IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

OFFICE OF THE ATTORNEY GENERAL, DEPARMENT OF LEGAL AFFAIRS, STATE OF FLORIDA, Plaintiff, -vs- CAREMARK Rx, L.L.C, CAREMARK, L.L.C. and CAREMARKPCS, L.L.C. formerly known as ADVANCEPCS, Defendants.	)	NO.

AGREED FINAL JUDGMENT AND CONSENT DECREE

Plaintiff, THE STATE OF FLORIDA, by BILL McCOLLUM, Attorney General of the State of Florida, has filed a Complaint for a permanent injunction and other relief in this matter pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2002) alleging Caremark committed violations of the aforementioned Act. Caremark denies the allegations of the Complaint and denies any alleged violations of the Act.

Plaintiff, by its counsel, and Caremark, by its counsel, have agreed to the entry of this Final Judgment and Consent Decree by the Court without trial or adjudication of any issue of fact or law, and without admission of any wrongdoing or admission of any of the violations of the Act as alleged in the Complaint.

I. PARTIES

1. The State of Florida (hereinafter "the State") is the plaintiff in this case.

2. Caremark Rx, L.L.C., Caremark, L.L.C., and CaremarkPCS, L.L.C. formerly known as AdvancePCS (collectively referred to as "Caremark") are the Defendants in this case. Caremark's executive offices are located at 211 Commerce Street, Suite 800, Nashville, TN

37201. As used herein, any reference to "affiliates" of Caremark means affiliates of Caremark that provided pharmacy benefit management services as of March 21, 2007, immediately prior to the merger transaction with CVS Corporation.

II. BACKGROUND

1. Beginning in July, 2004, the Attorneys General in 29 states[1] ("the States") commenced a review of Caremark's Drug Interchange programs, its practices regarding placement of certain drugs on and operations involving its Performance Drug List and Preferred/Primary Drug List, the disclosure and retention of rebates and other payments received from manufacturers, disclosures of potential costs savings to Plan Participants and Client Plans, and issues regarding whether the conduct of its pharmacists violated consumer protection statutes by failing to comply with pharmaceutical ethical principles and guidelines, among other matters, as alleged in the Complaint. The States specifically reviewed these practices for compliance with the States' consumer protection statutes[2] and the State of Florida subsequently filed the Complaint herein.

[1] The States of Arizona, Arkansas, California, Connecticut, Delaware, Florida, Illinois, Iowa, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nevada, New Mexico, North Carolina, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Texas, Vermont, and Washington, and the Commonwealths of Massachusetts, Pennsylvania, and Virginia, and the District of Columbia participated in the investigation and shall for purposes of this Consent Decree, be referred to as "the States", "the Participating States" or the "Settling States."

[2] The States' consumer protection statutes are: ARIZONA - Consumer Fraud Act, A.R.S. § 44-1521 *et seq*.; ARKANSAS - Ark. Code Ann. § 4-88-101, *et seq*., CALIFORNIA - Bus. & Prof. Code §§ 17200 *et seq*., and 17500 *et seq*.; CONNECTICUT - Conn. Gen. Stat. sections 42-110a *et seq*.; DELAWARE - Consumer Fraud Act, 6 Del.C. Section 2511, *et seq*., UDTPA, 6 Del.C. Section 2531, *et seq*.; DISTRICT OF COLUMBIA - District of Columbia Consumer Protection Procedures Act, D.C. Code Ann. § 28-3901, *et seq*.; FLORIDA - Deceptive and Unfair Trade Practices Act, Fla. Stat. Ch. 501.201 *et seq*.; Illinois - Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq*. (2006 State Bar Edition); IOWA - Iowa Consumer Fraud Act, Iowa Code Section 714.16; LOUISIANA - L.A. R. S. 51:1410 and L.A. R. S. 51:1401, *et seq*.; MARYLAND - Consumer Protection Act, Md. Code Ann., Com. Law § 13-101 *et seq*.; MASSACHUSETTS - Consumer Protection Act, M.G.L. c. 93A *et seq*.; MICHIGAN - Michigan Consumer Protection Act, MCL 445.901 *et seq*.; MISSOURI - Missouri Merchandising Practices Act, Mo. Rev. Stat.§ 407.040 *et seq*.; MISSISSIPPI - Mississippi Consumer Protection Act, Miss. Code Ann.§ 75-24-1, *et seq*.; MONTANA - Unfair Trade and Consumer Protection Act at MCA 30-14-101 *et seq*.; NEVADA - Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 *et seq*.; NEW MEXICO – Unfair Practices Act, N.M.S.A. §§ 57-12-2(14), (17) and 57-12-3;NORTH CAROLINA - Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1 *et seq*.; OHIO- Consumer Sales Practices Act, Oh. Rev. Code Ann. § 1345.06, *et seq*.; OREGON - Unlawful Trade Practices Act, ORS 646.605 to 646.656; PENNSYLVANIA - Unfair Trade

2. The State of Florida and Caremark have agreed to the entry of this Final Judgment and Consent Decree by this Court to resolve all matters of dispute between them in this action.

III. FINDINGS

1. The State filed the Complaint in this case pursuant to the provisions of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2002).

2. The Florida Attorney General is charged with, among other things, the responsibility of enforcing the Florida Deceptive and Unfair Trade Practices Act.

3. The executive offices of Caremark Rx, L.L.C. are located at 211 Commerce Street, Suite 800, Nashville, TN 37201.

4. Caremark, at all times relevant hereto, engaged in trade and commerce within the meaning of the Florida Deceptive and Unfair Trade Practices Act, including, but not limited to, Broward County, in that it advertised, solicited, offered for sale, and provided pharmacy benefit management services to Florida health plans and employers, including government employers.

5. The State, by and through its Complaint, has alleged that Caremark has engaged in unfair and deceptive acts or practices in the conduct of trade and commerce, in violation of Chapter 501, Part II of the Florida Deceptive and Unfair Trade Practices Act. Caremark denies the allegations of the Complaint, denies that it engaged in unfair and deceptive acts or practices in the conduct of trade and commerce in violation of Chapter 501, Part II of the Florida Deceptive and Unfair Trade Practices Act and denies that it engaged in any wrongful or inappropriate conduct.

Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.*; SOUTH CAROLINA - Unfair Trade Practices Act, S. C. CODE. ANN. Sections 39-5-10, *et seq.*; SOUTH DAKOTA - Deceptive Trade Practices Act, S.D. Codified Laws § 37-24, *et seq.*; TENNESSEE-Tennessee - Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101 *et seq.*; TEXAS - Deceptive Trade Practices - Consumer Protection Act, Tex. Bus. and Com. Code § 17.47, *et seq.*; VERMONT - Consumer Fraud Act, 9 V.S.A. § 2451 *et seq.*; VIRGINIA - Virginia Consumer Protection Act, Va. Code sections 59.1-196 *et seq.*; WASHINGTON - Unfair Business Practices/Consumer Protection Act, E.C.W. 19.86 *et seq.*

6. This Final Judgment and Consent Decree fully and finally resolves the allegations made by the State in the Complaint, as provided in Section IX.

7. Entry of this Decree does not constitute a finding of liability against Caremark and Caremark denies any and all allegations. Rather, to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of the State's claim for injunctive relief, Caremark has consented to the entry of the instant Consent Decree for the purposes of this settlement only, without this Decree constituting evidence against or any admission by any party, and without trial of any issue of fact or law on the issues specifically addressed and released herein. This Court has jurisdiction over the subject matter of the Complaint filed herein and over the parties to this Final Judgment and Consent Decree.

IV. DEFINITIONS

Defined Terms include:

"Actual Cost Savings" shall mean, with respect to a Proposed Drug Interchange, the actual amount in dollars a Client Plan or Plan Participant will save in Net Drug Costs annually if a Drug Interchange occurs at the expected dosage, assuming the Plan Participant will use the drug for twelve months.

"Caremark" unless the context requires otherwise, shall mean Caremark Rx, L.L.C., Caremark, L.L.C., Caremark PCS, L.L.C. (formerly known as AdvancePCS), and all of their state licensed pharmacy subsidiaries, and shall also include (i) any corporate predecessor of any such entity to the extent such entity is the legal successor, by merger or otherwise, of the corporate predecessor, (ii) any corporate successor of any such entity, and (iii) employees of any such entity solely in their capacity as employees acting within the scope of their employment and not in any individual or personal capacity. To the extent the foregoing entities are agreeing herein to comply with certain requirements, they are agreeing to do so with respect to their

respective relationships with Client Plans, retail pharmacies, pharmaceutical manufacturers, Plan Participants and other parties as described herein.

"Caremark Total Product Revenue" shall mean the net revenue of Caremark and its corporate affiliates that provide pharmaceutical benefit management services, which consists principally of sales of prescription drugs to clients, either through Caremark's network of contractually affiliated retail pharmacies or through Caremark's mail order pharmacies, including any specialty pharmacies. Where Caremark or a corporate affiliate acts as a principal in accordance with generally accepted accounting principles, which is the case in the majority of Caremark's or its corporate affiliates' Client Plan contracts, revenues are recognized at the prescription price negotiated with clients, as well as the associated administrative fees.

"Clear and Conspicuous" shall mean a disclosure in such size, color, contrast and location, that it is readily noticeable, readable and understandable; is presented in proximity to all information necessary to prevent it from being misleading or deceptive, in a manner that such information is readily noticeable, readable and understandable and not obscured in any manner; and if a print disclosure, it appears in a type size, contrast and location sufficient for the intended recipient to read and comprehend it. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies or is necessary to prevent other information from being misleading or deceptive, then the statement must be presented in proximity to that information, in a manner that is readily noticeable, readable, and understandable, and is not obscured in any manner. A print disclosure must appear in a type size, contrast and location sufficient for the intended recipient to read and comprehend it. For purposes of this Consent Decree, nothing in this definition shall prevent Caremark from disclosing prescription, health and safety information first.

"Client Plan" shall mean any governmental entity, employer, insurer, union or other entity that contracts with Caremark to provide or administer a pharmacy benefit for such Client Plan and its Plan Participants.

"Confidential Information" shall mean the confidential and proprietary information of Caremark, the value of which might be lost if the proprietary nature or confidentiality of such Confidential Information is not maintained, including, but not limited to, costs and pricing, rebate agreements, financial and technical information, ideas, designs, specifications, techniques, models, data, programs, documentation, processes, know-how, customer lists, marketing plans; information regarding contracts, audit results, SAS70 reports, pricing, finances, discounts or rebates; manuals; computer programs, systems and capabilities; databases, innovations and copyrighted materials; trade secrets.

"Co-payment" shall include but not be limited to any payment a Plan Participant is required to make to a retail or mail order pharmacy prior to the dispensing of prescribed medication or other health related services. This term shall include payments at set flat fees (e.g., $5 for each dispensed prescription for a generic medication) and payments which represent a percentage of a drug's cost as measured by some identifiable cost marker (e.g., payment of 20% of the cost of a brand medication as measured by AWP).

"Drug Interchange" shall mean any change from one prescription drug to another, made by, on behalf of, or at the request of Caremark. "Drug Interchange," however, shall not include those Drug Interchanges:

i) initiated pursuant to a Drug Utilization Review except those that are therapeutically equivalent switches in a class;

ii) initiated for Plan Participant safety reasons;

iii) required due to market unavailability of the Originally Prescribed Drug;

iv) from a brand drug to its Generic Equivalent; or

v) required for coverage reasons, that is, where the Originally Prescribed Drug is not covered by the Client Plan.

"Drug Interchange-Related Health Care Costs" shall mean a Plan Participant's Co-payment incurred for tests, doctor visits, and other health care services that are performed in accordance with a treating physician's instructions, and are incurred as a direct result of a Drug Interchange, for the purpose of assessing the continuum of the previous therapy, for up to 90 days after commencement of the Plan Participant's use of the new drug therapy. If, following a Drug Interchange Solicitation, a Prescriber or Plan Participant indicates that a Proposed Drug Interchange will result in such costs being incurred, Caremark in its discretion may cease to seek the Proposed Drug Interchange. If a Plan Participant, because of a deductible or cap requirement, pays actual costs of tests instead of Co-payments, then that Plan Participant's Drug Interchange-Related Health Care Costs shall be based on the Co-payment (if any) that would apply upon satisfaction of the deductible or the Co-payment applicable prior to the cap being met, but if the Plan Participant is not covered by any health benefits program or plan for the costs of those tests, doctor visits, and/or other health care services, then that Plan Participant's Drug Interchange-Related Health Care Costs shall be based on the costs of those tests, doctor visits, and/or other health care services.

"Drug Interchange Solicitation" shall mean any communication by, on behalf of, or at the request of Caremark or for the purpose of requesting a Drug Interchange.

"Drug Utilization Review" shall mean the process used to assess the appropriateness of drug therapy by engaging in the evaluation of data on drug use in a given health care environment against predetermined criteria and standards.

"Generic Equivalent" shall mean a medication deemed chemically equivalent to a branded drug, signified by an A rating by the Food and Drug Administration, approval for substitution on an applicable formulary, or approval for substitution by the Pharmacy and Therapeutics ("P&T") Committee.

"Manufacturer Payments" shall mean any compensation or remuneration Caremark and its corporate affiliates receive from or on behalf of a pharmaceutical manufacturer, including but not limited to, rebates, regardless of how categorized, market share incentives, commissions, fees under products and services agreements, any fees received for sales of utilization data to a pharmaceutical manufacturer, and administrative or management fees. It does not include purchase discounts based upon invoiced purchase terms. For purposes of any "Manufacturer Payment Reports" that may be provided to Client Plans hereunder, all "Manufacturer Payments" received by Caremark and its affiliates fit into one of two categories defined herein, namely, "Manufacturer Formulary Payments" or "Manufacturer Additional Payments."

"Manufacturer Formulary Payments" shall mean Payments that Caremark and its affiliates receive pursuant to agreements with pharmaceutical manufacturers for formulary placement, if applicable, and drug utilization. Caremark acknowledges that its practice is to receive such Payments only when drug utilization data is submitted to the pharmaceutical manufacturer in connection with such Payments. If Caremark or an affiliate receives payment from a manufacturer for formulary placement without the submission of drug utilization data to

the pharmaceutical manufacturer in connection with such payment, then such payment shall be included in "Manufacturer Formulary Payments."

"Manufacturer Additional Payments" shall mean all Manufacturer Payments other than Manufacturer Formulary Payments.

"Minimum Cost Savings" shall mean the minimum amount in dollars a Client Plan or Plan Participant will save in their costs annually if a Drug Interchange occurred at the expected dosage.

"Net Drug Cost" shall mean the price Caremark charges a Client Plan for a prescription drug whether that drug is delivered through a retail pharmacy or mail order. The Net Drug Cost may take into account all discounts, rebates, credits or other payments that lower the cost of the drug charged to the Client Plan, to the extent such payments are provided to the Client Plan. Net Drug Cost may be reduced by Manufacturer Payments to the extent those amounts are provided to the Client Plan, but shall not be reduced by Manufacturer Payments that are paid to and retained by Caremark.

"Originally Prescribed Drug" shall mean a drug prescribed for a Plan Participant that is the subject of a Caremark Drug Interchange Solicitation.

"Plan Participant" shall mean a natural person whose prescription drug benefit is administered by Caremark.

"Prescriber" means a physician, dentist, physician's assistant, optometrist or other health care professional authorized by law to write prescriptions for prescription drugs.

"Proposed Drug" shall mean the drug or drugs that Caremark, in its Drug Interchange Solicitation program, proposes to interchange for an Originally Prescribed Drug.

"Proprietary Claim" shall mean any claim arising out of a contract with Caremark for the administration, management of, or provision of services for any health plan of a state, state agency, state subdivision, state college or university system, municipality or locality, or any state public or quasi-public entity.

"Usual and Customary" or "U&C" shall mean usual and customary retail cash charges.

V. GENERAL TERMS AND PROVISIONS

A. Caremark will not advise or counsel Client Plans to develop, design or implement a plan design for prescription drug benefits for its Plan Participants that is inconsistent with the terms of this Consent Decree. This Consent Decree shall not operate or be construed, however, to limit the ability of a Client Plan to develop, design, or implement a plan design for prescription drug benefits for its Plan Participants, subject to its duty to comply with applicable laws and regulations.

B. No disclosure of Confidential Information shall be required pursuant to this document in the absence of a contract that is signed and executed by each party with the authority to bind the respective party to the terms of the contract. Prior to any disclosure of Confidential Information required pursuant to this document a confidentiality agreement must be signed by client/payers, employees, and each and every agent, consultant, attorney, auditor, or any party acting on behalf of the client/payer who will access or receive Caremark's Confidential Information. No information disclosed shall be made available to any other party in the absence of a signed and executed confidentiality agreement between such party and Caremark.

C. This Agreement is not intended to require Caremark to breach the terms of any existing contract with a Client Plan, pharmaceutical manufacturer, retail pharmacy or other

contractual party. If compliance by Caremark with this Agreement would cause a breach of any such existing contract, Caremark will seek to obtain consent of the other contractual party to permit Caremark to comply.

VI. ORDER/INJUNCTION

NOW THEREFORE, on the basis of these findings, and for the purpose of effecting this Final Judgment and Consent Decree,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

A. **Caremark Disclosures and Obligations**

1. **Relationships with Client Plans:**

(a) For five years from the Effective Date of this Decree, unless otherwise previously provided, Caremark shall disclose to each Client Plan or prospective Client Plan, prior to executing an agreement with such Client Plan (whether it concerns a new Client Plan contract or renewal of the Client Plan contract at or upon the expiration of the negotiated term of that contract), a copy of a sample MAC list Caremark currently uses for pricing purposes in its contracts with Client Plans. For purposes of this paragraph and for purposes of Section VI.A.1 (h)(1), Caremark's obligation to disclose certain information to a "prospective Client Plan" means that Caremark will make the required disclosure to any new Client Plan prior to being selected to provide or administer pharmacy benefits for such Client Plan, but only after such Client Plan has signed a nondisclosure agreement with Caremark confirming the confidential and proprietary nature of the disclosed information.

(b) In any new Client Plan contract or at renewal of the Client Plan contract at or upon the expiration of the negotiated term of that contract, Caremark shall:

(1) clearly describe the products and services that will be delivered or performed pursuant to the Client Plan contract;

(2) disclose to each of Caremark's Client Plans that Caremark may perform non-Drug Utilization Review brand-to-brand Drug Interchanges that may result in increased pharmaceutical Manufacturer Formulary Payments to Caremark;

(3) clearly define the obligations of Caremark and the Client Plan under the contract;

(4) clearly describe the amounts to be paid by the Client Plan for products or services under the Client Plan contract;

(5) disclose, where applicable, to Client Plans that Client Plans may pay more or less for brand and generic drugs at retail than Caremark reimburses retail pharmacies for said drugs;

(6) in any Client Plan contract that refers to MAC or uses MAC as a price marker, identify all drugs composing the MAC list applicable to the Client Plan at the time the contract is signed;

(7) clearly define MAC in any Client Plan contract that refers to MAC or uses MAC as a price marker and indicate that Caremark's definition of MAC is not the same as HCFA MAC, if such is the case;

(8) when using nationally recognized data sources and terms for Client Plan pricing, ensure that data sources and terms are defined in the contract with the Client Plan;

(9) when using nationally recognized data sources and terms for Client Plan pricing, disclose to the Client Plan the circumstances under which Caremark will utilize the data sources and terms;

(10) disclose to each Client Plan:

i. that Caremark sells and receives revenue from the sale of data to pharmaceutical manufacturers and others, if such is the case;

ii. the purpose(s) for the sale of the data; and

iii. all the types of data sold.

(11) disclose to each Client Plan the existence of contracts with pharmaceutical manufacturers to engage in Prescriber or Plan Participant education; and

(12) disclose to each Client Plan that Caremark may receive payments from pharmaceutical manufacturers for such education.

(c) Prices charged to Client Plans for Generic Drugs: Caremark shall provide an updated MAC list applicable to the Client Plan at such time and at such intervals as may be required by the Client Plan contract or otherwise reasonably requested by the Client Plan.

(d) **Reference Pricing Data Source:**

In a contract where the pricing terms are set by reference to a nationally recognized data source, Caremark shall utilize the same data source for pricing to the Client Plan throughout the term of the contract unless the Client Plan otherwise agrees to change the data source. If the designated data source for any reason ceases to provide pricing information necessary to administer the contract terms, Caremark is not prohibited under this paragraph from utilizing a different nationally recognized data source if it provides notice of any such change to the Client Plan.

(e) **AAWP**

In any new contract with a Client Plan or in any contract renewal, Caremark shall, if using the terms "average Average Wholesale Price," "average AWP," "standard Average Wholesale Price" or "standard AWP," do so consistently with the definition of those terms by a nationally-recognized data compendium, and:

(1) disclose to the Client Plan they will average AWPs for that Client Plan,

(2) indicate in the contract or contract renewal precisely which nationally recognized compendium they have chosen to use,

(3) continue to use that compendium's definition(s) throughout the term of the contract, and

(4) clearly disclose the definition(s) in full to the Client Plan at the inception or renewal of the contract.

(f) **Third Party Auditor Confidentiality Contracts**

Caremark shall not prevent Client Plans from obtaining an independent third party audit to the extent allowed by the Client Plan contract.

(g) **Retail Pharmacy Contracting**

In any new contract with a retail pharmacy or in any amendment to an existing contract with a retail pharmacy in which new terms and conditions (other than pricing terms and renewal dates) are negotiated and documented:

(1) Caremark's template contract that it provides to retail network pharmacies shall include an express requirement that the retail pharmacy disclose to the Plan Participant if such pharmacy's U&C price for the particular drug dispensed is less than the applicable Co-payment, unless the contract between Caremark and the Client Plan provides otherwise.

(2) Caremark's template contract that it provides to retail network pharmacies shall include an affirmative obligation requiring the retail pharmacy to allow the Plan Participant to pay either the Co-payment or the U&C price; whichever is lower, if the Plan Participant's plan design so permits, unless the contract between Caremark and the Client Plan provides otherwise.

(h) **Manufacturer Payments**

(1) Caremark shall disclose to each prospective or renewing Client Plan in advance of or upon entering into a contract with such Client Plan:

i. that Caremark will solicit and receive Manufacturer Payments and that Caremark may pass through all or a portion of those payments to Client Plans or may retain those payments for itself, depending on the contract terms and whether the payments are attributable to the Client Plans; and

ii. for five years from the Effective Date of this Decree, the information set forth in Caremark's Manufacturer Payment Report pursuant to Section (2) below, concerning the most recent Caremark fiscal year for which such information is publicly available, at the time of the communication under this Section.

iii. that Caremark will report, quarterly and annually, for a period of five years from the Effective Date of this Decree, on Manufacturer Payments, consistent with Section (2) below if the Client Plan contracts on a "Rebate Sharing Basis," as defined immediately below. If a Client Plan does not contract on a "Rebate Sharing Basis" as defined immediately below, Caremark shall have no further obligations under this Decree to make disclosures about Manufacturer Payments to Client Plans. For purposes of Section VI. A(1)(h) of this Consent Decree, a "Rebate

Sharing Basis" shall mean a contract where Caremark agrees to share Manufacturer Payments with a Client Plan.

(2) Quarterly and Annual Disclosures: For five years from the Effective Date of this Decree, with respect to each Client Plan that has contracted to receive (directly or by credit) any Manufacturer Payments from Caremark, for each Caremark fiscal year during which the Client Plan receives any such Manufacturer Payments, Caremark shall provide those Client Plans, for each Caremark fiscal quarter and year, a Manufacturer Payments Report. Caremark's Manufacturer Payments Report shall identify, for the reported fiscal quarter or year ("the reporting period"), the information set forth below at (i) through (v). If the precise reported figure is not known by Caremark at the time of its report, Caremark shall provide its current best estimate of the reported information, provided that, with respect to each report, should the reported information subsequently need revision in accordance with generally accepted accounting principles, Caremark will provide an update to the reported information to reflect that revision. Manufacturer Reports shall include:

i. the dollar amount of Caremark Total Product Revenue (as defined) for the reporting period;

ii. the dollar amount of total drug expenditures for the applicable Client Plan;

iii. all Manufacturer Payments earned by Caremark for the reporting period expressed as a percentage range (within plus or minus 3 percent) of the Caremark Total Product Revenue;

iv. the percentage of all Manufacturer Payments earned by Caremark during the reporting period that were Manufacturer Formulary Payments; and

v. the percentage of all Manufacturer Payments received by Caremark during the reporting period that were Manufacturer Additional Payments.

(3) Caremark's Manufacturer Payment Reports shall present the above information in a Clear and Conspicuous manner that serves to inform Client Plans of all Manufacturer Payments earned by Caremark.

B. **Relationships with Participants**

With respect to Caremark's pharmacies and its employed pharmacists, Caremark agrees to the following:

1. **Drug Interchanges**

(a) When a Plan Participant's Prescriber (or his or her authorized representative) approves a Drug Interchange, Caremark agrees to provide to the Plan Participant both a written communication that is included with the drug shipment and, when feasible, an electronic communication.

(b) In these Drug Interchange communications to Plan Participants, Caremark shall not make any savings claim for a Drug Interchange unless such savings claim is substantiated.

(1) Claims of savings to the Client Plan shall be substantiated by either the Minimum or Actual Cost Savings to the Client Plan. If a savings claim to the Client Plan is made, the Minimum or Actual Cost Savings to the Client Plan must be disclosed.

(2) Claims of savings to the Plan Participant shall be substantiated by either the Minimum or Actual Cost Savings to the Plan Participant. If a savings claim to the Plan Participant is made, the Minimum or Actual Cost Savings to the Plan Participant must be disclosed.

(3) Claims of savings to both the Client Plan and the Plan Participant shall be substantiated by either the Minimum or Actual Cost Savings to the Client Plan and either the Minimum or Actual Cost Savings to the Plan Participant. If a savings claim to both the Client Plan and the Plan Participant is made, the Minimum or Actual Cost Savings to the Client Plan and the Minimum or Actual Cost Savings to the Plan Participant must be disclosed.

When making these disclosures, Caremark may reasonably rely on information provided by the Client Plan with respect to eligibility and Co-payments, irrespective of deductibles and caps.

(c) Both of these Drug Interchange communications to Plan Participants shall include the following:

(1) A disclosure that is separate from other prescription, health and safety information included with the drug shipment, that is in such size, color, contrast and location, that it is readily noticeable, readable and understandable and not obscured in any manner and in a location sufficient for a Plan Participant to read and comprehend it. For purposes of this Consent Decree, nothing in this section shall prevent Caremark from calling the Plan Participant's attention to prescription health and safety information first;

(2) A Clear and Conspicuous and understandable explanation that a Drug Interchange has been requested by Caremark;

(3) An explanation that following Caremark's request, the Plan Participant's Prescriber (or his or her authorized representative) approved and authorized the Drug Interchange;

(4) A description of the circumstances under which the Originally Prescribed Drug will continue to be covered by the Client Plan, if such is the case;

(5) The names of the Proposed Drug and the Originally Prescribed Drug;

(6) Clear instructions on how to use the toll-free telephone number provided by Caremark to call a pharmacist if the Plan Participant has any questions about the Drug Interchange. Upon request by a Prescriber (or his or her authorized representative), the same

number will be provided to Prescribers for questions about a Proposed Drug Interchange;

(7) A description of the effect, if any, on a Plan Participant's Co-payment, e.g., "This change will not increase the amount you pay for your medication based on current pricing and plan design;"

(8) A disclosure of Caremark's policy with respect to Drug Interchange-Related Health Care Costs, in accordance with Section VI.B.5.;

(9) A clear explanation of the process the Plan Participant should follow to initiate a switchback, including the toll-free number that should be called to request a reversal of the Drug Interchange; and

(10) A Clear and Conspicuous statement that the Plan Participant may decline the Drug Interchange in which case the Plan Participant will receive the Originally Prescribed Drug if the Originally Prescribed Drug remains on the Client Plan's formulary and the Plan Participant is willing to pay any difference in Co-payment.

(d) **Restrictions on Drug Interchanges and Required Disclosure of Pricing Information**

Unless otherwise specifically directed by a Client Plan with respect to a Proposed Drug Interchange, Caremark shall not do any of the following:

(1) Make, solicit or cause to be made or solicited any Drug Interchange if the Net Drug Cost to the Client Plan is higher than the Net Drug Cost of the Originally Prescribed Drug (excluding

any cost impact resulting from changes in dosage, frequency or form of the drug prescribed), unless the Client Plan has agreed to such specific Drug Interchange;

(2) Make, solicit or cause to be made or solicited any Drug Interchange if the cost to the Plan Participant will be greater than the cost of the Originally Prescribed Drug (excluding any cost impact resulting from changes in dosage, frequency or form of the drug prescribed) unless the P&T Committee decides that the Proposed Drug is clinically superior to the Originally Prescribed Drug;

(3) Make or cause to be made any Drug Interchange Solicitation if the Originally Prescribed Drug has Generic Equivalents and the Proposed Drug has no Generic Equivalents, unless the Proposed Drug has a lower Net Drug Cost than the Net Drug Cost of all Generic Equivalents of the Originally Prescribed Drug or the Prescriber (or his or her authorized representative) has previously denied the dispensing of a Generic Equivalent;

(4) Make or cause to be made any Drug Interchange Solicitation if the currently scheduled expiration of the latest of any patent covering or listed for the Originally Prescribed Drug in the United States Patent and Trademark Office is reasonably expected to expire within six months of the Drug Interchange Solicitation; and

(5) Make or cause to be made any Drug Interchange Solicitation regarding a Plan Participant who, within the last two years, and with respect to the same therapeutic class involved in the Proposed Drug Interchange, has either a) interchanged his or her drug following a Caremark Drug Interchange Solicitation or b) interchanged his or her drug following a Caremark Drug Interchange Solicitation but had the Drug Interchange reversed, unless all of the Proposed Drugs in the current Drug Interchange Solicitation were not among the Proposed Drugs in the prior Drug Interchange Solicitation or were new drugs approved by the FDA after the Drug Interchange Solicitation or were existing drugs approved for a new indication after the prior Drug Interchange, in which case Caremark may make a Drug Interchange Solicitation for the new Proposed Drug or the new indication of the existing drug only.

(e) Caremark will not represent that the Plan Participant's Prescriber initiated the Drug Interchange.

(f) Whenever a Drug Interchange is considered for a multi-sourced drug, Caremark shall request that a generic drug be prescribed, if one exists, before requesting that another brand drug be substituted, unless the brand drug has a lower Net Drug Cost than the generic drug.

2. **Rejected Drug Interchanges**

(a) Caremark shall maintain a toll-free telephone number(s) to field telephone calls from Plan Participants and Prescribers in response to Caremark's interchange confirmations.

(b) For a period of five years from the Effective Date, Caremark shall maintain this toll-free telephone number(s) Monday through Friday from the hours of 7:00 AM to 9:00 PM CT. Caremark shall maintain an average response time of no more than 60 seconds for its customer service representatives to begin assisting incoming customer callers.

(c) The Plan Participant or Prescriber shall have up to 30 days following shipment of the interchanged drug to request a reversal to the Originally Prescribed Drug. The time period for Plan Participants to request reversal of a Drug Interchange may also be extended for certain clinical exceptions to be determined on a case-by-case basis.

(d) In the event that a Plan Participant reverses a Drug Interchange, Caremark shall take reasonable steps to obtain approval from the Prescriber (or his or her authorized representative) for the Originally Prescribed Drug before the Plan Participant exhausts his or her existing supply and then shall provide the Originally Prescribed Drug, if approval is obtained.

(e) In the event a Plan Participant will exhaust his or her supply of the Originally Prescribed Drug before a replacement shipment will be delivered to the Plan Participant, Caremark shall arrange for dispensing of an appropriate quantity of replacement medications at a participating

Caremark retail network pharmacy at no additional cost to the Plan Participant.

(f) Unless otherwise requested by the Prescriber, Caremark shall provide written confirmation to the Prescriber that the approved interchange has been reversed and that the Originally Prescribed Drug has been dispensed.

(g) Caremark shall charge the Plan Participant only one Co-payment, plus shipping and handling fees, if applicable, so that an approved, but reversed interchange will not increase Plan Participant costs beyond costs originally contemplated had Caremark dispensed the Originally Prescribed Drug.

(h) Unless otherwise agreed in the contract, in the event of a reversed interchange, Caremark will also credit the Client Plan for the Proposed Drug and shall charge the Client Plan only for the cost of the prescribed drug that is ultimately dispensed.

(i) Unless an Originally Prescribed Drug is no longer on the Client Plan's formulary or the Plan Participant is unwilling to pay any higher applicable Co-payment or other costs, Caremark shall cancel and reverse the Drug Interchange upon written or verbal instructions from a Prescriber (or his or her authorized representative) or Plan Participant.

(j) Unless otherwise provided by contract with a Client Plan, Caremark shall also bear the expense of shipping the Proposed Drug back to Caremark,

with prepaid postage to be provided by Caremark for the return shipment.

(k) Caremark agrees to document and retain for a period of at least two years any information related to the reversal of a Proposed Drug Interchange.

3. **Caremark Monitoring of Interchange Health Effects**

Caremark shall monitor the effects of Drug Interchanges requested by Caremark upon the health of Plan Participants, and shall report to Caremark's P&T Committee, not less than semi-annually, the results of such monitoring, and the P&T Committee shall reasonably consider the results of Caremark's monitoring. Such monitoring shall include, without limitation, a system designed to report an aggregate summary of all Plan Participant-reported and Prescriber-reported adverse medication events and reversal rates associated with a Drug Interchange. For the aggregate summary of adverse drug events, Caremark will include the specific drug associated with the adverse drug event and a clinical description of the adverse drug event, again summarized by therapeutic class. The aggregate summary of interchange reversals will include the following data summarized by therapeutic class: number of requests, number of approvals, conversion success rates, number of subsequent reversals, and reversal rates. These aggregate summaries will not include individually identifiable "Protected Health Information," as set forth by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), P.L. 104-191, and any regulations promulgated thereunder.

4. **Retail Pharmacies**

In its contracts with retail pharmacies, Caremark shall include the following elements as part of its Drug Interchange program:

(a) Retail pharmacies shall seek and obtain the Plan Participant's express verifiable authorization to any Drug Interchange prior to making a Drug Interchange Solicitation to the Plan Participant's Prescriber (or his or her authorized representative).

(b) Retail pharmacies, in order to obtain a Plan Participant's express verifiable authorization, shall disclose to the Plan Participant:

(1) a description of the program;

(2) that Caremark has requested that the retail pharmacy attempt to make a Drug Interchange;

(3) that participation in the program is voluntary and that the Plan Participant may choose whether or not to participate;

(4) if the retail pharmacy receives compensation from Caremark for participating in such program, that the retail pharmacy will be compensated for the time and effort spent discussing the program with the Plan Participant and the Plan Participant's Prescriber or his or her authorized representative;

(5) a statement describing the effect, if any, on a Plan Participant's Co-payment, e.g., "This change will not increase the amount you pay for your medication based on current pricing and plan design;"

(6) in the event that Caremark requests to change a Plan Participant's prescription from a prescription drug or dosage to an over-the-counter drug or dosage, the retail pharmacy shall disclose whether the change will result in increased costs for the Plan Participant;

(7) that, should the Plan Participant agree to the Drug Interchange, the retail pharmacy will thereafter contact the Plan Participant's Prescriber (or his or her authorized representative) to obtain his/her permission to effectuate the Drug Interchange, and the Drug Interchange will only be effectuated if that permission is obtained; and

(8) that there is a toll-free number that Plan Participants may call in order to speak with a Caremark customer service representative about the Drug Interchange. Retail pharmacies shall provide Plan Participants with the toll-free number itself and its hours of operation.

(c) Disclose to the Prescriber (or his or her authorized representative):

(1) that Caremark administers the Plan Participant's pharmacy benefit plan;

(2) if the retail pharmacy receives compensation from Caremark for participating in such program, that the retail pharmacy will be compensated for the time and effort spent discussing the program with the Plan Participant and the Plan Participant's Prescriber (or his or her authorized representative);

(3) the name and manufacturer of the Originally Prescribed Drug and the suggested alternative drug; and

(4) the name and telephone number of the pharmacist.

(d) If the retail pharmacy intends to undertake a Drug Interchange for a Plan Participant who is not present in the retail pharmacy (whether because that Plan Participant is homebound, has made a telephone refill request or otherwise), the retail pharmacy shall attempt to contact the Plan Participant at the telephone contact number the Plan Participant has provided to the retail pharmacy, if a telephone contact number is provided. If the retail pharmacy reaches the Plan Participant, it shall then read to the Plan Participant the information set forth at paragraph (b) (1-8) above. If the retail pharmacy is unable to reach the Plan Participant by telephone because he/she is not available or does not answer, the retail pharmacy shall not leave any message with another person or on an answering machine that does not comply with HIPAA and any regulations promulgated thereunder. The retail pharmacy shall make two attempts to reach the Plan Participant by telephone; if neither is successful, the retail pharmacy may proceed to make the Drug Interchange Solicitation to the Plan Participant's Prescriber (or their authorized representative), informing the Prescriber that attempts to reach the Plan Participant prior to contacting the Prescriber (or their authorized representative) were unsuccessful.

(e) Retail pharmacies shall record, in the manner required by Caremark (i.e., via computer entry or otherwise), that they have sought and obtained the Plan Participant's express verifiable authorization to a Drug Interchange

prior to soliciting Drug Interchange authorization from a Prescriber (or his or her authorized representative).

(f) Retail pharmacies shall record, in the manner required by Caremark (i.e., via computer entry or otherwise), that they have sought and obtained the Plan Participant Prescriber's (or his or her authorized representative) express verifiable authorization to a Drug Interchange prior to effectuating the Drug Interchange. If the authorization is made verbally by a person other than the Prescriber, the retail pharmacy shall record, in the manner required by Caremark, the name and title of the person authorizing the Drug Interchange on behalf of the Prescriber.

(g) The retail pharmacies shall document the program services that were performed, the date the services were performed and the name of the pharmacist performing the services.

(h) Any written materials that the pharmacy shall use to provide the information required at paragraph (b)(1-8) above shall either be approved by Caremark prior to use, or be provided to the retail pharmacy by Caremark itself.

(i) The retail pharmacies will be subject to monitoring by Caremark for compliance with the program and the pharmacy may be removed from Caremark's Drug Interchange program for any acts of misconduct.

5. **Caremark's Payment of Drug Interchange-Related Health Care Costs**

(a) For five years from the Effective Date of this Decree, within 60 days of receipt of an appropriate claims form for such costs, Caremark shall pay

all requested Drug Interchange-Related Health Care Costs incurred by a Plan Participant by reimbursing the Plan Participant for such costs not exceeding $200.00. For any amount exceeding $200.00 requested for such costs, Caremark may, in its sole discretion, choose to have an independent third party selected by Caremark review the Drug Interchange-Related Health Care Costs requested by a Plan Participant with respect to any particular Drug Interchange. If a determination is made that the costs requested qualify as Drug Interchange-Related Health Care Costs, then Caremark shall pay all remaining Drug-Interchange-Related Health Care Costs within sixty days of original receipt of the claim form for such costs.

(b) Caremark shall enact and follow a procedure for reimbursing Plan Participants such costs, by which Caremark shall, without limitation, (1) permit Plan Participants, Prescribers or treating physicians to request such reimbursement, by phone or in writing, and (2) upon such request, provide a single-page claim form to Plan Participants (with instructions) to request reimbursement. For reimbursement requests, Caremark may (but need not) require that the Plan Participant's reimbursement claim provide information showing that Drug Interchange-Related Health Care Costs were incurred. This requirement may be satisfied by a physician or Prescriber notation at a designated place on the claim form, or by providing a Prescriber's written order, or other evidence showing payment of Drug Interchange Related Health Care Costs (e.g., Co-

payments for tests or Prescriber visits as permitted herein) incurred as a result of a Drug Interchange which clearly states that the cost was directly due to the Drug Interchange. Caremark shall not prevent or discourage Plan Participants or physicians from requesting or receiving reimbursement for Drug Interchange-Related Health Care Costs in accordance with this provision.

(c) Caremark's written communications to both Prescribers and Plan Participants concerning Drug Interchanges, as set forth below, whether disseminated by, at the direction of or upon request of Caremark, shall Clearly and Conspicuously disclose Caremark policy, consistent with this Section, with respect to Drug Interchange-Related Health Care Costs. Caremark telephone communications with Prescribers and Plan Participants concerning Drug Interchanges, as set forth below, shall indicate the existence of Caremark's policy with respect to Drug Interchange-Related Health Care Costs. In its communications with Prescribers, Plan Participants and Client Plans, or in those communications prepared by or as directed by Caremark for dissemination to Plan Participants, Caremark shall accurately represent its policy with respect to Drug Interchange-Related Health Care Costs. Caremark shall include as part of its audit procedures for network retail pharmacies, the right to audit any communications concerning Caremark's policy with respect to Drug Interchange-Related Health Care Costs that a pharmacy may disseminate to Plan Participants to

confirm that such communications accurately represent Caremark's policy with respect to Drug Interchange-Related Health Care Costs. The retail pharmacies will be subject to monitoring by Caremark for compliance with the program and the pharmacy may be removed from Caremark's Drug Interchange program for any acts of misconduct.

(d) Caremark, while complying with the timely reimbursement requirement set forth in (a) above, may, in its sole discretion, choose to have an independent third party chosen by Caremark to review the Drug Interchange-Related Health Care Costs requested by a Plan Participant with respect to any particular Drug Interchange. If a determination is made that the costs were not Drug Interchange-Related Health Care Costs, nothing herein shall prevent Caremark from pursuing any legal remedies Caremark may have against the Plan Participant and any other party involved.

C. **Relationships with Pharmacists and Physicians**

With respect to Caremark's pharmacies and its employed pharmacists, Caremark agrees to the following:

1. Caremark agrees to adopt the Code of Ethics of the American Pharmacists Association that is in effect on the date of this agreement for its employed pharmacists ("APhA Code of Ethics") and agrees to adopt the American Pharmacists Association Principles in effect on the date of this agreement ("APhA Principles").

2. No Caremark employee supervisor or manager shall instruct any employee to engage in conduct which is inconsistent with the APhA Code of Ethics, referenced above, or state pharmacy law and regulations.

3. Caremark shall make available to its mail order pharmacy employees, Client Plans and Plan Participants copies (which may be in electronic form or available on a web site) of the APhA Code of Ethics and APhA Principles, both referenced above in paragraph 1.

4. Caremark shall require its pharmacies, pharmacists, pharmacy technicians, and other employees to comply with all state law requirements governing their professional practice.

5. Caremark shall inform its pharmacists that Caremark supports the duty of its pharmacists to use independent professional judgment in carrying out their responsibilities, including determining whether a Drug Interchange is clinically appropriate for the Plan Participant.

6. Caremark shall not interchange a Plan Participant's drug absent express verifiable authorization from the Prescriber, as communicated (a) directly by the Prescriber (in writing or verbally) or (b) by a person who affirms (in writing or verbally) that the interchange has been authorized by the Prescriber. If such authorization is by a person other than the Prescriber and is verbal, Caremark shall document that person's first and last name, title or position, and date and time.

7. In the event that Caremark requests to change a Plan Participant's prescription from a prescription drug or dosage to an over-the-counter drug or dosage,

Caremark shall Clearly and Conspicuously disclose that the change may result in increased costs for the Plan Participant.

8. All Caremark Drug Interchange Solicitations to a Prescriber shall:

(a) Identify the name and title of the person representing the Drug Interchange program;

(b) State that Caremark is soliciting a Drug Interchange;

(c) Describe under what circumstances the Originally Prescribed Drug will continue to be covered by the Client Plan, if such is the case;

(d) Include a statement that will describe the effect, if any, on a Plan Participant's Co-payment, e.g., "This change will not increase the Plan Participant's Co-payment based on current pricing and plan design;"

(e) If Caremark receives Manufacturer Additional Payments from a drug manufacturer for a specific proposed Drug Interchange or Drug Interchange Solicitation that are not reflected in Net Drug Cost because they are Manufacturer Additional Payments that do not inure to Caremark's Client Plan, Caremark shall disclose to Prescribers that it receives such Manufacturer Additional Payments;

(f) Disclose the existence of Caremark's policy with respect to Drug Interchange-Related Health Care Costs outlined in Section VI.B.5. If the Drug Interchange Solicitation is written, this disclosure shall be Clear and Conspicuous and advise the reader of the option to receive the written confirmation described below for details. If the Drug Interchange

Solicitation is by telephone, Caremark shall advise the party of the option to receive the written confirmation described below; and

(g) Disclose any material differences, as determined by the Caremark P&T Committee, between the Originally Prescribed Drug and the Proposed Drug with respect to efficacy and side effects or potential effects on Plan Participant's health and safety, if any.

9. For five years from the Effective Date of this Decree, Caremark agrees to record, where permitted by law, all conversations with the Prescriber's office where an interchange is solicited. Such recordings shall be maintained and stored for at least two years.

10. If as a result of the Drug Interchange Solicitation the Prescriber calls Caremark to request additional information regarding the clinical appropriateness of such proposed Drug Interchange, a pharmacist shall respond to the Prescriber's call.

11. Caremark shall maintain records memorializing, with respect to each Drug Interchange, how express verifiable authorization was obtained, including the name of the person providing the express verifiable authorization of the Drug Interchange (to the extent that the last name is provided, it will be included); whether the authorization was written or verbal and, at mail only, if verbal and by a person other than the Prescriber, that person's title or position, if provided and the date and time.

12. Upon obtaining express verifiable authorization of a Drug Interchange at mail, Caremark shall provide the Prescriber the option of receiving a written confirmation of the Drug Interchange and, if requested by the Prescriber, shall

send a written communication to the Prescriber confirming the Drug Interchange. If the Drug Interchange Solicitation (containing the requirements above) was not in writing, then the written confirmation shall include the information required in Section VI.C.8. Regardless of whether the Drug Interchange Solicitation was in writing, the written confirmation shall:

(a) Not make any savings claim for a Drug Interchange unless such savings claims are substantiated.

(1) Claims of savings to the Client Plan shall be substantiated by either the Minimum or Actual Cost Savings to the Client Plan. If a savings claim to the Client Plan is made, the Minimum or Actual Cost Savings to the Client Plan must be disclosed.

(2) Claims of savings to the Plan Participant shall be substantiated by either the Minimum or Actual Cost Savings to the Plan Participant. If a savings claim to the Plan Participant is made, the Minimum or Actual Cost Savings to the Plan Participant must be disclosed.

(3) Claims of savings to both the Client Plan and the Plan Participant shall be substantiated by either the Minimum or Actual Cost Savings to the Client Plan and either the Minimum or Actual Cost Savings to the Plan Participant. If a savings claim to both the Client Plan and the Plan Participant is made, the Minimum or Actual Cost Savings to the Client Plan and the Minimum or Actual Cost Savings to the Plan Participant must be disclosed.

When making these disclosures, Caremark may reasonably rely on information provided by the Client Plan with respect to eligibility and Co-payments, irrespective of deductibles and caps;

(b) Clearly and Conspicuously disclose Caremark's policy with respect to Drug Interchange-Related Health Care Costs, in accordance with Section VI.B.5.; and

(c) provide a toll free telephone number for the Prescriber.

13. Caremark shall not make any savings claim for a Drug Interchange unless such savings claims are substantiated. Such savings claims shall be substantiated and disclosed as outlined above in Section VI.C.12.(a).

14. In the event that Caremark represents or causes to be represented to a Prescriber that a Drug Interchange will save money for the Plan Participant, there must be a decrease in the Plan Participant's Co-payment.

15. Caremark agrees that it shall not make or cause to be made any Drug Interchange Solicitation regarding a Plan Participant or Prescriber (or his or her authorized representative) who, within the last two years, and with respect to the same therapeutic class involved in the proposed Drug Interchange, has declined a participant-specific Drug Interchange Solicitation, unless all of the Proposed Drugs in the current Drug Interchange Solicitation were not among the Proposed Drugs in the prior Drug Interchange Solicitation or were new drugs approved by the FDA after the Drug Interchange Solicitation or were existing drugs approved for a new indication after the prior Drug Interchange, in which case Caremark

may make a Drug Interchange Solicitation for the new Proposed Drug or the new indication of the existing drug only.

D. **Returned Drugs**

1. Caremark shall not restock or re-ship returned drugs unless it is permitted to do so by applicable law.

2. Caremark shall adhere to applicable state pharmacy practice laws with regard to destruction of returned drugs.

E. **Education**

1. Caremark shall not make communications to Plan Participants and/or Prescribers which are inconsistent with communications made by Caremark on behalf of Client Plans, including but not limited to Drug Interchange Solicitations.

2. Caremark shall Clearly and Conspicuously disclose that educational or promotional materials sent to Plan Participants and/or Prescribers are funded by, or sent on behalf of, a pharmaceutical manufacturer and not on behalf of the Client Plan, if such is the case.

3. For a period of five years from the Effective Date, Caremark shall, on an annual basis, communicate to those Prescribers visited by clinical consultants in writing, by mail and by hand delivery of the same letter on the first office visit to the Prescriber, that part of the clinical consultants' messaging and office visits are funded by pharmaceutical manufacturers, if such is the case. These written communications with the Prescribers shall:

(a) Include a personalized address to the Prescriber;

(b) Identify the clinical consultant who will be visiting the Prescriber;

(c) Accurately disclose the purpose of the clinical consultants' office visit; and

(d) Clearly and Conspicuously identify that part of the clinical consultant's messaging and activities during the office visits are funded by pharmaceutical manufacturers, if such is the case.

4. Caremark will accurately disclose the purpose of the clinical consultants' office visits and that part of the clinical consultant's messaging and activities during the office visits are funded by pharmaceutical manufacturers, if such is the case.

5. Caremark shall not accept funding or other benefits from a pharmaceutical manufacturer to make any representation relating to a prescription drug or medical device at the direction of the pharmaceutical manufacturer that would be prohibited by FDA rules and regulations if the representation were made by the manufacturer of the prescription drug or medical device.

F. **Drug Utilization Review**

With respect to Drug Utilization Review recommendations, if Caremark's recommendation references published clinical guidelines, Caremark shall Clearly and Conspicuously disclose all relevant portions of the clinical guidelines that are related to the clinical appropriateness for the recommended change to the existing drug therapy.

VII. REIMBURSEMENT & CY PRES PAYMENT

A. **Reimbursement.**

1. Caremark shall pay up to $2.5 million to reimburse "Affected Consumers," as defined below, up to $25.00 for out-of-pocket expenses incurred as a result of a "Statin Drug

Interchange," using the notification and claims process described in Section VII.A.1&2. For purposes of this Section, a "Statin Drug Interchange" means a Plan Participant's Drug Interchange, from one already dispensed branded drug to another branded drug within the HMG-CoA Reductase Inhibitors therapeutic class, from January 1, 1997 through the Effective Date. "Affected Consumers" means those persons who (i) following a Statin Drug Interchange, paid Co-payments for tests, Prescriber visits or other health care services incurred as a result of the Statin Drug Interchange, (ii) have not received reimbursement from Caremark for those out-of-pocket expenses, and (iii) currently reside in a Participating State or resided in a Participating State at the time of the Statin Drug Interchange at issue.

2. Caremark, or its designee, shall identify and pay Affected Consumers using the following notification and claims process, the costs of which shall be borne by Caremark:

(a) Using its Plan Participant records and records related to Drug Interchanges, Caremark shall identify all Plan Participants who had a Statin Drug Interchange, including Statin prescriptions filled by a Caremark mail order pharmacy or at retail (collectively, "Potential Affected Consumers"). Caremark shall make reasonable efforts to identify the current address for each Potential Affected Consumer, using its current Plan Participant records and skip-tracing.

(b) Caremark shall mail to each Potential Affected Consumer a "Reimbursement Notice and Claim Form," in a form (or forms) approved by the participating Attorneys General of Participating States. The Reimbursement Notice shall, Clearly and Conspicuously, (i) advise Potential Affected Consumers that Caremark reached a settlement with the participating Attorneys General, and that Caremark will reimburse Affected Consumers up to $25.00 for Interchange-related expenses, (ii) explain how Affected Consumers may obtain

reimbursement, and (iii) explain that Affected Consumers must submit all claims to Caremark within six months of the Affected Consumer's receipt of the notice and claims form.

(c) The Claim Form, which shall be coupled with the Reimbursement Notice, may request that the Potential Affected Consumer: i) generally describe any costs incurred as a result of a Statin Drug Interchange; and ii) attest, under penalty of perjury, that the information provided on the claim form is true and accurate. The Claim Form also will advise the Potential Affected Consumer that acceptance of reimbursement pursuant to the claims process will reduce, by the reimbursement amount, any recovery by any other means, of out-of-pocket costs attributable to Co-payment for tests, Prescriber visits or other health care services incurred as a result of the Statin Drug Interchange. A pre-paid envelope shall accompany the Reimbursement Notice and Claim Form. The Claim Form also shall provide a toll-free number for Potential Affected Consumers to call should they have questions.

(d) Caremark shall mail all notices as soon as practicable following the Effective Date, but in any event within four months of the Effective Date. Caremark then shall accept claims for seven months after the last mailing of notice and claim forms ("the time period"). After expiration of the time period, Caremark shall make reimbursement of $25.00 to each Affected Consumer who submits a completed claim form and attests that he or she incurred out-of-pocket expenses following a Statin Drug Interchange (a "Qualified Claim"). In the event that, after expiration of the time period, Caremark has received Qualified Claims in an amount that exceeds $2.5 million based upon a $25.00 payment (i.e., more than 100,000 Qualified Claims), then payments to Affected Consumers shall be prorated by dividing the $2.5 million by the number of Qualified Claims received.

(e) Following completion of the above notification and claims process, and in any event not more than 12 months after the Effective Date, Caremark shall certify to the participating Attorneys General that it has complied with this reimbursement Section and provide a report identifying, without limitation: i) the number of Reimbursement and Claims Forms mailed to Potentially Affected Consumers, ii) the number of phone calls received concerning the notice and claims process, iii) the number of claims forms submitted, iv) the number of Qualified Claims submitted, v) the total amount in reimbursement paid by Caremark to Affected Consumers, and vi) the costs of administration of this reimbursement program.

B. **Cy Pres Payment.**

1. Caremark shall pay the participating State Attorneys General $22 million as described further in this Section VII.B., to be apportioned among the participating states proportionally based upon population, with a minimum per state distribution, as agreed by the participating states. Each state's proportional share of the $22 million ("the Monetary Portion") shall be reflected in a schedule provided to Caremark in advance of the Effective Date (the "State Schedule").

2. Within 14 days of its receipt of written notice of a State's payment instructions (e.g., to whom the Monetary Portion shall be made payable), Caremark shall pay the Monetary Portion in cash, by check and consistent with the State's reasonable payment instructions. Each state's Monetary Portion shall not exceed the State's proportional share of the $22 million set forth on the State Schedule. Caremark need not pay a State's Monetary Portion until: a) Caremark has received the State's written notice of instructions, described above, and b) the State has entered a Consent Decree in its state court in substantively the same form as this Consent Decree.

3. States that receive a Monetary Portion shall make a *cy pres* distribution of these funds, pursuant to a state-specific Cy Pres Distribution Plan, to a political subdivision(s) thereof or to a state agency or program, a non-profit corporation(s) and/or a charitable organization(s), at the sole discretion of the Attorney General of each respective State, with the express condition that the funds be used to benefit low income, disabled, or elderly consumers of prescription medications, to promote lower drug costs for residents of that State, to educate consumers concerning the cost differences among medications, or to fund other programs reasonably targeted to benefit a substantial number of persons affected by the Covered Conduct that is the subject of this Consent Decree.

VIII. PAYMENT OF CONSUMER EDUCATION, FEES AND COSTS TO THE STATES

A. **Fees and Costs to the States.** On or before the Effective Date of this Decree, Caremark shall pay $16.5 million to the participating State Attorneys General, to be distributed among those participating states as agreed by the Attorneys General, for attorney's fees and investigative costs, consumer education, litigation, public protection, consumer protection purposes or local consumer aid funds or any other purpose permitted by state law at the sole discretion of each State's Attorney General. Caremark shall pay this amount by check to the Office of the Pennsylvania Attorney General. The Pennsylvania Attorney General shall hold that payment in trust and, as soon as practicable but not later than six months after receipt, shall distribute the payment among the participating States pursuant to the participating States' agreement, provided, however, that, prior to receiving its allotted distribution hereunder, a State has entered in its State a Consent Decree in substantively the same form as this Consent Decree.

IX. GENERAL PROVISIONS

1. **Scope of Consent Decree.** The injunctive provisions of this Consent Decree are entered into pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2002) and are applicable to Caremark, its officers, and employees, and all those acting under the direction and on behalf of Caremark who receive actual notice of this Decree by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device.

2. **Release of Claims.** By its execution hereof, each Settling State releases Caremark and all of its past and present subsidiaries, affiliates, predecessors and successors and each of the past and present officers, directors, attorneys, insurers and assigns of any of the foregoing and employees of any such entity solely in their capacity as employees acting within the scope of their employment and not in any individual or personal capacity (collectively, the "Releasees") from all civil claims, causes of action, damages, restitution, fines, costs and penalties on behalf of the State under the above-cited consumer protection statutes and any antitrust, unfair business practice, or unfair competition statutes and regulations arising from the Covered Conduct which is the subject of this Consent Decree, which the State asserted or could have asserted from January 1, 1997, through the date the parties execute this Consent Decree.

The State agrees that it shall not proceed with or institute any civil action or proceeding, either individually or collectively, based upon the Covered Conduct arising under these above cited consumer protection statutes and any antitrust, unfair business practice, or unfair competition statutes and regulations against the Releasees, including but not limited to an action or proceeding seeking damages, restitution, injunctive relief, fines, penalties, attorneys fees or costs for any conduct undertaken or omissions prior to the date the parties execute this

Consent Decree arising from the Covered Conduct. The State shall also not initiate any claim in the nature of a class action arising from any Covered Conduct from January 1, 1997, through the date the parties execute this Consent Decree. Caremark may plead this Decree as a full and complete defense to any claim, whether class, individual or otherwise in nature, released hereunder that may be instituted, prosecuted, or attempted by any Settling State with respect to the Covered Conduct.

Notwithstanding the foregoing, the State does not release any claim arising under statutes, laws or regulations other than those identified herein and in Section II(1) above and arising from the Covered Conduct which is the subject matter of this Consent Decree. Claims excluded from the State's release include, but are not limited to, claims arising from Best Price, Average Wholesale Price or Wholesale Acquisition Cost reporting practices or price manipulation claims, or Medicaid fraud or abuse. The State is also expressly not releasing any Proprietary Claim, any claim under its state false claims act, any claim under its anti-kickback statute, or any regulatory action under the jurisdiction of its state pharmacy board or, for any state that does not have a state pharmacy board, the equivalent state entity or entities that regulate(s) compliance with such state's pharmacy laws and regulations. Caremark and the States expressly are not releasing Proprietary Claims and any defenses they may have to such claims. Any Proprietary Claim of a State, state agency, state subdivision, state college or university system, municipality or locality, or any state public or quasi-public entity, or of a health plan of a State, state agency, state subdivision, state college or university system, municipality or locality, or any state public or quasi-public entity, is unaffected by this Consent Decree.

In addition, the State does not release any personal claim, right or cause of action that a consumer or other person or entity other than the State may have against Caremark. Moreover, the State may institute an action or proceeding to enforce the terms and provisions of this Consent Decree or take action based on future conduct by the Releasees.

3. **Covered Conduct**. The specific conduct covered by this Consent Decree is for the period January 1, 1997 through the Effective Date of this Consent Decree and includes

(a) All of Caremark's pharmacy and operational practices and procedures at their mail order pharmacies, retail pharmacies, customer care call centers, and corporate offices, related to Caremark's Drug Interchange practices, and disclosures to Client Plans, health care providers, Prescribers, and Plan Participants concerning Caremark's Drug Interchange practices;

(b) Caremark's disclosures to Prescribers and Plan Participants related to Drug Interchange practices and potential cost savings;

(c) Caremark's practice of receiving payment from pharmaceutical manufacturers for the distribution of information and materials to health care providers, Prescribers, and Plan Participants and disclosures to Client Plans, health care providers, Prescribers, and Plan Participants concerning that practice, and the disclosure and retention of rebates and other payments received from pharmaceutical manufacturers;

(d) Caremark's disclosures to Client Plans, health care providers, Prescribers, and Plan Participants related to Caremark's receipt of Manufacturer Payments;

(e) Caremark's practice of restocking returned drugs;

(f) Caremark's provision, or lack of a provision, in its contracts with retail network pharmacies requiring the pharmacy to disclose to the Plan Participants if such pharmacy's U&C price for the particular drug dispensed is less than the applicable Co-payment;

(g) Caremark's provision, or lack of a provision, in its contracts with retail network pharmacies allowing the Plan Participant to pay either the Co-payment or the U&C price, whichever is lower;

(h) Provisions in Caremark's contracts with retail pharmacies regarding procedures that the retail pharmacies must follow when conducting or performing a Drug Interchange as a part of any Caremark Drug Interchange program; and

(i) Compliance by Caremark pharmacists with pharmaceutical ethical principles and guidelines, to the extent failure to comply would violate consumer protection statutes.

4. **Preservation of Law Enforcement Action.** Nothing herein precludes the State from enforcing the provisions of this Consent Decree, or from pursuing any law enforcement action arising from the acts or practices of Caremark not covered by this Consent Decree or any acts or practices of Caremark conducted after the Effective Date of this Consent Decree.

5. **Compliance with and Application of State Law.** Nothing in this Agreement shall relieve Caremark of its obligation to comply with applicable state and federal law.

6. **Non-Approval of Conduct.** Nothing herein constitutes approval by the State of Caremark's Drug Interchange program or other business practices. Caremark shall not make any representation contrary to this paragraph.

7. **Effective Date.** The "Effective Date" shall be the first date on which all parties have executed the Consent Order.

8. **Effective Date of Section VI.** Notwithstanding that Caremark shall endeavor to comply with all injunctive terms in Section VI as promptly as practicable, the terms of Section VI shall be implemented on or before 120 days after the Effective Date.

X. COMPLIANCE PROVISIONS

A. Within 60 days after the Effective Date of the Decree, Caremark must provide a copy of this Decree and obtain a signed and dated acknowledgement of receipt from:

1. Caremark officers and directors;
2. Caremark senior management;
3. All managers within each of Caremark's mail order pharmacies and clinical intervention centers and all pharmacists involved in Drug Interchange communications with Plan Participants or Prescribers;
4. Each customer service representative to whom a telephone call concerning Drug Interchanges may be directed in the routine routing of calls, if applicable.

B. For five years from the Effective Date, Caremark shall provide a copy of this Decree to and obtain a signed and dated acknowledgement of receipt from future personnel described in A.1 through A.4 of this Section X within 30 days after the person assumes such position or responsibility.

C. For five years from the Effective Date, Caremark shall make this Decree accessible to Client Plans and Plan Participants through its website.

D. For five years from the Effective Date, the compliance committee of Caremark shall assess, on a quarterly basis, Caremark's compliance with this Decree. The compliance committee, or its delegate, shall develop, maintain and distribute methods and procedures ("M&Ps") establishing a code of conduct consistent with APhA Code of Ethics and state pharmacy law and regulations for all Caremark

employees engaged in Drug Interchange programs. The M&Ps must be designed to establish quality standards for the manner in which information is disseminated to Prescribers and Plan Participants by Caremark employees regarding Drug Interchanges.

E. For five years from the Effective Date, Caremark will review the M&Ps annually with their pharmacists and all other personnel involved with the Drug Interchange program. As warranted, the compliance committee will review and/or recommend initiatives to ensure that Caremark's Drug Interchange practices and disclosures to Prescribers, Plan Participants and Client Plans comply with this Decree.

F. Caremark shall create and retain for a period of five (5) years following the date of creation, books and records that in reasonable detail accurately reflect Caremark's compliance with this Decree. These records must include, but are not limited to, the following:

1. Documents reflecting the current addresses, telephone numbers, fax numbers and email addresses for Caremark and its subsidiaries, including all mail order pharmacies and clinical intervention centers;

2. The original, signed and dated acknowledgments of the receipt of the Decree described in Section X.A.1.-A.4.;

3. Documents provided to or received from Client Plans concerning all Client Plan instructions, if any, concerning opting out of any provisions of this Decree;

4. An exemplar of each written notice sent to Prescribers regarding Drug Interchanges;

5. An exemplar of each written notice sent to Plan Participants regarding Drug Interchanges;

6. A copy of each script used in telephonic communications with Prescribers and Plan Participants relating to Drug Interchanges;

7. A copy of all training materials used to inform employees of the requirements of this Decree;

8. A copy of all M&Ps developed by the compliance committee or its delegate;

9. Documents concerning the drugs subject to Drug Interchanges;

10. Documents reflecting Plan Participant rejections of Drug Interchanges; and

11. Exemplars of Caremark's quarterly and annual disclosures to Client Plans required by Section VI.A.1(h) of this Decree.

One year after the Effective Date, and then annually for five years from the Effective Date, Caremark shall provide to the Attorney General of each Participating State a certification, signed by a Caremark senior officer, certifying Caremark's compliance with this Consent Decree. Caremark's annual certification may be accompanied by a report showing the manner in which Caremark has complied with the Consent Decree.

G. For a period of five years beginning on the Effective Date of this Decree, and within 30 days of a written request by the State, Caremark shall provide to the State:

1. Copies of the documents described in the preceding paragraphs; and

2. Such other records and documents as the State determines reasonably bear on compliance with the Decree.

H. Nothing in this Decree limits the State's lawful use of compulsory process to investigate whether Caremark has violated any provision of law enforced by the State.

XI. ADMINISTRATIVE PROVISIONS

A. This Court shall retain jurisdiction of this matter for all purposes.

B. Any party to this Consent Decree may petition the Court for modification, on 30 days' notice to all other parties to this Consent Decree. Modification may be appropriate if the underlying facts and circumstances have changed in any material respect. In addition, the parties by stipulation may agree to a modification of this Consent Decree, which stipulation shall be presented to this Court for consideration; provided that the parties may jointly agree to a modification only by a written instrument signed by or on behalf of both Caremark and the State. Any party seeking a stipulation for a modification of this Consent Decree shall send a written request to the other party at least 30 days prior to filing a motion with the Court for such modification. Within 30 days of receipt of a written request for agreement to modify, the receiving party shall notify the requesting party in writing if the receiving party agrees to the requested modification.

C. If, after the date of entry of this Consent Decree, the State, its Attorney General, or any agency of the State enacts or promulgates legislation, rules or regulations with respect to matters governed by this Consent Decree that conflict with any provision of this Consent Decree, or if the applicable law of the State shall otherwise change so as to conflict with any provision of this Consent Decree, the Attorney General shall not unreasonably withhold its consent to the modification of such provision to the extent necessary to eliminate such conflict. Laws, rules, or

regulations, or other change in State law, with respect to the matters governed by this Consent Decree, will be considered to conflict with a provision of this Consent Decree if Caremark cannot reasonably comply with both such law, rule, or regulation and an applicable provision of this Consent Decree.

PLAINTIFF,
FLORIDAATTORNEY GENERAL
BILL McCOLLUM

By:_____

Jack A. Norris, Special Counsel
Florida Attorney General's Office
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Mark Kraus
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Patrice Malloy
Assistant Attorney General
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Bar Number: 0137911

Done and ordered in Fort Lauderdale, Broward County, Florida.

Dated this day of February 14th 2008.

_____

HONORABLE JUDGE JOHN T. LUZZO

Copies Furneshed to:

James. F. Herbison
Winston & Strawn LLP
35 West Wacker Drive
Chicago, Illinois 60601