

STATE OF LOUISIANA
Plaintiff

Versus

CAREMARKPCS HEALTH, LLC
CVS HEALTH CORP
Defendants

27th JUDICIAL DISTRICT COURT
ST. LANDRY PARISH, LOUISIANA
CASE NO.: _____

PETITION FOR INJUNCTION,
RESTITUTION, CIVIL PENALTIES, AND OTHER RELIEF

NOW INTO COURT, through undersigned counsel, comes the State of Louisiana through the Honorable Liz Murrill, Attorney General, and respectfully submits the following Petition.

I. Nature of the Action

1. This is a civil enforcement action brought by the State of Louisiana, through its Attorney General, to hold CVS Health Corporation, CaremarkPCS Health, L.L.C., and affiliated entities accountable for unfair, deceptive, and unlawful practices that have harmed Louisiana’s independent pharmacies, and the public at large.
2. Defendants operate one of the nation’s largest vertically integrated pharmacy enterprises, controlling the flow of prescription drugs from formulary design and pricing negotiations to pharmacy reimbursement, health insurance coverage, and drug dispensing. Through CVS Caremark, their pharmacy benefit manager (PBM), Defendants exert enormous influence over the prescription drug market in Louisiana. That influence has been wielded not to lower drug costs or enhance access, but instead to manipulate prices, restrict competition, and channel profits internally, all while operating behind a veil of contractual and financial opacity.
3. Among other things, the Defendants have abused their market position by systematically under-reimbursing independent Louisiana pharmacies to the point of economic hardship, while routing patients to CVS-owned facilities; engaging in spread pricing; and charging unlawful fees.
4. The practices described herein violate Louisiana statutes that regulate PBMs, and constitute violations of the Louisiana Unfair Trade Practices Act, La. R.S. 51:1405.
5. Through this action, the State of Louisiana, through the Attorney General, invokes Section 1407 of the Unfair Trade Practices Act, and seeks injunctive relief, civil penalties, restitution, and any other relief the Court deems just and necessary to restrain and remedy these ongoing violations of law.

II. Parties

6. Plaintiff, the State of Louisiana ("State") is a sovereign state that fulfills its duties to its citizens through various offices established by law. The Attorney General has the constitutional and statutory authority to bring this action on behalf of the State, and in the public interest of the citizens of the State of Louisiana.
7. Defendant CAREMARKPCS HEALTH, LLC ("CaremarkPCS") is a Delaware limited liability company with its principal place of business at One CVS Drive, Woonsocket, Rhode Island, 02895. CaremarkPCS is registered to do business in Louisiana and can be served through its designated registered agent, National Registered Agents, Inc., located at 3867 Plaza Tower Dr., Baton Rouge, Louisiana 70816. CaremarkPCS is registered as a third-party administrator with the Louisiana Department of Insurance.
8. Defendant CVS HEALTH CORP ("CVS Health") is a Delaware limited liability company with its principal place of business at One CVS Drive, Woonsocket, Rhode Island, 02895. Defendant CaremarkPCS is a wholly owned subsidiary of CVS Health. CVS Health holds itself out as deliberately directing, and is therefore responsible for, CaremarkPCS' forum-related activities. Among other things:
 - A. Prior to 2014, CVS Health bore the name CVS Caremark Corporation. When announcing its name change in 2014, CVS Health stated that its PBM services would continue to be known as "CVS/Caremark."
 - B. CVS Health continues to use CVS Caremark to refer to its PBM services on its website and in other locations.
 - C. The website located at www.caremark.com bears the name CVS Caremark.
 - D. CVS Health states in its filings with the U.S. Securities and Exchange Commission that its "Pharmacy Services segment provides a full range of PBM solutions, including plan designs offerings and administration, formulary management, retail pharmacy network management services, and mail order pharmacy."
 - E. Likewise, CVS Health has stated that as part of its PBM services, CVS Health designs pharmacy benefit plans and negotiates with pharmaceutical companies to obtain discounted acquisition costs for many of the products on CVS Health's drug lists.

9. Defendants CaremarkPCS and CVS Health are referred to as "CVS Caremark." At all relevant times CVS Caremark transacted and continues to transact business in Louisiana.

III. Jurisdiction and Venue

10. The district court has subject matter jurisdiction as the court of general jurisdiction.
11. This Court has personal jurisdiction over the Defendants pursuant to La. C.C.P. Art. 6, La. 51:1407(A), 51:1418, and related statutes, because the Defendants engage in commercial transaction within Louisiana, and purposefully directs its action towards Louisiana, and has the requisite minimum contacts within Louisiana to permit this Court to exercise jurisdiction.
12. Venue is proper in St. Landry Parish because the unlawful acts complained of in this Petition occurred in this Parish and resulted in damages sustained in this Parish.

IV. Facts

A. CVS Has Vertically Integrated Pharmacy Services in Louisiana.

13. CVS Caremark controls multiple, interlocking stages of the pharmaceutical supply and reimbursement chain—from insurance to drug pricing, to pharmacy distribution and dispensing. This structure gives it market power not just horizontally (as one of the largest PBMs), but vertically across multiple tiers of the healthcare system.
14. The Defendants' vertical integration across the pharmacy value chain includes the following:
15. As a PBM, CVS Caremark negotiates with: drug manufacturers for rebates and formulary placement; pharmacies (including its own competitors) for reimbursement rates; health plans/employers/governments to administer drug benefits, and therefore controls drug pricing, access, and reimbursement.
16. CVS Health owns over 70 pharmacies in Louisiana, as well as CVS Specialty Pharmacy (a major specialty drug provider), and CVS Mail Order and Long-Term Care pharmacy (Omnicare); and therefore captures dispensing revenues and steers patients to its own pharmacies.
17. CVS Caremark acquired Aetna in 2018—one of the largest health insurers in the United States. Through Aetna, CVS designs and manages plans that use Caremark as the PBM and CVS as the pharmacy. Aetna operates in Louisiana across multiple plan types, including:

18. Medicaid (Aetna Better Health of Louisiana) Aetna offers Medicaid plans under the state's Healthy Louisiana program. Specifically, "Aetna Better Health of Louisiana" is available statewide for Medicaid beneficiaries.
19. Aetna provides Medicare Advantage, Medicare Part D prescription drug plans, and Medicare Supplement (Medigap) coverage in Louisiana.
20. Louisiana-based individuals and small businesses can access Aetna's ACA (Obamacare) marketplace plans and employer-sponsored coverage, offered under the combined "Aetna CVS Health" umbrella.
21. Aetna's doctor and hospital network includes providers throughout Louisiana, often used by major institutions like LSU First—where Aetna is part of the provider network.
22. CVS operates MinuteClinics, HealthHUBs, and home infusion services, and provides chronic care and medication adherence programs (run through the PBM and pharmacy), and therefore has vertical control over diagnosis, prescription, and fulfillment.

B. CVS abuses its market power to inflict economic harm on independent pharmacies.

23. Independent pharmacies play a crucial role in the Louisiana healthcare system by dispensing medications, compounding medications, and managing medication therapy. To serve patients that have prescription drug coverage through their health insurance, pharmacies must work through PBMs that administer prescription drug benefits on behalf of health insurers.
24. PBMs, such as CVS, function as payment processors in the distribution of prescription drugs. Six PBMs control 95% of all prescriptions filled in the nation. The "Big Three" PBMs—Express Scripts, CVS Caremark, and OptumRx—control more than 80% of the prescriptions filled in the U.S.
25. The Big Three PBMs are each owned by the largest health insurance companies in the United States: Cigna (Express Scripts), United Health (OptumRX), and Aetna/CVS Health (CVS Caremark).¹
26. Pharmacies that are part of a PBM's Pharmacy Network purchase drugs from a Manufacturer or wholesaler, and after these drugs are dispensed to a patient, the PBM reimburses the pharmacy under the pharmacy's contract with the PBM.

¹ CVS Health Corporation owns both the health insurer, Aetna, and its PBM, CVS Caremark.

27. To be able to serve their patients, i.e. to accept health insurance reimbursements rather than charge their patients cash, independent pharmacies have no choice but to contract with each of the Big Three PBMs.
28. CVS's enormous market power allows them to decide what drugs pharmacies will receive reimbursements for on behalf of patients, and the reimbursement rates. On information and belief, CVS does this without disclosing how much they charge and how much they earn through their opaque role in the drug reimbursement process.
29. CVS's structure and market power also allows them to impose crippling fees on independent pharmacies, which can severely decrease the effective reimbursement rates, and thus the financial viability of independent pharmacies.
30. Independent pharmacies generally cannot decline to deal with CVS Caremark because of its control of access to over 15% of the Louisiana private market. The greater the number of plan members that a PBM represents, the greater its market power. Independent pharmacies have no realistic option other than to accept CVS's terms because they cannot reasonably operate if they are cut off from such a large segment of potential customers.
31. CVS's market power is further cemented by the fact that pharmacy customers are locked into their health insurance plans. By the time a customer arrives at a pharmacy counter to obtain prescription drugs, the PBM that will process that transaction is set. The claim is processed through the PBM automatically. Neither the consumer nor the pharmacy has the option to switch to a different PBM to seek better reimbursement rates or lower fees from a different PBM.
32. A pharmacy can hypothetically refuse to contract with CVS, but the predictable result is that customers compelled to use CVS's network will be forced to take their prescription drug business to other pharmacies.
33. CVS, like other PBMs, charges pharmacies various types of Direct and Indirect Remuneration (DIR) fees. These fees are often applied retroactively and are imposed in various types, as further described in the following paragraphs.
34. Performance-Based DIR Fees: On information and belief, these fees are tied to specific performance metrics set by CVS. CVS audits pharmacies for medication adherence rates, generic dispensing rates, and other clinical outcomes. If a pharmacy fails to meet these metrics, CVS may charge higher DIR fees. This type of fee is nominally intended to

incentivize pharmacies to improve their performance but in effect is financially burdensome, especially for pharmacies serving complex patient populations.

35. **Clawback Fees:** On information and belief, clawback fees are a form of retroactive charge where CVS recoups a portion of the reimbursement paid to pharmacies after the point of sale. These fees are typically calculated based on the total cost of the drugs dispensed or specific contractual agreements. Clawbacks create financial uncertainty for pharmacies as they cannot predict their final reimbursement amounts at the time of sale. They frequently result in forcing pharmacies, especially independent pharmacies, to incur a net loss for each unit dispensed to a consumer. These fees, however, are not passed on to the consumer in the form of price reductions. This practice is prohibited under La. R.S. 22:1860.3.
36. **Fixed or Variable DIR Fees:** On information and belief, some DIR fees charged by CVS are fixed amounts per prescription, while others vary based on the cost of the medication or other factors. These fees can be applied uniformly or tiered based on different thresholds and performance targets. The variability and complexity of these fees can make it difficult for pharmacies to manage their finances effectively, and again frequently result in forcing (independent) to operate at a net loss. These fees, however, are not passed on to the consumer in the form of price reductions.
37. **Rebate-Based DIR Fees:** On information and belief, CVS may also charge DIR fees based on the rebates they negotiate with drug manufacturers. These savings occasioned by these rebates are not passed on to the pharmacies or patients. Instead, the rebates contribute to the CVS's revenue, and the associated DIR fees are deducted from the pharmacies' reimbursements.
38. **Administrative Fees:** In addition to performance-based and rebate-related fees, CVS may charge pharmacies administrative fees that cover the cost of managing pharmacy networks and processing claims. These fees can further reduce the net reimbursement that pharmacies receive, adding to their financial burden and operating losses.
39. **Contracts between CVS and pharmacies** are highly complex and opaque, making it difficult – and often impossible – for pharmacies to fully understand the terms. This complexity can include the convoluted reimbursement formulas, various fees, and performance metrics, discussed above. In addition, independent pharmacies do not even have access to the complete terms of their contracts with CVS.

40. Independent pharmacies also typically operate on small margins. As a result, they are disproportionately affected by DIR fees compared to large chain pharmacies. Unlike the “big box” retail-chain pharmacies, independent pharmacies do not have bargaining power to negotiate terms with PBMs.
41. In violation of the express provisions of La. R.S. 22:1860.3, on information and belief, CVS uses its market power to reimburse independent pharmacies on a net basis less than chain pharmacies or their affiliates for the same drugs.
42. In violation of the express provisions of La. R.S. 22:1860.3, on information and belief, CVS uses its market power to reimburse independent pharmacies on a net basis less than it reimburses its affiliates for providing the same services.
43. In violation of the express provisions of La. R.S. 22:1860.3, on information and belief, CVS provides limited information to independent pharmacies about how DIR fees are calculated and applied.
44. On information and belief, the result is that CVS often reimburses pharmacies at a net rate (post adjustments) that are below the pharmacies’ cost of acquiring the medications. This practice puts significant financial pressure on pharmacies, particularly independents, which may not have the negotiating power to secure better terms. This practice also violates the express provisions of This practice violates the express provisions of La. R.S. 22:1860.3
45. According to the Louisiana Association of Independent Pharmacies (“LIPA”), more than 100 pharmacies closed in Louisiana in 2023, which has a particularly harmful impact on access to care and drug access in rural areas of the State.
46. On information and belief, CVS often enters exclusive contracts with large pharmacy chains, limiting the ability of independent pharmacies to join networks. This restricts patient choice and can lead to higher costs for those who are forced to use out-of-network pharmacies. Additionally, these exclusive arrangements often mean patients have fewer options for accessing medications, particularly in underserved or rural areas.
47. On information and belief, CVS also engages in spread pricing, wherein CVS negotiates prices with pharmacies and separately negotiates prices with health insurers. For example, if CVS pays a pharmacy \$50 for a prescription but charges a health plan \$70 for the same prescription, the \$20 difference is the spread that CVS retains as profit. This model allows

CVS to generate significant revenue by leveraging its negotiation power with both pharmacies and clients.

48. Spread pricing is expressly prohibited by La. R.S. 22:1867.

49. On information and belief, CVS often threatens to remove independent pharmacies from their network, or otherwise retaliates or penalizes independent pharmacies, based on a pharmacy's inability to afford to fill certain prescriptions, even if that pharmacy would have to sell the prescription at a net loss. This is a further instance of CVS using its market power to unfair and anticompetitive ends.

50. The above-described conduct constitutes multiple violations of the section of the Insurance Code that governs the payment of pharmacy benefit claims. By operation of statute, each such violation is also a violation of La. R.S. 51:1405.

V. Causes of Action: the Louisiana Unfair Trade Practices Act

51. The State incorporates by reference the allegations contained in preceding paragraphs of this Petition as though fully set forth herein.

52. La. R.S. 22:1860.3 governs the PBM reimbursement process.

53. Section 1860.3 mandates, *inter alia*, as follows:

- a. "A pharmacy benefit manager or person acting on behalf of a pharmacy benefit manager shall not reimburse a pharmacy or pharmacist in this state an amount less than the amount that the pharmacy benefit manager reimburses an affiliate of the pharmacy benefit manager for providing the same services."
- b. "Any pharmacy or pharmacist who has a contract, either directly or through a pharmacy services administration organization, with a pharmacy benefit manager administering any type of drug or pharmacy benefit plan to provide covered drugs, devices, or services at a contractual reimbursement rate may decline to provide a covered drug, device, or service if the pharmacy or pharmacist will be or is paid less than the acquisition cost for the covered drug, device, or service."
- c. "The commission of any act prohibited by this Section shall be considered an unfair method of competition and unfair practice or act which shall subject the violator to any and all actions, including investigative demands, private actions, remedies, and penalties, provided for in the Unfair Trade Practices and Consumer Protection Law, R.S. 51:1401 et seq."

54. La. R.S. 22:1867 makes spread pricing an unfair trade practice as follows:

- a. “A pharmacy benefit manager is prohibited from conducting or participating in spread pricing in this state unless the pharmacy benefit manager provides written notice as provided in Subsection B of this Section.”
- b. Any violation of this Section that is committed or performed with such frequency as to indicate a general business practice shall be subject to the provisions of the Unfair Trade Practices and Consumer Protection Law, R.S. 51:1401 et seq., as provided in R.S. 40:2870(B).

55. CVS’s business practices with the independent pharmacies of Louisiana constitute unfair competition, and are deceptive, unscrupulous, contrary to public policy, and substantially injurious to the public, in violation of La. R.S. 51:1405.

56. Specifically, CVS’s abuse of its enormous market power to impose unethical, unscrupulous, and exorbitantly high fees on independent pharmacies—under threat of being expelled from the CVS network—amounts to unfair competition and unfair trade practice.

57. CVS’s abuse of its enormous market power to impose unethical, unscrupulous, and exorbitantly low reimbursement rates on independent pharmacies—under threat of being expelled from the CVS network—amounts to unfair competition and unfair trade practice.

58. CVS’s abuse of its enormous market power to engage in covert spread pricing to further enrich itself at the expense of the independent pharmacies in its network amounts to an unfair trade practice.

59. CVS’s unfair competition and trade practices as described herein are ongoing within Louisiana, and is likely to continue without an injunction.

VI. Relief Requested

60. Plaintiff, State of Louisiana, hereby demands a trial by jury on all claims so triable pursuant to LA C.C.P. Art. 1731 and related statutes.

61. WHEREFORE, Plaintiff prays that, in due course, the Court issue a permanent injunctive order against Defendants, including any employees, agents, contractors, and those persons in active concert or participation with them, to restrain, enjoin, and prohibit Defendants from:

- A. Engaging in any activity in violation of LUTPA;

- B. Engaging in any activity in violation of La. R.S. 22:1860.3, 1867.
- C. Obfuscating or otherwise manipulating prices and payments made for prescription drugs;
- D. Any other provisions that are found to be equitable after a trial of this matter.

62. Plaintiff further prays for relief as follows:

- A. In due course, the Court issue an Order that Defendants pay restitution to the State of Louisiana for all expenses reasonably related to their practices described herein through any manner deemed practicable by the Court.
- B. Plaintiff further prays that, in due course, the Court issue an Order requiring Defendants to reimburse the Office of the Attorney General for all costs and expenses incurred in the investigation and prosecution of this action, including attorney's fees under LSA-R.S. 51:1408 and 1409 and LSA-R.S. 46:438.6.
- C. Plaintiff further prays for judgment in favor of Plaintiff and against Defendants under LUTPA for restitution and disgorgement under LSA-R.S. 51:1408 and civil penalties under LSA-R.S. 51:1407 for Defendants' violations.
- D. Plaintiff further prays for all additional civil penalties allowable under law.
- E. Plaintiff further prays for all additional damages allowable under law.
- F. Plaintiff further prays that this Court grant any further relief that it finds justice may require or is otherwise equitable.

RESPECTFULLY SUBMITTED:

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