



For Immediate Release
February 14, 2008

Media Contact: Robyn Ziegler
312-814-3118
rziegler@atg.state.il.us

MADIGAN, 28 ATTORNEYS GENERAL REACH SETTLEMENT WITH CAREMARK FOR DRUG SWITCHING PRACTICES

Chicago – An investigation led by Attorney General Lisa Madigan and Maryland Attorney General Douglas Gansler has resulted in a 28-state, \$38.5 million settlement agreement with Caremark Rx, L.L.C., one of the nation’s largest pharmacy benefits management (PBM) companies. The company processes prescription drug claims and negotiates pharmaceutical volume discounts for employer and government health plans. Under the settlement, Caremark must significantly alter the practices it uses to ensure that patients, physicians and health plans have the information needed to make the most cost-effective purchasing decisions.

“As a result of this settlement, Illinois health care consumers and their health plans can make sure that the prescription drugs they purchase are the most cost-effective options,” Madigan said. “In times of rising health care costs, pharmacy benefit managers must fulfill their role of negotiating the most affordable prescription drugs for consumers and their health plans.”

Madigan and Gansler led the investigation into Caremark’s drug-switching practices that resulted in today’s settlement announcement. Under the agreement, Illinois will receive \$1,263,977.77 of \$22 million paid to the states for use to benefit low-income, disabled or elderly consumers of prescription medications, to promote lower drug costs for state residents, or to educate consumers concerning the cost differences among medications. Caremark will also pay \$16.5 million to the states for investigative costs, fees and consumer education, including \$1.75 million for Illinois to use in consumer fraud enforcement. Also as part of the agreement, Caremark will set aside an additional \$2.5 million to reimburse patients who submit claim forms for expenses related to certain switches between cholesterol-controlling drugs. Affected consumers should expect to see a claim form in the mail from Caremark.

The complaint against Caremark Rx, L.L.C., and two of its subsidiaries: Caremark, L.L.C. and CaremarkPCS, L.L.C. (formerly AdvancePCS) alleges that Caremark engaged in deceptive business practices by encouraging doctors to switch patients to different brand-name prescription drugs and representing that the patients and/or health plans would save money. However, according to the complaint, Caremark did not adequately inform doctors of the effect this switch would have on costs to patients and health plans. Further, Caremark allegedly did not clearly disclose to their client plans that rebates accrued from the drug switching process would be retained by Caremark and not passed directly to the client plan. The complaint also alleges that Caremark restocked

and re-shipped previously dispensed drugs that had been returned to Caremark's mail-order pharmacies.

To prevent this conduct from occurring in the future and ensure that patients, physicians and health plans receive full and accurate information for use in making drug purchasing decisions, the settlement agreement requires that Caremark significantly change its practices.

Specifically, the settlement prohibits Caremark from soliciting drug switches when:

- The cost to the patient will be greater than the cost of the originally prescribed drug;
- The originally prescribed drug has a generic equivalent and the proposed drug does not;
- The net drug cost of the proposed drug exceeds the net drug cost of the originally prescribed drug;
- The originally prescribed drug's patent is expected to expire within six months; or
- The patient was switched from a similar drug within the last two years.

The settlement also requires that Caremark:

- Inform patients and prescribers of the effect that a drug switch will have on a patient's co-payment;
- Inform prescribers of Caremark's financial incentives for certain drug switches;
- Inform prescribers of material differences in side effects or efficacy between prescribed drugs and proposed drugs;
- Reimburse patients for out-of-pocket expenses for drug switch-related health care costs and notify patients and prescribers that such reimbursement is available;
- Obtain express, verifiable authorization from the prescriber for all drug switches;
- Inform patients that they may decline a drug switch and the conditions for receiving the originally prescribed drug;
- Monitor the effects of drug switches on the health of patients;
- Adopt a code of ethics and professional standards;
- Refrain from making any claims of savings for a drug switch to patients or prescribers unless Caremark can substantiate the claim;
- Refrain from restocking and re-shipping returned drugs unless permitted by applicable law; and

- Inform prescribers that certain visits by Caremark's clinical consultants and promotional materials sent to prescribers are funded by pharmaceutical manufacturers.

The states participating in the settlement with Illinois and Maryland are: Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Iowa, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nevada, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia and Washington.

Consumer Protection Division Chief Deborah Hagan and Assistant Attorney General Ryan Tyrrell Lipinski are handling the case for Madigan's Consumer Protection Division.

-30-

[Return to February 2008 Press Releases](#)