner has determined that the March 27, 2025 *Order Assessing Penalty* contained a miscalculation with respect to the amount of the penalty. It is hereby **ORDERED** that the March 27, 2025 *Order Assessing Penalty* be and the same is hereby **VACATED**.

This Amended Order Assessing Penalty is based upon the findings of the *Report of Market Conduct Examination* ("*Examination Report*") which was adopted by the Commissioner in *Findings of Fact, Conclusions of Law, and Order Adopting Report of Market Conduct Examination* entered February 26, 2025.

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.* and W.Va. Code R. § 114-99-1, *et. seq.*

W.Va. Code § 33-2-9(*l*)(3) states, "In the event the commissioner determines that regulatory action is appropriate as a result of any examination, analysis or review, he or she may initiate any proceedings or actions as provided by law."

In addition, 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 or the right of any party to request judicial review of an order of the Commissioner.

FINDINGS OF FACT

The Commissioner conducted a market conduct examination of Caremark which covered the period of January 1, 2022 through December 31, 2023. The Commissioner entered *Findings of Fact, Conclusions of Law, and Order Adopting Report of Market Conduct Examination* on February 26, 2025 adopting the findings in the *Examination Report* with the following modification: Findings 8, 9,10, 11, 12, 13, 14, 15, 16, and 25 were not found to be violations against Caremark, but rather, were Findings that are applicable to the relevant insurer or insurers with whom Caremark contracted to provide PBM services.

As reflected in the *Examination Report* adopted by the Commissioner, Caremark failed to comply with a number of West Virginia laws applicable to PBMs, including, but not limited to, the following:

- PBM Pricing: Caremark did not comply with W.Va. Code § 33-51-9(f) when it reimbursed itself or an affiliate pharmacy more for a prescription drug than other pharmacies within the PBM network. Caremark did not comply with W.Va. Code § 33-51-9(e) when it failed to reimburse pharmacies at least the national average drug acquisition cost (NADAC) plus a professional dispensing fee of $10.49, or the wholesale acquisition cost plus a professional dispensing fee of $10.49 if NADAC was not available at the time a drug was administered or dispensed. Caremark did not comply with W.Va. Code § 33-51-9(k) when it failed to pass through administrative fees associated with manufacturer rebates to a health plan and its members at the point of sale. Further, Caremark failed to properly apply the definition of "rebate" when withholding rebate payments and fees from the health plan.
- Pharmacy Audits: Caremark did not comply with W.Va. Code § 33-51-4(a)(14) because it used more stringent criteria than required by the statute for what is considered acceptable records or documents for prescriptions during an audit. Caremark did not comply with W.Va. Code § 33-51-4(a)(9)(B) by exceeding the maximum quantity of prescriptions covered in a pharmacy audit. Further, contracts and communications delivered to providers described fees associated with the cost of pharmacy audits in excess of those allowed by W.Va. Code § 33-51-4(a)(13) and Caremark recouped funds from pharmacy claims in excess of actual financial harm associated with the dispensed product.
- Company operations: Caremark did not comply with W.Va. Code § 33-2-9 when it failed to provide unredacted and/or timely responses to the Commissioner's examiners which resulted in delays and inefficiencies in the examination and provided inaccurate and contradictory data on multiple occasions. Caremark failed to comply with W.Va. Code §§ 33-51-11(a)(5), 33-51-11(a)(10) and 33-51-11(e) when it imposed a monetary advantage

or penalty under a health benefit plan that affected the member's choice among pharmacies. Further, Caremark did not comply with W.Va. Code § 33-51-11(a)(10) when it prohibited members from filling 90-day supplies of prescription drugs from a retail pharmacy and inappropriately steered members to a mail order pharmacy.

- Formulary and drug placement: Caremark did not comply with W.Va. Code §§ 33-51-11(a)(7) and 33-51-11(a)(8) when it limited access to prescription medications by unreasonably designating 65 covered prescription medications as specialty medications.
- Pharmacy/Provider relations: Caremark did not comply with W.Va. Code § 33-51-11(a)(3) when it required independent pharmacies to pay a $1,200 pharmacy enrollment application fee in order to participate in a health benefit plan network.

CONCLUSIONS OF LAW

The *Examination Report* contained numerous violations of West Virginia law as summarized above. The Commissioner has entered this Amended Order Assessing Penalty pursuant to his authority under W.Va. Code § 33-2-9(*l*)(3) and W.Va. Code R. § 114-99-8.1. The violations found in the *Examination Report* justify the Commissioner taking this administrative action and, pursuant to W.Va. Code R. § 114-99-8.1, can result in a civil penalty not to exceed Ten Thousand Dollars ($10,000.00) **per violation**. The facts, as stated above and more particularly described in the adopted *Examination Report*, describe multiple violations over the course of the exam period.

Therefore, Caremark is **ORDERED** to do the following:

- Caremark shall specifically cure the violations and deficiencies identified in the *Examination Report* Findings that were adopted by the Commissioner's February

26, 2025 *Findings of Fact, Conclusions of Law, and Order Adopting Report of Market Conduct Examination* so as to bring itself into compliance and conformity with West Virginia law to the extent such has not already been completed and/or accomplished;

- Caremark shall file a Corrective Action Plan (CAP), subject to the approval of the Commissioner, which said CAP shall detail Caremark's changes to its procedures and/or internal policies to ensure compliance with West Virginia law and shall further incorporate all recommendations of the Commissioner's examiners and address all violations specifically cited in the *Examination Report*;
- The CAP shall be submitted to the Commissioner's PBM Unit for approval within 30 days of the date this Amended Order is entered;
- Caremark shall make reasonable changes to the CAP if and as directed by the Commissioner within 30 days of its receipt of the Commissioner's changes, or disapproval of, the CAP;
- Caremark shall, within 90 days of its receipt of notice from the Commissioner of his final approval thereof, implement the CAP;
- Caremark shall review the 6,568 identified claims (covering the period of the *Examination Report*) paid to West Virginia pharmacies below NADAC plus a professional dispensing fee of $10.49 and calculate the difference between the amount that was paid and the amount of NADAC plus $10.49;
- Caremark shall pay the above identified underpayments to the respective pharmacies or pharmacists, including payment for the amount of any consumer cost share adjustments that occurred when applying the requirements of W.Va.

Code § 33-51-9(e) (2022), plus interest within thirty (30) days of the date this Amended Order is entered. Pursuant to W.Va. Code R. § 114-99-8.5.10, Caremark shall pay interest, at a rate of the U.S. Prime Rate per annum, as calculated from the date the payment to the pharmacy was initially due or should have been made;

- Within 30 days of reimbursing all pharmacies or pharmacists, Caremark shall file a report with the Commissioner's PBM Unit verifying that each pharmacy or pharmacist has been properly paid.
- Caremark shall pay to the Commissioner an administrative fine in the amount of One Million Four Hundred Thirty-Five Thousand, Five Hundred Dollars ($1,435,500.00). This administrative fine was calculated at the Commissioner's discretion based upon 2,871 assessed violations at $500.00 per violation. The administrative penalty was not assessed against 6,189 of the identified claims (covering the period of the *Examination Report*) paid to West Virginia pharmacies below NADAC plus a professional dispensing fee of $10.49. However, Caremark shall, as noted, make restitution to pharmacies or pharmacists on all identified claims paid to West Virginia pharmacies below NADAC plus a professional dispensing fee of $10.49.

ORDER

Inasmuch as the Commissioner finds and concludes, based upon the foregoing, that Caremark was not in compliance with West Virginia law as detailed in the *Examination Report*, it is **ORDERED** that a civil penalty in the amount of One Million Four Hundred Thirty-Five Thousand, Five Hundred Dollars ($1,435,500.00) 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 Amended

Order. It is further **ORDERED** that Caremark comply with the terms of the Amended Order as outlined herein.

Inasmuch as Caremark has appealed the Commissioner's *Findings of Fact, Conclusions of Law, and Order Adopting Report of Market Conduct Examination* entered on February 26, 2025 to the West Virginia Intermediate Court of Appeals and previously requested a stay of the penalty order resulting from the findings in the *Examination Report*, the Commissioner does hereby *sua sponte* **STAY** the effect of this Amended Order Assessing Penalty pursuant to W.Va. Code §33-2-14 pending the outcome of Caremark's appeal of the Commissioner's February 26, 2025 *Findings of Fact, Conclusions of Law, and Order Adopting Report of Market Conduct Examination*.

ENTERED on this 4th day of April 2025.

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