

CVS Caremark:

Raising Costs, Limiting Access, and Choking Competition

In March 2007, CVS, the nation's largest retail pharmacy, merged with Caremark, the nation's largest Pharmacy Benefits Manager. The resulting prescription giant operates more than 6,800 pharmacies, with the number one or two market share in each of the country's top ten markets, with a market share as high as 47%, and covers 134 million lives (more than twice as many as any other PBM). **The company dominates the pharmaceutical services industry, filling or managing more than 1.2 billion prescriptions annually, servicing an estimated 1 of 2 Americans.**

By controlling Caremark, CVS has access to the most competitively sensitive information of competitor pharmacies including the identity of their customers and prescribers, the drugs prescribed, the cost of the drugs, the amount of drugs acquired, the drug acquisition cost, and the reimbursement amount. By owning Caremark, CVS controls reimbursement for a substantial segment of reimbursement for its competitors. **In no other industry does a participant have this type of control or access to this type of information of its competitors. Moreover, CVS abuses that power to raise costs and limit access.**

How does this affect patients nationwide?

The following pages summarize complaints received from patients and their pharmacists from across the country that document the ways in which CVS Caremark has improved its profit margin at the expense of patient care. These complaints show that:

- **CVS Caremark's conduct raises cost to many consumers while limiting choice, access, quality and convenience for several thousands of others across the country;**
- **CVS Caremark claims to have comprehensive firewall policy to keep customers and rivals protected from misuse of information, but it continues to abuse the PBM-retail relationship to drive business to CVS;**
- **CVS Caremark raises costs to employer- and government-sponsored plans by creating waste and abusing the PBM-retail relationship; and**
- **CVS Caremark's specialty pharmacy policies are dangerously irresponsible. They increase CVS Caremark's profits at direct expense to the patient's quality of care.**

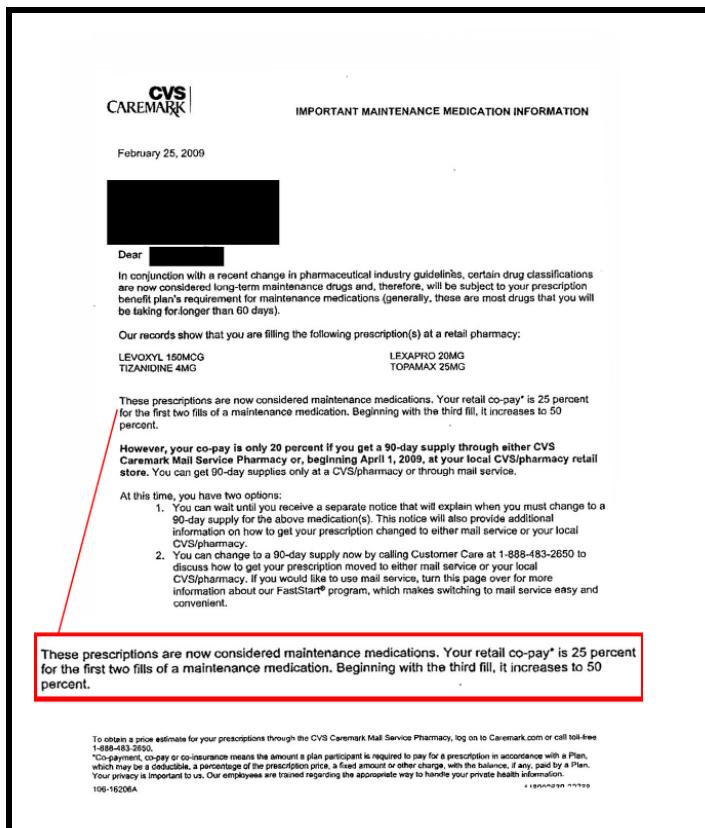
CVS Caremark's conduct raises costs to many consumers and limits choice, access, quality and convenience for patients.

The "Maintenance Choice" program forces patients to use only CVS Caremark

The program harms patients by limiting their options for care and forcing them to pay higher copays if it is inconvenient or infeasible for them to use CVS retail or Caremark mail order. Patients receive letters indicating that they can fill 0, 1, 2, or 3 more fills at the pharmacy of their choice. After that, refills are either not covered or subject to "penalty copays" as high as \$50. **This feature, which plans say is offered to them as their only option if they contract with Caremark, is limiting patient access and forcing those with special needs to pay more for health care.**

"This is 80-year old people who you're telling they can't go to their local pharmacy where they've been going for 40 years. They still come to us with questions – they say, 'they don't answer the phone; I can't get anybody.' So we'll look things up for them to tell them if anything interferes. We don't get paid for it, but we're gonna spend time counseling them because we're not going to turn them away...Some of our patients even pay out of pocket to avoid having to use CVS. They say they don't trust them. So they pay for insurance and their drugs."

- Pharmacist T. in New Jersey



Some letters under Caremark's "incentivized" plan design indicate that prescriptions filled at non-CVS locations "would be subject to an increased copay." **Patients in various states reported that their copays at their local pharmacies increased by as much as 900% following this notice – often to far more than the cash price or acquisition cost of the drug.**

In New England, Pharmacist D. was appalled when his patient's copay on a monthly refill suddenly increased from approximately \$5 to \$50. When he asked her if she knew why, she said she had been receiving letters that said she would have to transfer to CVS or use mail order and get a 3-month supply that is too heavy for her to lift (this particular patient is 94 years old).

Above, a letter to a Kansas patient explaining the pending rise in copay at non-CVS stores – from 25% to 50%.

These plans are implemented with no regard for the effects on the patient:

There are many affected patients for whom getting to CVS is impractical (hours away by car) or who cannot use mail order – either because mail is irregular at their home, they split time between several residences, they have limited English skills, or they have a condition like dementia or schizophrenia that makes paperwork impossible. Still others require special services, such as delivery, infusion or pill-splitting, that are not offered at CVS retail or Caremark mail order. **These patients pay full price out-of-pocket for their drugs – if they can afford it. Others simply go without their medication.**

At right, a model letter like those sent to patients on the most restrictive form of Maintenance Choice plans, which prohibits reimbursements on maintenance medications filled at any non-CVS pharmacy.

Who does this affect?

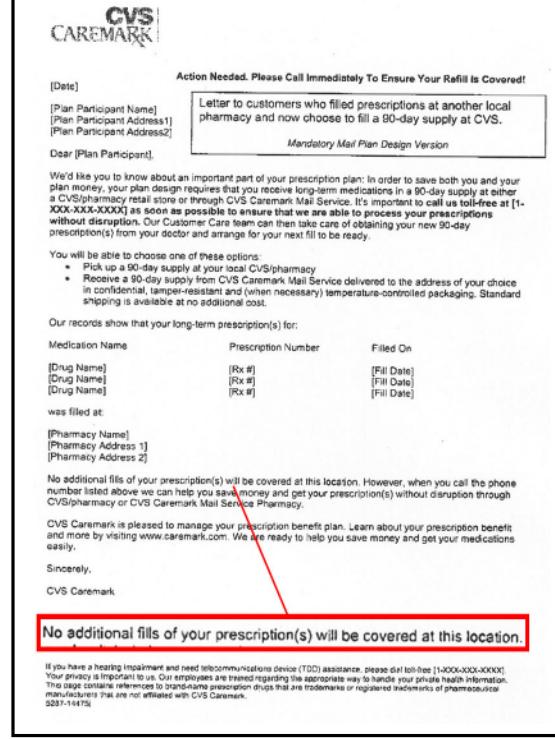
Leona in Texas, who at 98 years old was released from the emergency room for bleeding ulcers and had one crucial prescription denied (incidentally, the one drug in her maintenance regimen that costs over \$100 to reimburse). Leona was “lucky” enough that her daughter was able to drive to the nearest CVS – a 40-minute round-trip – to pick up that single brand-name prescription (instead of being with her mother).

In Iowa, Pharmacist J.’s patient, a gentleman in his seventies, arrived at J’s pharmacy after dental surgery with an acute prescription for a one-time fill. However, when he attempted to fill it, it was denied. J. contacted Caremark to ask why, and was told that because it could be considered a maintenance medication, it had to be filled at CVS. **The patient had to drive ten miles to the downtown area, while in serious pain after surgery, in order to get his medication.**

In New Jersey, Pharmacist S.’s **74-year-old patient** splits her time between a caregiver and her daughter’s home. She was told that she had to use mail order or go to a CVS instead of using her usual community pharmacy. The patient was very upset, as mail order is impractical for her due to her changing locations, and it is difficult for her caregivers to seek out a CVS pharmacy. **The patient, however, has to comply with this decision if she wants her medication to be covered.**

Jeanine in Kansas, who had to get four prescriptions in her first month under “Maintenance Choice” to adjust her dose of nerve pain medicine and was surprised when the fourth fill was denied. Caremark instructed her to use CVS retail or Caremark mail order if she wanted the drug to be covered. Since going to CVS would require a two-hour round-trip which she could not make, **Jeanine was forced to wait two weeks – suffering from severe pain her pharmacist described as “like being on fire” – before Caremark delivered her drug in the mail, since the company refused to allow an emergency fill.**

The Maintenance Choice program is good for CVS Caremark’s bottom line, but it harms patients – especially the elderly, the very ill, and patients with limited means. Forcing patients to accept this level of care from a plan that they cannot themselves choose is bad healthcare policy.



CVS Caremark claims to have comprehensive firewall policy to keep customers and rivals protected from misuse of information, but it continues to abuse the PBM-retail relationship to drive business to CVS.

CVS Caremark can use audit information and claims data to gain unfair competitive advantage in determining where to open stores.

Pharmacists report that since the CVS/Caremark merger, Caremark auditors have requested inappropriate information such as aggregate sales data for all customers while refusing to give written guarantees that the information will not be shared with the retail portion of the business. **In no other industry is a competitor allowed this type of access to its rivals' competitively sensitive information – and CVS Caremark is abusing that ability.**

One pharmacist, who asked not to be identified by state or initial, reported that in his most recent audit by Caremark, they requested his pharmacy's aggregate purchasing volume and other records not related to Caremark plan customers. Moreover, Caremark refused to give written assurance that the information would not be shared with the retail side of the business. He had no choice but to comply.

CVS Caremark's ability to extract its rivals' competitively sensitive information using this tactic is completely inappropriate and could lead to reduced competition in the retail pharmacy market.

CVS uses Caremark claims data to secretly switch patients' prescriptions:

Patients in three different states (including at least one patient on a Medicare Part D plan) reported having their refills rejected because a CVS retail location had already filled the prescription.

CVS Caremark contacts physicians, without the patient's permission, to obtain new prescriptions and fill them at CVS pharmacy or by mail order. CVS pharmacy has no way of knowing which prescriptions to ask the doctor to reissue except via claims data submitted by the patients' pharmacist. **Using PBM information to poach a prescription without the permission of the patient is absolutely a violation of patients' rights, as well as an unfair competitive advantage.**

Who does this affect?

Pharmacist R.'s longtime patient in Louisiana was shocked when her monthly refill was denied and the system claimed the drugs had already been processed – at a CVS pharmacy two towns over. When R. called to ask why the drugs had been filled at a different pharmacy without the patient's request, the CVS pharmacy refused to comment and only said "we'll back them out." **CVS could only have gotten the information for that fill using Caremark claims data.**

Pharmacist G. in New England's patient got a surprising call from her doctor saying that CVS Caremark had called to request a new copy of her prescription to fill at CVS. This patient is elderly, has been going to G. for thirty years, and wants to continue using her local community pharmacy. The unsolicited call to her doctor's office is coupled with monthly "refill reminders" this patient receives from CVS Caremark which suggest that she refill her prescriptions at CVS and are sent using information from claims that G. transmits for claims adjudication.

Caremark uses data from claim submissions to call customers and direct them to switch to CVS pharmacies:

Caremark patients across the country who had never used CVS for prescriptions reported that CVS Caremark repeatedly called them – sometimes within hours of filling their prescriptions at their local community pharmacy – and told them they could have bought their drugs at a lower price at CVS.

- Several patients told their pharmacists they felt threatened or harassed by the frequent phone calls and letters. Elderly patients especially believed they would lose their coverage if they did not comply with requests to use CVS retail.

JJ in New York received one such call from a CVS Caremark representative on a Saturday afternoon. She got so “nervous” during the call when she got the idea that her plan would stop covering her Medicare Part D plan if she didn’t switch her prescriptions to CVS as requested that she agreed to leave the pharmacy she had been using for years. Afterward, she spoke with her local pharmacist and when he told her she’d be able to keep her coverage, she canceled the transfers.

Two hours after filling her regular prescription at her longtime local pharmacy, a Michigan patient was called at home by Caremark. The caller told her how much money she could have saved on her last purchase if she had taken her business to a CVS retail location or sent it to CVS Caremark mail order instead. The patient was very upset and called to notify her pharmacist.

“One of my valued and much beloved long-term patients is practically being harassed by an automated telephone service from CVS Caremark. The service calls her and leaves a message on her answering machine soliciting her to return the call to a toll free number. According to my patient this is a daily occurrence.”

-Pharmacist L. in Illinois

For some medications, Caremark reimburses non-CVS pharmacies at a price so far below cost that only CVS pharmacies are able to dispense the medication to customers with Caremark coverage.

This practice drives business to CVS stores, but it severely limits patient access – especially for customers in areas where CVS is not accessible and states where CVS has no locations.

It’s planned, on Caremark’s part, to reimburse below cost, and it’s deliberate, and they won’t change it. When we call them and ask them why they’re reimbursing for less than we can buy it for, they say, “because we can.”

- Pharmacist J. in Colorado

For example, pharmacist G. reports that in his town in New Jersey, only CVS can fill children’s vitamin Poly-vi-flor for Caremark-covered patients; all the other pharmacies are reimbursed at such a steep loss that they cannot afford to dispense the same medication.

CVS Caremark blatantly uses information gathered through its PBM-retail relationship to drive business to CVS retail locations. Any firewall the company has fails to protect pharmacies or patients from exclusive, unfair and inappropriate conduct.

CVS Caremark raises costs to privately and publicly sponsored plans by creating waste and abusing the PBM-retail relationship.

CVS Caremark authorizes outrageous reimbursements to CVS pharmacies, charging plans up to 3,800% more than for fills at competing pharmacies:

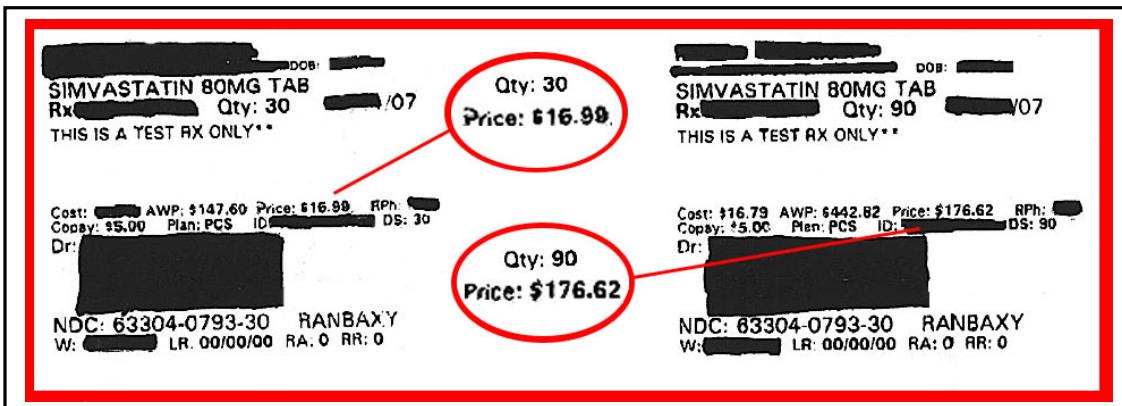
Explanations of benefits obtained by some patients show that Caremark-operated Medicare Part D plans reimburse to CVS pharmacies at costs that are grossly inflated relative to both the cost of the drug and the reimbursement level received by other pharmacies.



At left, an excerpt from the explanation of benefits obtained by a North Carolina patient on a Medicare Part D plan operated by CVS Caremark switched his and his wife's prescriptions to CVS in March 2009 expecting lower costs, as advertised, but instead had an extra \$321 billed to his plan in pharmacy reimbursements, in addition to \$12 in extra copay.

It is totally inappropriate for CVS to inflate costs to government plans and push seniors towards their donut hole coverage gap in order to offer itself a higher payment for the same drug.

Though plans believe they are paying less for 90-day supplies of drugs, evidence suggests CVS may use the lack of transparency endemic to the PBM industry to charge plans high costs for drugs while offering figures (such as AWP less a certain percent) that seem like bargains.



This test transaction, adjudicated according to the pricing guidelines for Caremark's 90-day supply option, shows that Caremark has not instituted "Maximum Allowable Cost" for 90 day supplies of Simvastatin (which are normally only available from CVS or mail order. The result? The plan sponsor pays \$176.62 for a 90-day supply that should logically cost no more than three times the 30-day price (\$50.97).

In addition to direct price increases, plan sponsors suffer from the waste of expensive medications due to exclusive policies on high-cost specialty drugs.

Specialty drugs, defined as drugs that require special handling or administration and cost more than \$1000 per dose, are often denied at non-CVS locations as “inappropriate for this location” despite the fact that these pharmacists are authorized to dispense them under most other PBMs, often have the drugs on premises, and in some cases have been administering them to the patient for years. This inflates CVS’s profits at the direct expense of patients suffering from serious, difficult-to-treat diseases.

One pharmacist has many chemotherapy patients who come to her pharmacy for low-cost drugs but are forced to use mail order for expensive ones. **These patients frequently get their drugs too late to even use them (after chemotherapy) and are often forced to order a 2-3 month supply even if they only need a few days.** At a cost of \$17 to \$150 a pill, up to 112 pills per course, and 6-8 courses per treatment, the money plans waste on pills that patients never use adds up very quickly.

*“It takes between a week and two weeks to get a mail order prescription. **By the time they get the injection in their hand it’s too late to even use them.** They lose all their white blood cells and have all these extra pills...my patients are coming to me and they say, “what am I supposed to do with all these pills? They’re all over my house!”*

- Pharmacist N. in Texas

*“They have an hour window to take the drug. **If you skip a dose [because it’s late in the mail, delayed for prior authorization, or you have to drive to a second pharmacy], you have six thousand dollars of medication wasted, and the plan has to pay for it again next month.** And these drugs are really tough on the patients; the physical and emotional toll is enormous... Nobody even knows how many cycles are lost because of this – it’s a huge factor in cost to plan sponsors.”*

- Pharmacist M. in New Jersey

According to specialty pharmacists across the country, drugs routinely arrive late, to the wrong address, and without the necessary equipment, such as injection needles or “pens.” As a result of these mistakes, plans pay for drugs their members never use – and the costs are staggering :

- For cancer or HIV drugs, one missed dose can result in a delayed recovery, relapse, or need for additional treatment;
- For fertility medications, every time a patient misses a dose of one crucial medication, the entire cycle is wasted, and must be purchased again the next month for successful treatment.

Moreover, pharmacists have reason to believe that specialty drug transactions are intentionally diverted by CVS Caremark, without plan sponsor approval:

For example, In Ohio, a benefits administrator who went to her pharmacist for an injection of a time-sensitive specialty drug was falsely told she had to go to a CVS store because her plan benefits administrator had authorized only CVS to dispense that medication. Only because of her unique position was she able to refute that statement, insist on authorization, and get her dose on time.

CVS Caremark abuses the PBM-retail relationship to raise costs to patients and plans in order to enrich itself – and patient care is the casualty.

CVS's specialty pharmaceutical policy is dangerously irresponsible.

"I have a Medicare Part D patient whose chronic pain is controlled by a patch. Her prescription was denied as needing prior authorization. ...a week later there was still no authorization in place so I called back yet again because the prescription was to expire that day. I was told (paraphrased): 'She is just going to have to wait until we authorize or deny the prescription. If she wants to avoid this in the future she can send the prescription to our mail order facility and no prior authorization is necessary. They can fill it right away.' I commented that it must not be about medical necessity but about who gets the money and the operator replied 'I can't comment on that.'"

- Pharmacist S in Illinois

In Missouri, Pharmacist M. had been filling a patient's prescription for therapy following organ transplant. When the patient tried to get a refill in February, the prescription stated, "prior authorization required." When M. called Caremark, he was told that Caremark was currently calling the physician to get a new prescription that could only be filled at CVS. **The patient still had not received the drug a month later – but he had been told that his copay would rise from \$40 at his pharmacy to \$100 at CVS.**

Pharmacies specializing in Cancer and HIV treatment report that expensive prescriptions are often denied and patients are forced to use Caremark mail order service – which often loses prescriptions, sends drugs late, or sends the wrong dose – in order to receive their meds.

In these instances, CVS Caremark even forbids pharmacists to perform emergency fills, resulting in patients waiting weeks for treatment.

CVS Caremark's specialty drugs policies endanger patients' health and even their lives. It is *not* a responsible or ethical approach to patient care.

What happens if CVS Caremark drives community pharmacies out of business?

If the weather's bad, the planes won't fly in here...It takes two weeks sometimes to get the mail. My wife's on quite a bit of medication and she can't wait 5 or 6 days for it to come in...If we lose our pharmacy we're gonna be in trouble. You'd be packing people out of here in a bodybag.

- Patient Fred in Alaska

According to *Consumer Reports*, community and independent pharmacies have the highest satisfaction rating of all types of pharmacy.¹ They also serve underserved areas. In some rural areas, like Fred's in Alaska, they are crucial to residents' health and well-being – in some remote spots, as the only health care providers. Moreover, recent studies demonstrate that patients who receive counseling on their medications are up to 34% less likely to have an adverse event related to the conditions being treated with prescription drugs.²

It would be disastrous for independent pharmacies to disappear just to boost CVS's profit.

CVS Caremark is just not worth the price.

¹ "America's Best Drugstores." Consumer Reports. June 2008: available at <http://www.consumerreports.org/health/prescription-drugs/drugstores/overview/drugstores-ov.htm> .

² "UNC study: pharmacist's care reduces medication problems, costs for heart patients." UNC News. 27 Apr 2009: available at <http://uncnews.unc.edu/news/health-and-medicine/unc-study-pharmacists-care-reduces-medication-problems-costs-for-heart-patients.html> .