CVS Caremark Under Fire on Many Fronts

CVS Caremark’s questionable conduct following the 2007 merger of retail juggernaut CVS (7,000 stores) and pharmacy benefit manager Caremark (2nd largest PBM) continues to raise concerns among patients, community pharmacists and federal and state policy makers – documented most recently by *Fortune*. There is so much activity, you almost need a scorecard to keep up.

**Federal Trade Commission**

*The Washington Post* reported that the Federal Trade Commission is officially investigating CVS Caremark’s business practices. NCPA and others have provided the FTC with many examples of CVS Caremark misconduct. The FTC staff also heard from two Detroit-area pharmacists on the verge of losing their businesses as the result of abusive audit practices by CVS Caremark.


Separately, Dow Jones reported that the FTC’s recent requirement of a firewall as part of Pepsi Co’s acquisition of two large bottlers would restrict access to sensitive business information, and could serve as a model for policing CVS Caremark.

Already, CVS Caremark agreed to pay $2.25 million to resolve FTC charges of HIPAA privacy violations.

**Congressional Action**

A House subcommittee recently approved a bill introduced by U.S. Representative Stephen F. Lynch (D-Mass.) to allow the Office of Personnel Management to increase regulation of pharmacy benefit managers, such as CVS Caremark, contracting with the Federal Employees Health Benefits Program (FEHBP). Among other fixes, *Rep. Lynch’s bill* would prohibit a PBM from switching a patient’s drug, which can drive up costs, without a doctor’s approval and ban the FEHBP from doing business with PBMs that own both retail and PBM pharmacies – an obvious conflict of interest. FEHBP members experienced drug cost increases of 69 percent over the last eight years. A startling report by Change to Win determined that FEHBP enrollees covered by CVS Caremark pay more at CVS pharmacies than uninsured patients do on 85% of generic drugs.

Senate Finance Committee Ranking Member Chuck Grassley (R-Iowa) is asking PBMs like CVS Caremark about their financial relationships with pharmaceutical manufacturers. Critics allege that as much as 50% of manufacturer rebates are kept by PBMs, driving up costs to plan sponsors and patients while encouraging profit-based coverage decisions. The Medicare Payment Advisory Commission has called for a national disclosure requirement for PBMs.

**Medicaid Fraud Probe**

In January 2010 CVS Caremark received a federal subpoena as part of an ongoing investigation into potential false or improper Medicaid claims by the Department of Health and Human Services’ Office of Inspector General. The subpoena requested claims data for dual eligible
customers and other information concerning the company’s retail pharmacy claims processing systems and pharmacy payer contracts.

**States Targeting CVS Caremark**

As *Fortune* first reported, Florida and other “states are investigating the $99 billion company, which some people hope will be broken up.” Connecticut and Illinois are among the states investigating, according to Bloomberg News.

**Ohio SB 154** would prohibit a PBM from having a relationship with a retail pharmacy and using that relationship to the competitive disadvantage of other retail pharmacies.

Introduced on January 27, 2010 **Michigan H.B. 5772** would require PBMs to disclose any ownership interest or affiliation with “any insurance company responsible for providing benefits directly or through reinsurance to any plan for which the PBM provides services.”

Texas estimates saving $265 million in the Employee Retirement System by insisting on transparency from CVS Caremark – thereby taking a significant chunk of apparently excess revenue out of the company’s pocket.

**What Others Are Saying**

Union advocacy group Change To Win released a series of reports and statements outlining concern for CVS Caremark’s record on drug favoring and switching, privacy violations, lack of transparency, and fraud issues.

Charlotte, North Carolina patients Jan and Max Hauser were surprised and angry when they paid closer attention to their prescription drug costs under a plan administered by CVS Caremark. Jan Hauser said “If it’s happening to us, it’s happening to others.”

Lonnie and Peggy Butzske of Magnolia, Texas were forced by CVS Caremark’s insurance requirements to drive over 40 miles to the closest CVS or pay higher co-pay.

**Twenty-four consumer rights, labor and public interest groups**—including the Consumer Federation of America, U.S. Public Interest Research Group (PIRG), and the National Legislative Association on Prescription Drug Prices (NLARx)—sent a joint letter in January 2010 urging House Speaker Nancy Pelosi (D-Calif.) and Senate Majority Leader Harry Reid (D-Nev.) to combine the best pharmacy benefit manager (PBM) transparency provisions from the separate health care reform bills they were reconciling at the time.

**National Legislative Association on Prescription Drug Prices** (NLARx) criticized CVS for alleged consumer protection violations in 2009.

On November 23, 2009 **NCPA and several consumer and privacy groups**—Consumer Action, U.S. Public Interest Research Group (PIRG), Patient Privacy Rights, Private Citizen, and Privacy Journal—asked the U.S. Department of Health and Human Services’ Office for Civil Rights (OCR) and the Federal Trade Commission (FTC) to investigate potentially illegal activity by CVS Caremark.
Had enough? Where there’s smoke…there’s fire!