



Office of the Secretary

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

May 3, 2012

Ellen Stevenson  
State of New York

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

Dear Ms. Stevenson:

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.

Your comment requests that the Commission, before finalizing the proposed consent order in this matter, investigate RxAmerica's Medicare Part D generic mail order business for alleged pricing misrepresentations involving certain generic drugs purchased by your husband.

The proposed complaint alleges that CVS Caremark ("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 the Centers for Medicare & Medicaid Services' Plan Finder<sup>1</sup> 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.

The Commission's order covers all of CVSC's Medicare Part D prescription drug programs, including its mail order, generic, and brand name programs. Specifically, it 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. Thus, to the extent that CVSC makes such misrepresentations moving forward, it would be in violation of the

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<sup>1</sup> 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.

Commission's final order and liable for civil monetary penalties of up to \$16,000 per violation, pursuant to Section 5(l) of the FTC Act.

In terms of redress for alleged prior misconduct regarding RxAmerica's mail order program, the order requires CVSC to pay \$5 million in consumer redress, to be distributed to eligible RxAmerica Medicare Part D beneficiaries who purchased at least one generic drug at a CVS or Walgreens pharmacy in 2007 and/or 2008. To the extent that you believe you or your husband were injured by conduct not covered by the proposed order, you are free to contact the FTC's Consumer Response Center at (877) 282-4357, or file a complaint online at [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov). The complaint will then be entered into our Consumer Sentinel database and made available to FTC investigators and hundreds of other law enforcement agencies.

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, and it thanks you again for your comment.

By direction of the Commission, Commissioner Ohlhausen not participating.

Donald S. Clark  
Secretary