

BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA

FILED

MAR 31 2023

INSURANCE COMMISSIONER
OKLAHOMA

STATE OF OKLAHOMA, ex rel. GLEN)
MULREADY, Insurance Commissioner,)
)
Petitioner,)
v.)
)
CAREMARK, LLC,,)
)
)
Respondent.)

Case No. 22-0637-DIS

NOTICE OF HEARING AND ORDER TO SHOW CAUSE

COMES NOW the State of Oklahoma, ex rel. Glen Mulready, Insurance Commissioner, by and through his counsel, Molly K. Clinkscales, and alleges and states as follows:

JURISDICTION

1. The Insurance Commissioner of the State of Oklahoma, Glen Mulready, (“Commissioner”), is charged with the duty of administering and enforcing all provisions of the Oklahoma Insurance Code, 36 O.S. §§ 101 *et seq.*, including the Patient’s Right to Pharmacy Choice Act, 36 O.S. §§ 6958–6968; the Third-Party Prescription Act, 15 O.S. §§ 781 *et seq.*; the Pharmacy Audit Integrity Act, 59 O.S. §§ 356 *et seq.*; and 59 O.S. §§ 357–360.

2. Caremark, LLC. (“Respondent”) is a pharmacy benefits manager (“PBM”) licensed by the State of Oklahoma with State Based Systems Company Number 44201226. Respondent’s business address of record is 1 CVS Drive, Woonsocket, Rhode Island, 02895 and a Statutory Home Office Address of 1110 Research Drive, Suite C, Redlands, California, 92374.

3. Pursuant to 59 O.S. § 358, a PBM shall be licensed in order to provide pharmacy benefits management or any services included under the definition of pharmacy benefits

management found in Oklahoma statutes and must comply with all the applicable laws, rules, and regulations.

4. Pursuant to 36 O.S. § 6965(A), the Insurance Commissioner shall have power and authority to examine and investigate the affairs of every PBM engaged in pharmacy benefits management in this state in order to determine whether such entity is in compliance with the Patient's Right to Pharmacy Choice Act.

5. Pursuant to 36 O.S. § 6966(B)–(C), the Insurance Commissioner shall provide for the receiving and processing, including the investigation of, individual complaints alleging violations of the provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and 59 O.S. §§ 357–360.

6. Pursuant to 36 O.S. §§ 6966-6966.1, following notice and opportunity for a hearing, the Commissioner has the power and authority to censure, suspend, revoke, or place on probation the license of a PBM and, in addition to or in lieu of any censure, suspension, revocation, or probation of the PBM license, impose a civil fine of not less than One Hundred Dollars (\$100.00) and not greater than Ten Thousand Dollars (\$10,000.00) for each count that a PBM has violated a provision of the Patient's Right to Pharmacy Choice Act, 36 O.S. §§ 6958–6968; the Pharmacy Audit Integrity Act, 59 O.S. §§ 356 *et seq.*; and 59 O.S. §§ 357–360.

7. The Insurance Commissioner, pursuant to 36 O.S. § 319, has appointed an independent hearing examiner who shall sit as a quasi-judicial officer.

8. The Insurance Commissioner, pursuant to OAC 365:1-7-5, upon written request reasonably made by a person affected by the hearing and at such person's expense, shall cause a full stenographic record of the proceedings to be made by a competent court reporter.

ALLEGATIONS OF FACT

9. The Department alleges that during a time period beginning on or about November 31, 2021, through approximately February 24, 2023, the Department received at least one hundred and two (102) complaints alleging that Respondent denied prescription claims submitted by Oklahoma pharmacies on behalf of members, whereupon, and in summary, Respondent notified such pharmacies that the prescription claims were being denied in accordance with the member plan restrictions and/or that the members were required to have their prescriptions filled at other specific pharmacies, pharmacy chains, or mail order. Such alleged conduct is evidenced by the following:

- a. On or about March 27, 2022, the Department received a complaint against Respondent, subsequently numbered 93670. According to the complaint, a patient sought a prescription to be filled at the pharmacy of their choice located in Oklahoma, and on or about March 21, 2022, the claim was denied. The agency message from Respondent to support the denial states: "PLEASE HAVE CUSTOMER CALL NUMBER ON BACK OF CARD OR CAREMARK.COM/MOVEMYMEDS REFILLS ARE NOT COVERED." Based on information and reasonable belief of the Department, when the patient called Respondent as directed by the denial message, the patient was informed that they must use CVS pharmacies for fills of the medications. In short, Respondent's reasoning for the denial was that the patient is required to fill their prescriptions at a network provider owned or affiliated with Respondent or via mail order.

- b. On or about June 20, 2022, the Department received a complaint against Respondent, subsequently numbered 93783. According to the complaint, a patient sought three prescriptions to be filled at their pharmacy of choice located in Oklahoma, and on or about June 2022, the claim was denied. The agency message from Respondent to support the denial states relevant in part: “PLEASE HAVE CUSTOMER CALL NUMBER ON BACK OF CARD OR CAREMARK.COM/MOVEMYMEDS REFILLS ARE NOT COVERED.” Based on information and reasonable belief of the Department, when the patient called Respondent as directed by the denial message, the patient was informed that they must use CVS pharmacies for fills of the medications. In short, Respondent’s reasoning for the denial was that the patient is required to fill their prescriptions at a network provider owned or affiliated with Respondent or via mail order.
- c. On or about June 21, 2022, the Department received a complaint against Respondent, subsequently numbered 93740. According to the complaint, a patient sought a prescription to be filled at their pharmacy of choice located in Oklahoma, and on or about June 21, 2022, the claim was denied. The agency message from Respondent to support the denial states relevant in part: “PLEASE HAVE CUSTOMER CALL NUMBER ON BACK OF CARD OR CAREMARK.COM/MOVEMYMEDS REFILLS ARE NOT COVERED.” Based on information and reasonable belief of the Department, when the patient called Respondent as directed by the denial message, the patient was denied the opportunity to opt-out of Respondent’s requirement to fill the prescription at CVS

pharmacies. In short, Respondent's reasoning for the denial was that the patient is required to fill their prescriptions at a network provider owned or affiliated with Respondent or via mail order.

- d. On or about June 28, 2022, the Department received a complaint against Respondent, subsequently numbered 94059. According to the complaint, a patient sought a prescription to be filled at their pharmacy of choice located in Oklahoma, and on or about June 28, 2022, the claim was denied. The agency message from Respondent to support the denial states relevant in part: "PLEASE HAVE CUSTOMER CALL NUMBER ON BACK OF CARD OR CAREMARK.COM/MOVEMYMEDS REFILLS ARE NOT COVERED." Based on information and reasonable belief of the Department, when the patient called Respondent as directed by the denial message, the patient was informed that they must use CVS pharmacies for fills of the medications. In short, Respondent's reasoning for the denial was that the patient is required to fill their prescriptions at a network provider owned or affiliated with Respondent or via mail order.
- e. On or about July 19, 2022, the Department received a complaint against Respondent, subsequently numbered 94059. According to the complaint, a patient sought a prescription to be filled at their pharmacy of choice located in Oklahoma, and on or about July 19, 2022, the claim was denied. The agency message from Respondent to support the denial states relevant in part: "PLEASE HAVE CUSTOMER CALL NUMBER ON BACK OF CARD OR CAREMARK.COM/MOVEMYMEDS REFILLS ARE NOT COVERED." Based

on information and reasonable belief of the Department, when the patient called Respondent as directed by the denial message, the patient was informed that they must use CVS pharmacies for fills of the medications. In short, Respondent's reasoning for the denial was that the patient is required to fill their prescriptions at a network provider owned or affiliated with Respondent or via mail order.

- f. On or about July 27, 2022, the Department received a complaint against Respondent, subsequently numbered 94520. According to the complaint, a patient sought a prescription to be filled at their pharmacy of choice located in Oklahoma, and on or about July 25, 2022, the claim was denied. The agency message from Respondent to support the denial states relevant in part: "PLEASE HAVE CUSTOMER CALL NUMBER ON BACK OF CARD OR CAREMARK.COM/MOVEMYMEDS REFILLS ARE NOT COVERED." Based on information and reasonable belief of the Department, when the patient called Respondent as directed by the denial message, the patient was informed that they must use CVS pharmacies for fills of the medications. In short, Respondent's reasoning for the denial was that the patient is required to fill their prescriptions at a network provider owned or affiliated with Respondent or via mail order.
- g. On or about August 2, 2022, the Department received a complaint against Respondent, subsequently numbered 94613. According to the complaint, a patient sought a prescription to be filled at their pharmacy of choice located in Oklahoma, and on or about August 2, 2022, the claim was denied. The agency message from Respondent to support the denial states relevant in part: "PLEASE HAVE

CUSTOMER CALL NUMBER ON BACK OF CARD OR CAREMARK.COM/MOVEMYMEDS REFILLS ARE NOT COVERED.” Based on information and reasonable belief of the Department, when the patient called Respondent as directed by the denial message, the patient was informed that they must use CVS pharmacies for fills of the medications. In short, Respondent’s reasoning for the denial was that the patient is required to fill their prescriptions at a network provider owned or affiliated with Respondent or via mail order.

- h. Based on information and reasonable belief, the Department has received approximately ninety-five (95) other complaints with the same or substantially similar facts as those described in subparagraphs 9(a)–(i) above whereby, the patient was denied the opportunity to fill prescriptions at their in-network pharmacy of choice by having claims denied with rejection notices and messages directing the customer to “PLEASE HAVE CUSTOMER CALL NUMBER ON BACK OF CARD OR CAREMARK.COM/MOVEMYMEDS REFILLS ARE NOT COVERED” only to receive “customer service” directing the patient to a pharmacy affiliated with Respondent, and/or denying opportunity to opt-out of the requirement of Respondent to fill the medications through pharmacies affiliated with Respondent, and/or referring the prescription to be filled at a pharmacy affiliated with Respondent.

10. The denial of prescription claims described in the above-mentioned individual complaints are known or reasonably believed to be connected to a program offered by Respondent to self-funded health plans titled “Maintenance Choice Program,” which required members to refill

long-term (maintenance) medications in 90-day supply increments and further required the delivery of those medications to be by mail through Respondent's mail-order pharmacy or filled at a retail CVS pharmacy location.

11. On January 19, 2023, the Patient's Right to Pharmacy Choice Commission entered a *Consent Agreement and Order* in 22-0419-DIS, *State of Oklahoma v. Caremark, LLC*, finding in part that the mailing of a certain two hundred and nineteen (219) letters to Oklahoma members and denial of nine (9) prescription claims¹ in connection with the Maintenance Choice Program were in violation of 36 O.S. §§ 6961(C)–(D) and 6963 (D)–(E), and further ordering Caremark, LLC, to work with its clients within thirty (30) days of the *Consent Agreement and Order* to remove the Maintenance Choice Program in its then-current form with the intent for Caremark, LLC, to conduct business in compliance with the laws of Oklahoma while servicing and acting in the best interest of Oklahoma members.

12. On or about February 17, 2023, as a result of the Respondent's chosen method to dismantle the Maintenance Choice Program, Oklahoma residents who participated as members in their employers' self-funded health plans that utilized the Maintenance Choice Program received communications from Respondent and/or their employers, on behalf of Respondent, notifying the Oklahoma resident members that beginning February 23, 2023, 90-day supply increments were prohibited from being filled at any in-network participating pharmacy. Neither the *Consent Order and Agreement* nor the laws of Oklahoma require or mandate such prohibition. The communications from Respondent and/or employers, on behalf of Respondent, further contained

¹ The nine (9) prescription claim denials are identified as Department complaints numbered 92235, 92237, 92232, 92091, 92249, 92268, 93114, and 94895. Neither the two hundred and nineteen (219) mailed letters nor the nine (9) identified prescription claim denials subject to *Consent Agreement and Order* entered in 22-0419-DIS are incorporated in or subject to the above-titled action.

continued restrictive pharmacy choice conditions and the following, or substantially similar to the following, untruthful and harmful statements:

- a. A document titled “CVS/Caremark Maintenance Choice Oklahoma Regulatory Update Frequently Asked Questions” and marked for “Internal Use Only” provides that although CVS Caremark will not allow 90-day prescription fills at Oklahoma CVS retail pharmacies and members will be able to fill 30-day supplies of medications at any participating in-network pharmacy, the member still has the option of obtaining a 90-day supply through CVS Caremark Mail Service Pharmacy.
- b. Upon information and reasonable belief of the Department, a letter dated February 17, 2023, from an employer to its employee members provides the following, or substantially similar the following, statements:
 - i. “The State of Oklahoma lawmakers passed **Oklahoma HB 2632** creating the Patient’s Right to Pharmacy Choice Act. The Oklahoma Insurance Department (OID) and the Pharmacy Choice Commission (PCC) will begin enforcing this law effective **February 23, 2023.**”
 - ii. “The new law will prevent CVS Caremark/CVS Pharmacy from dispensing 90-day supply fills of your medications in the State of Oklahoma.”
 - iii. “Due to this new law, you might pay more for your 30-day-supply script than you did for a 90-day-supply script, as [the employer’s] plan provided some discount for purchasing in 90-day-supply increments.”

- iv. “If you want to continue purchasing your maintenance medications in 90-day supply increments, the CVS Caremark Mail Service Pharmacy is an option that is still available to you.”
- c. Upon information and reasonable belief of the Department, belief, a separate letter from another employer to its employee members provides the following, or substantially similar the following, statements:
 - i. “As required by the State of Oklahoma Insurance Commissioner, effective **February 23, 2023**, your 90-day Maintenance Choice prescription benefit will no longer be available.
 - ii. “Starting February 23, 2023, to stay in compliance with the requirements of the State of Oklahoma, . . . discounts for 90-day prescriptions will no longer be applied. You should anticipate an increase to the cost of your maintenance medications.”
 - iii. “If you wish to continue receiving a 90-day supply of a maintenance medication through CVS mail order, your physician will need to send a new prescription to the CVS Mail Order Pharmacy.”

13. Beginning on February 17, 2023, the Department received complaints against Respondent correlating with the communications and actions described in paragraph 12 contained in complaint file number 115183. The complaints evidence that Respondent continued to direct patients to specific pharmacies, pharmacy chains, or mail service affiliated with Respondent. Examples include, but are not limited to, the following:

- a. On or about March 4, 2023, a complainant was denied a claim submitted to Respondent for the reason that 30-day prescriptions are not covered unless the patient opts out of the Maintenance Choice Program and further instructs to call customer care or obtain a 90-day prescription at CVS.
- b. On or about March 17, 2023, a complainant reported to the Department that when seeking to fill a 90-day supply prescription at a local pharmacy of choice, the complainant was notified by the Respondent that the State of Oklahoma does not allow the filling of 90-day supply prescriptions but there is an option for 90-day supply prescriptions to be filled through CVS Mail Order Pharmacy.

14. In short, after removing the Maintenance Choice Program in accordance with the *Consent Agreement and Order* in 22-0419-DIS, *State of Oklahoma v. Caremark, LLC*, Respondent continued to restrict Oklahoma resident members' choice of in-network provider for prescription drugs by prohibiting the filling of all 90-day supply increments at any in-network pharmacy with the exception of CVS/Caremark Mail Service Pharmacy. Moreover, Respondent and employers on behalf of Respondent spread harmful misinformation alleging that the State of Oklahoma, the Oklahoma Insurance Department, and/or the Oklahoma Insurance Commissioner did not allow the filling of 90-day supply prescriptions and caused an increase in prescription cost when in actuality these were a result of the actions and decisions of Respondent when dismantling the Maintenance Choice Program.

15. On or about March 10, 2023, in an effort to cease the behavior described in paragraphs 13 and 14, Respondent elected to terminate offering mail service as a pharmacy option for all Oklahoma resident members impacted by the removal of the Maintenance Choice Program.

Upon information and reasonable belief of the Department, Respondent continues to offer mail service pharmacy as a pharmacy choice to clients and members in Oklahoma that did not previously participate in the Maintenance Choice Program. Accordingly, the termination of offering mail service as a pharmacy option for Oklahoma resident members' that previously participated in the Maintenance Choice Program is a continued restriction on individuals' choice of in-network provider to solely that of a retail pharmacy.

16. Pursuant to 36 O.S. 6961(C), “[p]harmacy benefits managers shall not require patients to use pharmacies that are directly or indirectly owned by the pharmacy benefits manager, including all regular prescriptions, refills or specialty drugs regardless of day supply.”

17. Pursuant to 36 O.S. § 6962(B)(1), a PBM shall not “[c]ause or knowingly permit the use of advertisement, promotion, solicitation, representation, proposal or offer that is untrue, deceptive or misleading.”

18. Pursuant to 36 O.S. § 6963(D), “[a] . . . PBM “shall not restrict an individual’s choice of in-network provider for prescription drugs.”

19. Pursuant to 36 O.S. § 6963(E), “[a]n individual’s choice of in-network provider may include a retail pharmacy or a mail-order pharmacy. A health insurer or PBM shall not restrict such choice. Such health insurer or PBM shall not require or incentivize using any discounts in cost-sharing or a reduction in copay or the number of copays to individuals to receive prescription drugs from an individual’s choice of in-network pharmacy.”

ALLEGED CONCLUSIONS OF LAW

20. The facts set forth above in paragraphs 9 and 12–14 of the Alleged Findings of Fact herein demonstrate that Respondent violated 36 O.S. § 6961(C) by requiring patients to use pharmacies that are directly or indirectly owned by Respondent.

21. The facts set forth above in paragraphs 12 and 14 of the Alleged Findings of Fact herein demonstrate that Respondent violated 36 O.S. § 6962(B)(1) by causing or knowingly permitting itself or its agents to share untrue, deceptive, and misleading information to Oklahoma member residents.

22. The facts set forth above in paragraphs 9 and 12–14 of the Alleged Findings of Fact herein demonstrate that Respondent violated 36 O.S. § 6963(D) by restricting patients' choice of in-network providers for prescription drugs; and

23. The facts set forth above in paragraphs 9 and 12–15 of the Alleged Findings of Fact herein demonstrate that Respondent violated 36 O.S. § 6963(E) by restricting patients' choice of utilizing either a retail pharmacy or a mail-order pharmacy as the preferred in-network provider and by using discounts in cost-sharing, reductions in co-pay or the number of copays, to require or incentivize individuals to receive prescription drugs from their choice of in-network pharmacy.

WHEREFORE, premises considered, the Department requests that, with respect to the specific violations alleged herein, the Insurance Commissioner enter an order against Respondent to censure, suspend, place on probation, or revoke the license of Respondent; to require restitution; and/or levy fines in an amount of not less than One Hundred Dollars (\$100.00) and not greater than Ten Thousand Dollars (\$10,000.00) for each violation a provision of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act or Sections 357 through 360 of Title 59

of the Oklahoma Statutes, and any further relief, which may be appropriate and authorized by law, whether or not specifically requested herein, consistent with 36 O.S. §§ 101, *et. seq.*, the Pharmacy Audit Integrity Act, 59 O.S. §§ 356, *et. seq.*; 59 O.S. §§ 357 through 360; and the Patient's Right to Pharmacy Choice Act, 36 O.S. §§ 6958, *et. seq.*

Further and pursuant to 36 O.S. §§ 101, *et. seq.*, the Pharmacy Audit Integrity Act, 59 O.S. §§ 356, *et. seq.*; 59 O.S. §§ 357 through 360; and the Patient's Right to Pharmacy Choice Act, 36 O.S. §§ 6958, *et seq.*; or the common law theories of payment by mistake, unjust enrichment, and fraud, the Department specifically reserves its right to pursue, through separate action, any civil or administrative remedy or monetary claim the Department has pertaining to any complaint, investigation, evaluation, examination or review with respect to the same or similar conduct by Respondent as alleged herein, but which is not specifically addressed herein.

NOTICE

WHEREFORE, Respondent is hereby given notice of a **hearing to be held at 9:30 A.M. on the 25th day of May, 2023**, at the Office of the Insurance Commissioner, 400 N.E. 50th Street, Oklahoma City, Oklahoma 73105, to determine if there are any reasons why Respondent's license in the State of Oklahoma should not be censured, suspended, placed on probation, or revoked; why Respondent should not be ordered to pay restitution and/or fines; and/or why other appropriate penalties pursuant to 36 O.S. §§ 6966–6966.1 should not be imposed. The proceedings will be conducted in accordance with the Oklahoma Insurance Code, 36 O.S. §§ 101, *et seq.*, and the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250–323.

Respectfully submitted this 31st day of March, 2023.



GLEN MULREADY
INSURANCE COMMISSIONER
STATE OF OKLAHOMA

Molly Clinkscales

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CERTIFICATE OF MAILING

I, Sherry Standerfer, hereby certify that a true and correct copy of the above and foregoing *Notice of Hearing and Order to Show Cause* was sent by mail, postage prepaid, on this 31~~st~~ day of March, 2023 to:

Caremark, LLC
1833 South Morgan Road
Oklahoma City, OK 73128

CERTIFIED MAIL NO. **7022 2410 0003 2697 7701**

Caremark, LLC
1 CVS Drive
Woonsocket, RI 02895

CERTIFIED MAIL NO. **7022 2410 0003 2697 7718**

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J. Angela Ables, OBA # 112
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201 Robert S. Kerr Ave., Ste. 600
Oklahoma City, Oklahoma 73102
aables@kiralaw.com

CERTIFIED MAIL NO. **7022 2410 0003 2697 7732**

And that a copy was delivered to:

Tracy Keeley and Sarah Smith-Drozdo
PBM Compliance and Enforcement Division, Oklahoma Insurance Department


SHERRY STANDERFER ✓