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April 19, 2019

The Honorable Colin M. Hayashida
Insurance Commissioner
Hawaii Insurance Division
Department of Commerce and Consumer Affairs
King Kalakaua Building
335 Merchant Street, Rm. 213
Honolulu, HI 96813

Re: Hawaii Coalition for Health's Outstanding Petition

Dear Mr. Hayashida:

I write to you in support of the Hawaii Coalition For Health's ("Coalition") 2016 petition requesting that the Insurance Commissioner make a declaratory judgment that numerous pharmacy benefit managers ("PBMs"), health insurers, and health benefit plans have knowingly, purposefully, materially, and repeatedly violated Hawaii Act 226 codified as Chapter 431R, including denying their beneficiaries the right to choose where to purchase covered prescription drugs, and injuring competition; and for orders specifying affirmative corrective actions and restitution.

Hawaii passed Act 226 in 2013 in an effort to curb the ability of insurers and intermediaries in the health care industry to restrict consumers' access to the pharmacies of their choosing. Indeed, the legislation was premised on the belief that "many beneficiaries, especially senior citizens, trust and rely on face-to-face interactions with their local pharmacists."[1] Many studies have shown that consumers are best served when they can choose how they receive the benefits of healthcare services. Consumers are able and should be able to use their own doctors and pharmacists with whom they feel comfortable.

I write to you based on my thirty plus years of experience as an antitrust and consumer protection attorney, and as a former antitrust enforcer with the Antitrust Division of the Department of Justice and the Federal Trade Commission (FTC). From 1995 to 2001, I served as the Policy Director and attorney advisor to Chairman Robert Pitofsky. I helped bring some of the first antitrust cases against PBMs and have authored dozens of articles about problems in the

[1] H.B. No. 65 (2013).

PBM market.[2] Currently, I am a public interest antitrust attorney in Washington, D.C. I have represented consumer groups, health plans, unions, employers, and even PBMs on PBM regulatory and competitive issues. I have testified before Congress four times and before eleven state legislatures on PBM reform issues and have served as an expert witness for the State of Maine on PBM regulation.[3]

The Unregulated Nature of the PBM Industry Has Led to Widespread Anticompetitive Conduct

Although PBMs offer the potential to control prescription drug prices, consumers are paying higher prices for drugs than they should be because PBMs are not adequately fulfilling their function in controlling costs. The PBM market is broken. It lacks the essential elements for a competitive market, namely: (1) choice, (2) transparency and (3) a lack of conflicts of interest.[4]

A tight oligopoly. According to the White House Council of Economic Advisers ("CEA"), three PBM firms - OptumRx, Express Scripts, and CVS Caremark - control more than 85% of the PBM market, "which allows them to exercise undue market power against manufacturers and against health plans and beneficiaries they are supposed to be representing, thus generating outsized profits for themselves."[5] Indeed, the three largest PBMs have a higher gross margin than any other players involved in the drug supply chain (distributors, insurers, or pharmacies).[6] PBM profits exceed $11 billion annually.[7]

Lack of Transparency. Moreover, the PBM market lacks transparency. As CEA observed, "[t]he size of manufacturer rebates and the percentage of the rebate passed on to health plans and patients are secret."[8] PBMs fight transparency at every turn, opposing federal and state legislation that would require disclosure of PBM rebates and fees.

Conflicts of interest. Given the lack of choice and transparency, preventing conflicts of interests is crucial to keeping prescription drug prices low. Here, conflicts of interest abound, because the three major PBMs are vertically integrated with health insurers, mail-order operations, and specialty pharmacies. Health plans and employers contract with PBMs, the middlemen, to secure prescription drugs from pharmaceutical manufacturers and services from pharmacies. When health plans and employers make contracts with PBMs, they want the services of "honest brokers" who will secure the lowest prices and best services from both drug manufacturers and payors. But, when PBMs are commonly owned with some of the entities they

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[2] PBM Watch: A Site Dedicated to Informing Consumers About Problems with Pharmacy Benefit Managers and Helping Identify Avenues to a More Transparent PBM Market, available at http://www.pbmwatch.com. Coalition to Protect Patient Choice, available at https://www.thecppc.com.

[3] *See* David Balto, Advocacy and Testimony, available at http://www.dcantitrustlaw.com/index.php?id=9.

[4] *"Protecting Consumers and Promoting Health Insurance Competition,"* Testimony of David Balto, Before House Judiciary Committee, Subcommittee on Courts and Competition Policy, October 8, 2009 at http://www.dcantitrustlaw.com/assets/content/documents/CAP/protecting%20consumers.pdf.

[5] Reforming Biopharmaceutical Pricing at Home and Abroad, The Council of Economic Advisors, White Paper, February 2018. (hereinafter referred to as CEA White Paper).

[6] Charley Grant, *Hidden Profits in the Prescription Drug Supply Chain*, Charlie Grant, February 24, 2018, Wall Street Journal.

[7] Charles Roehrig, *The Impact of Prescription Drug Rebates on Health Plans and Consumers*, Altarum, April 2018.

[8] CEA White Paper.

are supposed to bargain with in equivalent fashion, there is an inherent conflict of interest, which can lead to deception, anticompetitive conduct, and higher prices.

In a nutshell, the lack of choice, transparency and regulations allow for PBMs to engage in egregious conduct that harms consumers, health plans, and pharmacies alike. Both consumers and pharmacies suffer as consumers are increasingly denied a choice in their level of pharmacy service by PBMs. Vertically integrated PBMs exercise their power to restrict consumers to their own captive mail order and specialty pharmacy operations, reducing choice and quality for many. Ultimately consumers pay more and are denied the vital relationship with their community pharmacist. Consumers and their health plans also suffer when health plans are denied the benefits of the PBMs' services as an honest broker,[9] which drives up drug costs, and ultimately leaves consumers footing the bill for higher premiums.[10] This is why regulation is so necessary.

Hawaii's Any Willing Pharmacy Statute

Hawaii's "any willing pharmacy" statute requires "an otherwise qualified retail community pharmacy" to be part of a PBM's retail pharmacy network where it meets the plan's terms and conditions. Section 431 R-3.[11] The Insurance Commissioner has exclusive jurisdiction to determine what constitutes "otherwise qualified" for purposes of H.R.S. §431R-2.[12] Furthermore, any refusal by a prescription drug benefit plan, health benefits plan under chapter 87A or PBM to accept an otherwise qualified retail community pharmacy as part of a PBM's retail pharmacy network is a violation of the law.[13] Despite the clear wording of the statute, CVS Caremark and other PBMs have agreements with health benefit plans such as the Employee Trust Fund Union ("EUTF"), Hawaii Medical Service Association ("HMSA"), and other insurers, whereby consumers may only use their own specialty pharmacies.

[9] PBMs were initially formed to be "honest brokers" intermediaries who entered into relationships with pharmacies and drug manufacturers to create networks and as intermediaries worked to keep pharmacies and manufacturers in line with their clients' interests. However, when a PBM also owns a pharmacy it has a conflict of interest and may no longer act as an honest broker. Indeed, there are many complaints that CVS Caremark uses its dual role as a PBM and a pharmacy to disadvantage rival community pharmacies. See *Pharmacy Middlemen Made $223.7 Million From Ohio Medicaid*, Kaitlin Schroeder, June 23, 2018, Dayton Daily News, at https://www.daytondailynews.com/news/pharmacy-middlemen-made-223-from-ohio-medicaid/JsPLtbs3wfKoBmaGbF9GrK/ See also *House and Senate Pass Legislation to Rein in Pharmacy Benefit Managers*, Benjamin Hardy, March 14, 2018, Arkansas Times, at https://www.arktimes.com/arkansas/house-and-senate-pass-legislation-to-rein-in-pharmacy-benefit-managers/Content?oid=15678012.

[10] Often health plans, pharmacies, and large employers are silent about PBM misbehavior because of fears of retaliation, since they must do business with PBMs. In response to criticism during the Express Scripts/Medco merger that employers did not publicly express concern over the merger, Senator Herb Kohl stated that "it is notable that no large employer who privately expressed concerns to us wished to testify at today's hearing, often telling us they feared retaliation from the large PBMs with whom they must do business." Statement of U.S. Senator Herb Kohl on the Express Scripts/Medco merger (12.6.2011).

[11] HRS § 431R-2.

[12] HRS § 461.5 provides for the definition of a pharmacy, qualifications of a pharmacist, and the standards that the Board of Pharmacy uses to grant pharmacy permits.

[13] HRS § 431R-2.

Recent Complaints That Beneficiaries Are Being Denied Access from Using Their Pharmacy of Choice

Hawaii's any willing pharmacy statute also aims to prevent the "impos[ition of] any other term, condition, or requirement pertaining to the use of the services of a retail community pharmacy that materially and unreasonably interferes with or impairs the right of a beneficiary to obtain prescriptions from a retail community pharmacy of the beneficiary's choice."[14] Insurers and health plans worked to limit access to retail pharmacies by imposing onerous requirements to becoming a "specialty pharmacy." Meanwhile, these health plans and insurers steadily moved prescription drugs that were at one point administered by retail pharmacies, slapped a "specialty" label on those drugs, and then claimed that a retail pharmacy could no longer dispense such drugs. These same health plans and insurers maintained an opaque decision-making process about which pharmacies qualified to dispense specialty drugs, effectively foreclosing retail community pharmacies from the market. More evidence of the fact that "specialty pharmacies" are an invention designed to exclude competition from independent community pharmacies can be gleaned from HRS Chapter 461, where the Board of Pharmacy defines "pharmacy" but makes no mention of "specialty pharmacy."

In consideration of such exclusionary conduct, we are aware of two recent complaints made to the Insurance Commissioner by retail pharmacists as well as past complaints over the past several years demonstrating how CVS Caremark is engaging in exclusionary conduct designed to steer patients away from independent pharmacist to CVS Caremark's own CVS Long Drug Stores.

1) In January 2019, Brian Carter filed a complaint with the Insurance Division of the Hawaii Department of Commerce and Consumer Affairs indicating that consumers with health plans through HMSA were required to use CVS specialty pharmacy for their specialty prescriptions.[15]

2) On March 30, 2019, another complaint was filed indicating that a beneficiary of EUTF health plan was required to acquire their prescription at a CVS specialty pharmacy as well.[16]

The conduct of CVS Caremark is not new. CVS is engaged in a systematic and anticompetitive plan to foreclose independent pharmacists from servicing their patients.

ERISA Does Not Protect the PBMs' and Health Benefit Plans' Anticompetitive Behavior

The problem extends beyond CVS. Indeed, in 2016, the Coalition launched a complaint against insurers in Hawaii for the same type of exclusionary conduct. CVS Caremark and other vertically integrated PBMs steer business to their own specialty pharmacy stores. These

[14] § 431R-3.
[15] Complaint submitted by Brian A. Carter to Department of Commerce and Consumer Affairs, Insurance Division, dated January 20, 2019, attached as Exhibit 1.
[16] Complaint submitted by Gregory C. Harmon, Department of Commerce and Consumer Affairs, Insurance Division, dated March 30, 2019, attached as Exhibit 2.

practices are almost never in the interest of the consumer or in accordance with Hawaii's any willing pharmacy statute.

PBMs like CVS Caremark hide behind the Employee Retirement Income Security Act ("ERISA") to claim that Hawaii's law does not apply to them because it is preempted. This is not a surprise because PBMs try to challenge all legislation that attempts to regulate their activities. ERISA covers most employee benefit plans, including health plans, and provides detailed standards under the goal of uniformity to protect employee pension plans from fraud and mismanagement.[3] As a result, ERISA can preempt state laws that "relate to any employee benefit plan."[17] Here, however, ERISA's preemptive effect is inapplicable.

A successful ERISA challenge to the any willing pharmacy statute is unlikely. First, the Supreme Court has ruled that "any willing provider" statutes, like Hawaii's, regulate the "business of insurance" and are therefore not preempted by ERISA. *See Kentucky Ass'n of Health Plans v. Miller*, 538 US 329 (2003). While the goal of ERISA preemption is to permit employers to be able to establish consistent rules for their employee benefit plans on a nationwide basis, without being subject to varying state law requirements, the statute places limits on the scope of ERISA preemption and the Supreme Court has recognized that ERISA preemption is limited. Indeed, there is no exemption for most health plans. ERISA ***only*** exempts entities that are in the "business of insurance" if they are self-employed health plans (this is known as the "deemer clause"). *See* ERISA § 1144 (b)(2)(B). However, the deemer clause does not apply to governmental plans, like the Hawaii Employer Union Trust Fund that is in question in one of the complaints above nor does it apply to situations where health insurers are providing administrative services to self-insured plans. 29 U.S.C. § 1003(b); *Miller* 538 U.S. at 342 n.1 ("these noninsuring HMOs would be administering self-insured plans, which we think suffices to bring them within the activity of insurance for purposes of [ERISA])"). The Supreme Court rejected the argument that self-insured plans using health insurers for administrative services are covered by ERISA. *Id.* Because self-insured plans generally contract out for administrative services to such entities as HMOs and health insurers, the Court's decision further narrows the scope of ERISA preemption so Hawaii can certainly regulate certain aspects of self-insured plans through its laws directed at their administrative service providers. Moreover, the any willing pharmacy law covers health insurers exactly like HMSA and EUTF to ensure that they provide open access to *all* pharmacies should they seek to be in the PBMs', health benefit plans' and insurers' networks.

Insurance Commissioner Has a Duty To Enforce the Any Willing Pharmacy Statute

Chapter 431R grants the Insurance Commissioner with specific and exclusive powers to investigate whether the PBMs, health benefit plans, and health insurers are engaged in any unfair method of competition or deceptive acts, specify corrective actions, and issue orders to wrongdoers to cease and desist from engaging in the anticompetitive conduct and to assess monetary fines, if necessary. HRS 431R.

[17] 29 U. S. C. § 1144(a).

Concluding Thoughts

The anticompetitive and deceptive actions of the PBMs are knowing and purposeful violations of the any willing pharmacy law. I urge you to act on the Coalition's current petition and enforce the laws of the state to prevent these unfair and deceptive practices from continuing to deprive beneficiaries from choosing their pharmacy of choice. Action is necessary to protect consumers.

Sincerely,

David A. Balto

EXHIBIT 1

Department of Commerce & Consumer Affairs (DCCA)
upholding fairness in the marketplace

INSURANCE DIVISION - HEALTH BRANCH
PO BOX 3614
HONOLULU, HAWAI`I 96811-3614
PHONE NO: (808) 586-2804
FAX NO: (808) 587-5379
http://cca.hawaii.gov/ins/

COMPLAINT/INQUIRY FORM

ASSISTANCE IS NEEDED CONCERNING: ☒ A Complaint ☐ An Inquiry

YOUR INFORMATION

Mr.	Brian	A	Carter
	First	MI	Last

P.O. Box 939	Hanapepe	HI	96716	Kauai
Street Number & Name	City	State	Zip Code	Island

Home Phone: 8086450491 Business Phone: 8083355342 Fax: 8083350043

Mobile Phone: 8086450491 Email address: wbkotter@gmail.com

Name of insured person if different from above:

Your relationship to insured person: Self Authorized to represent ☒ Yes ☐ No

INSURER INVOLVED

My complaint/inquiry is about:

Note: The Insurance Division's Health Branch only has jurisdiction over insurers who provide private, fully insured health care insurance issued in Hawaii. The Health Branch does not have jurisdiction over federal plans such as Medicare, Medicaid (QUEST), TRICARE and the Federal Employees Health Benefits Program. The Health Branch also has no jurisdiction over hospitals, doctors, dentists or other health care providers, employers, health discount plans, or Worker's Compensation Insurance. If you have a complaint about other lines of insurance, contact the Insurance Division's Compliance and Enforcement Branch at (808) 586-2790.

Name of Insurance Company/Agency/Insurance Agent: CVS/~~HMSA~~ ← this is Hawaii blue cross

INSURANCE INFORMATION

The insurance policy related to the complaint/inquiry is: (check all that apply [**only if you know**])

First Level ☒ Group (coverage through an employer is group) ☐ Individual ☐ COBRA ☐ HIPAA Conversion

Second Level ☐ Health ☐ Dental ☐ Vision ☒ Prescription ☐ Long-Term Care

☐ Medicare Supplement (Medigap) Specify:

☐ Other Specify:

Third Level ☒ PPO ☐ HMO

Subscriber name: Beth Carter Subscriber Number: 02

Policy Number: R000081970675 Claim number: none

SUMMARY OF COMPLAINT OR INQUIRY

Provide a Summary of your complaint or inquiry. Include (1) all information you believe to be relevant to your claim and (2) the issues of concern. **If you need more space please prepare and attach additional sheet(s).**

I am asking the insurance commissioner to enforce ACT 226. Hawaii Pacific Health has enacted a policy through CVS/HMSA forcing me to utilize a pharmacy that is not of my choosing. According to a recent explanation of benefits my benefits will not include specialty pharmacies other than CVS specialty Pharmacy. I do not like CVS specialty pharmacy and do not want to have to utilize that pharmacy because I feel they do not meet my needs and I find their corporate impersonal approach offensive. It is important to me that I get the care that my spouse and I are paying for and I want the right to choose the pharmacy that I feel comfortable with. Act 226 affords me the right to choose the pharmacy that I feel most comfortable with. It is the responsibility of the government to protect its citizens. I demand that the insurance commissioner enforce the law to protect my rights.

I have attached the explanation of benefits that I received from HPH. I do not feel that I should be penalized by using a pharmacy of my choosing. Please act to correct this by informing CVS that they do not have the right to restrict my access to the pharmacy that I feel comfortable using and I should not have to pay a penalty to utilize the pharmacy of my choosing that is contracted, and otherwise qualified pharmacy.

RELIEF

State what you would consider to be a satisfactory resolution to your concerns:

I would like a publication to be distributed to all HPH employees that rescinds the previous memo with a listing of all possible pharmacies that I may utilize.

SIGN

ATTACH COPIES OF DOCUMENTS YOU FEEL WILL SUPPORT YOUR COMPLAINT OR INQUIRY. **DO NOT SEND ORIGINALS**

NOTICE: A copy of this form (and any attachments) may be sent to the insurance company for a response and may be shared with other regulatory agencies with jurisdiction over this matter.

Signature

Date 01/20/2019

CVS caremark™

2019 CVS Caremark® Prescription Copay Costs***

Prescription Copay:

	Any Network pharmacy		
	Price of one 30-day refill (non-long term medicine)	Price of each grace fill for one 30-day refill (long-term medicine)	
Generic	$10	$10	$20
Preferred brand	25% (Min:$50, Max: $100)	25%(Min:$50, Max: $100)	25% (Min: $100, Max: $200)
Non-preferred brand	50% (Min:$100, Max: $200)	50% (Min:$100, Max: $200)	50% (Min: $200, Max: $400)

Diabetic Insulin/Supplies Copay:

	Any Network pharmacy		
	Price of one 30-day refill	Price of each grace fill for one 30-day refill (long-term medication)	
Generic	$10	$10	$20
Preferred brand	$15	$15	$30
Non-preferred brand	$25	$25	$50

- Please Note: When a generic is available, but the pharmacy dispenses the brand-name medication for any reason, you will pay the difference between the brand-name medication and the generic plus the brand copayment.

Specialty Medication Copay:

Generic	$50
Preferred Brand	25% ($50min/$100max)
Non-Preferred Brand	50% ($100min/$200max)

Filling specialty medications:

You must use CVS Specialty pharmacy for your specialty prescriptions, if you choose to fill at a non-CVS Specialty pharmacy then you will pay the full cost of the prescription. Specialty medications may only be filled for a 30 day supply.

Do you have a mobile device?

- **Download the CVS Caremark App from the App Store or on Google Play**
- **Easy Refills** – Refill all your prescriptions in one place. You may refill prescriptions at CVS Caremark's mail service pharmacy, Longs Drugs/CVS pharmacy, or at CVS Specialty pharmacy.
- **Check your drug costs** – Find out if your medication is covered by your plan and see low cost options, including generics. You can also compare the cost of filling your prescription at mail or any retail pharmacy.
- **Manage and Track** – view and track all your mail, retail and specialty prescriptions in one easy-to-manage list.
- **View Prescription Spend** - See total prescription costs for you and your family enrolled on the plan in one view, making financial planning easier.

***Copayment, copay or coinsurance means the amount a plan member is required to pay in accordance with a Plan, which may be a deductible, a percentage price, a fixed amount or other charge, with the balance, if any, paid by the Plan.

Your privacy is important to us. Our employees are trained regarding the appropriate way to handle your private health information.

TDD: 1-800-863-5488

CVS caremark™

Want a way to save on your maintenance drugs (long-term medicines)?

Maintenance drugs (long-term medicines) are prescriptions commonly used to treat conditions that are considered chronic or long term. These conditions usually require regular, daily use of medicines. Examples of maintenance drugs are those used to treat high blood pressure, heart disease, asthma and diabetes. Some birth control medications are considered maintenance drugs.

Effective 1/1/19, your plan allows two (2) 30-day grace fills of long-term medications at any pharmacy in our network. If you continue to get 30-day fills after that, you will pay double the regular co-pay amount for a 30 day supply.

By switching to Maintenance Choice, you can avoid paying more for your long-term medications(s) by having 90-day supplies filled through mail service or at a CVS or Target/pharmacy.

- First, make a change from 30-day refills to 90-day supplies.
- Then, choose to fill your 90-day supply at any of our more than 9,600 Longs Drugs, CVS Pharmacy, including those inside Target store locations or with CVS Caremark Mail Service Pharmacy, located in Honolulu, HI. The choice is yours, and so are the savings.

Maintenance Medication (long-term medicines) Copay:

	Any Network pharmacy		[illegible]
	Price for your 2 grace fills	**Price for a 30-day supply if you do not move to 90-day supply after 2 grace fills**	[illegible]
Generic	$10	$20	$20
Preferred brand	25% ($50min/$100max)	25% ($100min/$200max)	25% ($100min/$200max)
Non-preferred brand	50% ($100min/$200max)	50% ($200min/$400max)	50% ($200min/$400max)

Save with CVS Caremark Mail Service Pharmacy

- Enjoy convenient, reliable delivery to the location of your choice.
- Receive your medicines in unmarked, tamper-resistant and, when needed, temperature-controlled packaging.
- Talk to a pharmacist by phone toll-free, 24/7, from the privacy of your home.

Save at Longs Drugs or CVS Pharmacy inside Target locations

- Pick up your medicines at a time that is convenient for you.
- Enjoy same-day prescription availability
- Talk with a pharmacist face-to-face

How to get started:

- Call our Honolulu Customer Care toll free at **1-877-876-7240**, and we'll handle the rest
- Speak to a pharmacist at one of our Longs Drugs, CVS Pharmacy locations, including those inside Target store locations
- Visit **www.caremark.com/mailservice** and sign in or register to request a new prescription

***Copayment, copay or coinsurance means the amount a plan member is required to pay in accordance with a Plan, which may be a deductible, a percentage price, a fixed amount or other charge, with the balance, if any, paid by the Plan.
Your privacy is important to us. Our employees are trained regarding the appropriate way to handle your private health information.

TDD: 1-800-863-5488

EXHIBIT 2

Department of Commerce & Consumer Affairs (DCCA)

upholding fairness in the marketplace

INSURANCE DIVISION - HEALTH BRANCH
PO BOX 3614
HONOLULU, HAWAI`I 96811-3614
PHONE NO: (808) 586-2804
FAX NO: (808) 587-5379
http://cca.hawaii.gov/ins/

COMPLAINT/INQUIRY FORM

ASSISTANCE IS NEEDED CONCERNING: ☑ A Complaint ☐ An Inquiry

YOUR INFORMATION

First: GREGORY | MI: C | Last: HARMON

Street Number & Name: PO Box 610 | City: Kapaau | State: HI | Zip Code: 96755 | Island: Hawaii

Home Phone: | Business Phone: 808 887-6161 | Fax: 808 889-0180

Mobile Phone: 808 938-6773 | Email address: KamRx96755@yahoo.com

Name of insured person if different from above: Edith Roxburgh

Your relationship to insured person: patient-pharmacist authorized to represent ☑ Yes ☐ No

My complaint/inquiry is about:

Note: The Insurance Division's Health Branch only has jurisdiction over insurers who provide health care insurance; the Health Branch does not have jurisdiction over hospitals, doctors, dentists or other health care providers, or employers. We also do not have jurisdiction over companies that sell health discount cards, Med-Quest or Worker's Compensation insurance. If you have a complaint about other lines of insurance or a producer (agent) selling insurance, contact the Insurance Division's Compliance and Enforcement Branch at (808) 586-2790.

INSURER INVOLVED

Insurance Company: CVS Caremark – EUTF State of Hawaii

INSURANCE INFORMATION

The insurance policy related to the complaint/inquiry is: (check all that apply **[only if you know]**)

First Level ☑ Group (coverage through an employer is group) ☐ Individual ☐ COBRA ☐ HIPAA Conversion

Second Level ☐ Health ☐ Dental ☐ Vision ☑ Prescription ☐ Long-Term Care ☐ Original Medicare

☐ Medicare Advantage (Medicare + Choice) ☐ Medicare Suplement (Medigap) Specify:

☐ Medicare Select ☐ Medicare Prescription (Part D)

☑ Other Specify: spouse of retired state employee

Third Level ☐ PPO ☐ HMO

Subscriber name: Roxburgh, Edith K | Subscriber Number: HB 1043848

Policy Number: Rx 3133 | Claim number: 494578 494575 494577 494574 494576 494573

DCCA Complaint CVS Caremark and EUTF State of Hawaii

Member-patient came in to Kamehameha Pharmacy to order her medication and pick up her husbands refills 01/18/19. She agreed to pay her co pay $45 confirmed for her CHF medication Entresto which needed to be ordered for a 90 day supply. This was a special order since medication cost was approx $1,500 which she agreed to wait since pharmacy does not stock and member last received same medication refilled on 08/28/18 for same co pay $45.

Member calls in refill request for her other 5 generic medications all for a 90 day supply on 01/21/19. Please note that these same prescriptions were last refilled and picked up on 11/01/18 for a 90 day supply for a total co pay $48.27. She did ANOT request refill for Entresto in November, 2018. We processed her refill requests later that morning with paid adjudicated claims with a total co pay $63.27 which is determined by the PBM CVS Caremark. The member called pharmacy and spoke with my technician regarding total price for her 5 medications at approx 10am which she was not agreeing with charges. Member was advised to check with her insurance company of plan sponsor to verify this increase in out of pocket charges for new year. Member calls back pharmacy and speaks to myself the pharmacist at approx 10:30 am very upset claiming that we are over charging her for her prescriptions. She was very concerned that we were $15 higher than the last time in Nov. I explained to her that we do not create the co pays then she abruptly hung up the phone.

CVS pharmacy in Waimea called approx 1:35 pm asking us to reverse all paid claims for member that we processed that same morning. I called Longs Drugs to verify that the member is requesting these transfers and was told he is was waiting at their location per Shannon, technician. Myself informed Shannon later it would be approx 2 hours for the investigation to be completed, I would notify Shannon when reversal has been completed except Entresto. CVS Caremark male representative called me approx

2:20pm explaining that member was part of EUTF and to reverse all the paid claims at my pharmacy as soon as possible. I informed help desk PBM representative that I would reverse claims except special order expensive Entresto prescription. I received a call from supervisor from Honolulu PBM call center RayLynn stating that my pharmacy was not in the network for EUTF. I reversed all paid claims except Entresto and notified Kim pharmacist at Longs Waimea at approx 3:45pm.

I reached out the following day to HMSA and the EUTF for more information regarding this so called network and other advise.

Friday 1/25/19 I contacted HMSA provider services for contact info for PBM call center to contact member to pick up her heart medicine Entresto before week end. HMSA representative Tiger was very understanding and agreed to send e mail to call center for response. I received a phone call from CVS Caremark employee Emerald very quickly as if she was in the same office as HMSA provider services. I suggested she reach out to the member to pick up her heart medication Entresto before the weekend. She stated "member does not want to go to your pharmacy". I suggested that maybe you could offer member a credit of $15 so member can pick up her expensive medication. She again stated "we can not tell member where to go to save money". Emerald was very hostile and emotional with this communication. I believe this was the representative that steered my patient-member to their own pharmacy Longs Drugs on 1/23/19 acting unprofessionally as the patient advocate which is a deceptive trade practice. Later that same day I received a call from Jeff a compliance representative from CVS Caremark regional office in Arizona regarding a complaint from PBM call center in Honolulu. He failed to return his call as stated approx 3:30pm. Jeff did call back the following week to take my report and provided a claim #04062409 and suggested I work with Dennis for resolution. I called CVS professional line in Arizona several times on 2/4, 2/6, 2/8, 2/13, 2/14, 2/19 until I received call back from Ralph in contracting division. Warren did call me back to discuss our mutual problem on 2/24/19. We discussed CVSCaremark over

nullify my paid claim early and disregarding my paid adjudicated claim on 1/18/19 which is a clear conflict of interest when sent to their own Longs Drugs. I did reverse my paid claim on 2/4/19 per my contract requirements. The final outcome for me is that this has left me with a bottle on Entresto $1500 on my shelf that can not be returned for credit and my pharmacy staff has not done anything wrong only trying to fill prescriptions for a state worker in Hawaii.

In conclusion the PBM increased generic co pays not in favor for the member to steer member to mail order pharmacy CVS or their own pharmacy CVS known as Longs Drugs. CVS Caremark representative in Honolulu call center misrepresented my pharmacy by being the only point of contact acting unprofessionally as the patient advocate directly without a plan sponsor or insurance agents advise before steering my patient to their pharmacy. I will be able to provide specific data relating to co pays with this case to clearly show financial structure to benefit PBM and work against member/plan sponsor EUTF. I did discuss this with EUTF director Derek on several occasions with no corrective comments or concern. In my opinion this deceptive business practice by CVS Caremark is eliminating competition and restricting rural access for necessary medications and all pharmacy benefit services in North Kohala, Big Island.

Respectfully, Greg Harmon, Pharmacist

Kamehameha Pharmacy, P.O. Box 610, Kapaau, HI 96755

SUMMARY OF COMPLAINT OR INQUIRY

please see three pages provided

RELIEF

Correct CVS Caremark's business practice for all E.U.T.F members to receive pharmacy benefits at their pharmacy of choice without price discrimination or penalities.

SIGN

Signature

Date 3-30-2019