

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into as of the Effective Date by and between the State of Illinois (“State”) and CaremarkPCS Health, L.L.C. (“Caremark”), hereafter collectively referred to as the “Parties,” to fully and finally resolve the dispute as defined herein. In consideration of their mutual agreement to the terms of this Agreement, and other such valuable consideration as described herein, the sufficiency of which is hereby acknowledged, the Parties, acting by and through their respective agents, stipulate and agree as follows:

I. PARTIES

1. The “State of Illinois” means the State of Illinois, its officers, agents, employees, agencies, and departments, including the Office of the Attorney General (OAG). The Attorney General is the chief legal officer of the State, having the duties and powers prescribed by law, including those set out in Article XX of the Illinois Code of Civil Procedure, 735 ILCS § 5/20-101, *et seq.*, and the Illinois False Claims Act, 740 ILCS 175/1 *et seq.*

2. CaremarkPCS Health, L.L.C., doing business as CVS Caremark, is a Delaware limited liability company and a subsidiary of CVS Health Corporation, and provides pharmacy benefit management services, including by a contract with the Illinois Department of Central Management Services (CMS), #CIB6354390, entered May, 2015, and amended June, 2017; June, 2018; and June, 2021 (the “Contract”).

II. DEFINITIONS

The following terms shall have the following definitions:

3. “Covered Conduct” shall mean and be limited to the alleged conduct of Caremark, CVS Pharmacy, Inc., Zinc Health Services, LLC (“ZHS”), and Zinc Health Ventures, LLC, regarding certain pharmaceutical manufacturer payments collected by ZHS between April 1, 2020

and June 30, 2024, which payments were the subject of an investigation by OAG, during which Caremark provided specific data to OAG concerning such payments, and which are alleged by the State to constitute Rebates, as defined in the Contract. The State alleges that Caremark was legally obligated to pass through such payments to Illinois, to adequately disclose to CMS the nature of the relationship between Caremark, CVS Pharmacy, Inc., ZHS, and Zinc Health Ventures, LLC, as well as any potential impact of those relationships on such payments; the State further alleges that Caremark, CVS Pharmacy, Inc., ZHS, and Zinc Health Ventures, LLC, separately and in concert, failed to do so and thereby unlawfully deprived the State of such payments. The Released Parties specifically deny these allegations.

4. “Effective Date” shall mean the first date that this Agreement has been executed by both of the Parties to this Agreement.

5. “Released Parties” shall mean CaremarkPCS Health, L.L.C., CVS Pharmacy, Inc., Zinc Health Services, LLC, and Zinc Health Ventures, LLC.

III. TERMS OF AGREEMENT

6. Within seven (7) business days of the Effective Date of this Agreement, Caremark agrees to pay by wire transfer the sum of \$45,000,000.00 (USD) in accordance with written instructions from OAG.

7. Payment of any additional amounts collected by Caremark, ZHS or any other party on behalf of Caremark or ZHS that constitute Rebates or Formulary Rebates, as defined below, that exceed \$45,000,000.00, earned or collected during the course of the Contract and directly or indirectly related to the purchase or utilization of products covered by the CMS pharmacy benefit plan by eligible plan members, shall be made directly to CMS during the true-up process completed in connection with the expiration of the Contract. For avoidance of doubt, Caremark agrees (a)

that the true-up process completed in connection with the expiration of the Contract shall be based upon the definition of Rebates or Formulary Rebates, below, as though that definition was set forth in full in the Contract and (b) CMS will under no circumstances owe Caremark any amount under the true-up process.

8. The Parties agree that the following definition appears in the contract between Caremark and the Illinois Department of Central Management Services, #CIB25035362, effective July 1, 2024:

“Rebates” or “Formulary Rebates” means compensation or remuneration of any kind received or recovered from a pharmaceutical manufacturer by Vendor, any affiliate, or any subcontractor, including but not limited to any group purchasing organization, directly or indirectly related to the purchase or utilization of Covered Products by eligible Members, regardless of how categorized, including, but not limited to, incentive rebates; credits; rebates, regardless of how categorized; market share incentives; promotional allowances; commissions; educational grants; market share of utilization; drug pull-through programs; implementation allowances; clinical detailing; rebate submission fees; and administrative or management fees. Rebates also include any bona fide fees, including Manufacturer Administrative Fees, or Corporate Fees that Vendor, any affiliate, or any subcontractor, including but not limited to any group purchasing organization, receives from a pharmaceutical manufacturer for administrative costs including but not limited to formulary placement, and/or access. Rebates do not include pharmacy purchase discounts and related service fees Vendor or its affiliates receive from pharmaceutical companies which are attributable to or based on the purchase of product to stock, or the dispensing of products from, Vendor’s affiliated mail order and specialty drug pharmacies. For the avoidance of doubt, 100% of Rebates shall be passed through to CMS. All items listed above are fully auditable by CMS during an eligible rebate audit and Vendor may not redact any manufacturer Rebate contracts selected for audit. Vendor agrees to affirmatively and immediately disclose to CMS all fees that Vendor, any affiliate, or any subcontractor is currently charging to any pharmaceutical manufacturer in order for CMS to assess whether those fees are in fact Rebates that should be passed through to CMS. This fee disclosure obligation applies to any other fees created during the initial term of this contract and any renewals.

9. Provided that the payments set out in Paragraphs 6 and 7 of this Agreement are made pursuant to the terms of those Paragraphs, the State, fully and finally remises, releases and forever discharges: the Released Parties, and each of their respective officers, directors, trustees, past and present employees, parents, subsidiaries, affiliates under common control, legal representatives, assigns, insurers, attorneys, predecessors, and successors of and from all manner of actions, causes of action, damages, judgments, executions, claims and demands and any other right to obtain any type of monetary damages (including punitive damages), expenses, attorney's and other fees, rescission, or restitution or any other remedies of whatever kind at law, in equity, in contract, or in tort, arising under, or related to, the Covered Conduct, on or at any time prior to June 30, 2024. For avoidance of doubt, a non-exclusive list of entities that are parents, subsidiaries, and/or affiliates of the Released Parties, and therefore are subject to the Release set forth in this Paragraph includes (but is not limited to) CVS Health Corporation, Caremark, L.L.C., and Caremark Rx, L.L.C.

IV. RESERVATIONS AND EXCLUSIONS

10. Notwithstanding any term of this Agreement, the following are specifically reserved and excluded from the scope and terms of the release set forth in paragraph 9 as to any entity or person:

- a. Any civil or administrative liability arising under Chapter 35 of the Illinois Compiled Statutes or any regulations promulgated under the authority of any statute contained therein;
- b. Any criminal liability;

- c. Any liability based upon such obligations as are created by this Agreement;
- and
- d. Any claims by or liability to the State, its agencies, or OAG for any conduct other than the Covered Conduct.

V. REPRESENTATIONS AND WARRANTIES

11. The Parties have executed this Agreement in good faith reliance upon the following warranties and representations. A material breach of any of these representations and warranties shall nullify the releases provided for in this Agreement to the breaching party.

12. Caremark warrants and represents to OAG that it has fully cooperated with OAG's investigation regarding the Covered Conduct by providing documents and other information and that it has not knowingly or intentionally withheld information that may be material to the evaluation and resolution of the investigation by OAG regarding the Covered Conduct.

13. The signatories below represent that they have the lawful authority to bind the Parties for whom they are signing to the terms of this Agreement. The Parties represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

VIII. MISCELLANEOUS

14. **Governing Law and Venue:** This Agreement is governed by the laws of the State of Illinois and the Parties agree that any disputes arising from this Agreement shall be heard in the Cook County Circuit Court of Illinois.

15. **Entire Agreement and Non-Reliance:** This Agreement constitutes the entire agreement between the Parties concerning the subject matters hereof. All other agreements, covenants, representations, and warranties, express or implied, oral or written, of the Parties hereto

concerning the subject matters hereof are contained herein. The Parties shall not rely on any representations, whether oral or written, not expressly incorporated in this Agreement. For avoidance of doubt, #CIB6354390 remains in full force and effect, and nothing in this Agreement shall be construed as novating, terminating, or cancelling that agreement.

16. **Severability:** If any portion, clause, phrase, or term of this Agreement is later determined by a court of law to be invalid or unenforceable, for whatever reason, the remaining provisions of this Agreement will remain valid and in effect as to the Parties and will be unaffected by said determination.

17. **Counterparts:** This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Facsimiles of signatures, including electronic signatures, shall constitute acceptable, binding signatures for purposes of this Agreement.

18. **Binding Agreement:** This Agreement is binding on the State and Caremark..

19. **Headings and Interchangeability:** The headings of sections contained in this Agreement are merely for the convenience of reference and shall not affect the interpretation of any of the provisions. Whenever the context so requires, the singular shall include the plural and vice versa. All words and phrases shall be construed as masculine, feminine, or gender neutral, according to the context. This Agreement is deemed to have been drafted jointly by the Parties and any uncertainty or ambiguity shall not be construed for or against any Party as an attribution of drafting to such Party.

20. **No Admission of Liability:** Caremark denies each and every allegation of liability, wrongdoing, and damages related in any way to the alleged Covered Conduct. Nothing in this Agreement shall be construed as an acknowledgement, an admission, or evidence of liability by


Caremark of any violation of any applicable law, rule, statute, regulation, order, understanding, agreement, or contract of any kind, under state or federal law. Nonetheless, without admitting or conceding any liability or damages whatsoever and without admitting any wrongdoing, Caremark has agreed to the terms and conditions set forth in this Agreement to avoid the substantial expense, inconvenience, burden and disruption of potential litigation.

21. **Disclosure:** Upon execution of this Agreement, all Parties consent to the disclosure of this Agreement to the public.

The State of Illinois
by the Office of the Attorney General of Illinois

Date: June 24, 2024

By:


David F. Buysse
Deputy Chief, Public Interest Division
115 South LaSalle Street, 31st Floor
Chicago, Illinois 60603

Date: June 24, 2024

By:

CaremarkPCS Health, L.L.C.
Matthew
C Oesterle
Digitally signed by
Matthew C Oesterle
Date: 2024.06.24
12:43:40 -05'00'
Matthew Oesterle
Vice President and Senior Legal Counsel,
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