

Before the Federal Trade Commission

**Response to Request for Comment
Caremark; Docket No. 9437**

Written Comment from the American Economic Liberties Project, Alliance of Independent Dentists, Doctors for America, Minnesota Farmers Union, Pharmacists United for Truth and Transparency, Public Citizen, T1International, and Write-Off Warrior Re: Caremark and Zinc Health Services; Analysis of Proposed Agreement Containing Consent Order To Aid Public Comment

Sept. 4, 2026

Introduction & Summary

The American Economic Liberties Project,¹ Alliance of Independent Dentists,² Doctors for America,³ Minnesota Farmers Union,⁴ Pharmacists United for Truth and Transparency,⁵ Public Citizen,⁶ T1International,⁷ and Write-Off Warrior⁸ submit this comment regarding the proposed 10-year consent agreement between the Federal Trade Commission (FTC) and CVS Caremark⁹ to settle alleged violations of federal law prohibiting unfair methods of competition.¹⁰

Although the proposed agreement—like its predecessor between the FTC and Express Scripts¹¹—includes positive terms that build upon aspects of the relief requested in the original

¹ Economic Liberties is a nonpartisan, nonprofit research and advocacy organization dedicated to understanding and addressing the problem of concentrated economic power in the United States.

² The Alliance of Independent Dentists champions private practice dentistry through education, advocacy, and collaboration, empowering dentists to provide exceptional patient-centered care.

³ Doctors for America is a physician-led, nonpartisan movement united doctors, medical trainees, and advocates to fight for equitable health care—backed by clinical experience and driven by evidence.

⁴ The Minnesota Farmers Union is a grassroots, member-driven organization working for family farmers and rural communities.

⁵ Pharmacists United for Truth and Transparency works to expose and end the harmful, anticompetitive practices of vertically-integrated pharmacy benefit managers.

⁶ Public Citizen is a nonprofit consumer advocacy organization that champions the public interest in the halls of power to ensure that government works for the people—not big corporations.

⁷ T1International is a global, patient-led nonprofit fighting for health care equity in the diabetes access-to-medicine space.

⁸ Write-Off Warrior is a research and advocacy firm focused on protecting rural health care access.

⁹ “Caremark and Zinc Health Services; Analysis of Proposed Agreement Containing Consent Order To Aid Public Comment,” Federal Trade Commission, Aug. 5, 2026, <https://www.regulations.gov/document/FTC-2026-1090-0001>.

¹⁰ “FTC Sues Prescription Drug Middlemen for Artificially Inflating Insulin Drug Prices,” Federal Trade Commission, Sept. 20, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-sues-prescription-drug-middlemen-artificially-inflating-insulin-drug-prices>.

¹¹ “Agreement Containing Consent Order with Respondents Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc., and Ascent Health Services LLC,” Federal Trade Commission, Feb. 4, 2026, https://www.ftc.gov/system/files/ftc_gov/pdf/d09437caremarkacco-esiresps.pdf.

complaint¹² and the pharmacy benefit manager (PBM) reforms recently enacted by Congress,¹³ it has significant limitations regarding prescription drug affordability and raises serious questions about enforceability. The proposed agreement also deviates from its predecessor, weakening certain standards for CVS Caremark compared with Express Scripts. Notably, the stock price for CVS Caremark's parent company, CVS Health, increased in the week after the FTC announced the agreement, signaling that Wall Street does not see it as meaningfully affecting CVS Caremark's business model, which is a prerequisite for lowering Americans' drug costs.¹⁴

This comment addresses these concerns. It also urges the FTC to strengthen the agreement before finalization and to continue investigating CVS Caremark's conduct beyond insulin.

The Proposed Agreement's Benefits and Limitations

Under the proposed agreement,¹⁵ CVS Caremark has agreed to the following:

- *Stop favoring higher list-price drugs over identical lower-cost alternatives on its standard formulary.* This term would expand coverage of lower-cost alternatives across drug types (not just insulin, which was the focus of the original complaint). It may also induce manufacturers to offer lower-cost alternatives where none exist. However, this term would neither apply to all formularies, many of which are customized by commercial plan sponsors,¹⁶ nor to all markets, given explicit exemptions for Medicare, Medicaid, and Affordable Care Act (ACA) Exchange plans, limiting its impact among more vulnerable patient populations, including older adults, people with disabilities, and low-income individuals.¹⁷ This term also exempts lower-cost alternatives that are in shortage “when the formulary decision is finalized, at the time the formulary is set to take effect, or at any time during the eighteen months prior to when the formulary decision is

¹² Complaint, *In the Matter of Caremark Rx, LLC, et al.*, Docket No. 9437, Federal Trade Commission, Nov. 26, 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/612314.2024.11.26_part_3_administrative_complaint_-_revised_public_redacted_version.pdf.

¹³ “H.R. 7148 - Consolidated Appropriations Act, 2026,” Library of Congress, accessed Feb. 23, 2026, <https://www.congress.gov/bills/119th-congress/house-bill/7148>.

¹⁴ “CVS Health Corporation (CVS),” *Yahoo! Finance*, accessed July 29, 2026, <https://finance.yahoo.com/quote/CVS/>.

¹⁵ “Decision and Order as to Respondents Caremark Rx, L.L.C. and Zinc Health Services, LLC,” Federal Trade Commission, July 14, 2026, https://www.ftc.gov/system/files/ftc_gov/pdf/CaremarkandZinc-DecisionandOrder.pdf.

¹⁶ According to a recent press release, “Plan sponsors that adopt CVS Caremark template formularies retain discretion to customize coverage for their members.” See “CVS Caremark Delivers Affordability and Access to GLP-1 Weight Management Medications with Expanded Coverage Options,” CVS Health, May 28, 2026, <https://www.prnewswire.com/news-releases/cvs-caremark-delivers-affordability-and-access-to-glp-1-weight-management-medications-with-expanded-coverage-options-302783820.html>.

¹⁷ As of March 31, 2026, Aetna's plan membership totaled 26,005, divided among commercial (71%), Medicare Advantage (16%), Medicare supplement (5%), and Medicaid (8%). Aetna, which shares a parent company in CVS Health with CVS Caremark, exited the ACA Exchange market at the end of 2025. “CVS Health Corporation Reports Strong First Quarter 2026 Results and Raises Full-Year 2026 Guidance,” CVS Health, May 26, 2026, <https://investors.cvshealth.com/news/news-details/2026/CVS-HEALTH-CORPORATION-REPORTS-STRONG-FIRST-QUARTER-2026-RESULTS-AND-RAISES-FULL-YEAR-2026-GUIDANCE/default.aspx>; Paige Minemyer, “Aetna to exit the ACA exchanges in 2026,” *Fierce Healthcare*, May 1, 2025, <https://www.fiercehealthcare.com/payers/aetna-exit-aca-exchanges-2026>.

finalized,” further limiting its impact.¹⁸ These market and shortage exemptions do not appear in the proposed agreement between the FTC and Express Scripts. They are especially significant for insulin-dependent patients, for whom switching products is not equivalent to substituting a comparably effective alternative for a non-insulin drug.

- *Extend a monthly out-of-pocket insulin co-pay cap to all plan members when a sponsor adopts a formulary that includes an eligible insulin product.* This term would cap certain members’ insulin costs at \$25 (for up to a 34-day supply) to \$75 (for a 69-day or longer supply). This is an improvement upon the proposed agreement between the FTC and Express Scripts, which did not specify the co-pay cap dollar amount. However, this term would neither apply to all insulin products nor all markets, limiting its impact. It also allows sponsors to opt out of this benefit, which would be particularly consequential for insulin-dependent patients on individualized regimens since an opt-out formulary exclusion may force a change in product that requires medical supervision, dose re-titration, or other urgent needs.
- *Provide and promote a standard offering that bases members’ out-of-pocket costs on net drug prices rather than list prices, transitions away from rebates and spread pricing, requires disclosure of certain information to sponsors, fairly reimburses retail community pharmacies, and doesn’t exclude willing retail community pharmacies from its network.* These terms ostensibly require CVS Caremark to pass through savings to plan members at the point of sale, which the FTC claims will contribute up to \$4.5 billion in patient out-of-pocket cost savings over 10 years, and bolster small, independent pharmacies by ensuring they are reimbursed fairly and not excluded from networks, both of which are essential to their financial viability.¹⁹ However, the FTC’s savings claims are unsubstantiated.

Furthermore, unlike the proposed agreement between the FTC and Express Scripts, these terms base members’ out-of-pocket costs on the “Client Contracted Amount” (i.e., the cost agreed to by CVS Caremark and the sponsor in their specific contract minus any rebates) rather than the net unit cost (i.e., list price minus any rebates).²⁰

These terms also carve out CVS Caremark’s TrueCost program, which, the company claims, offers “net cost pricing guarantees.”²¹ However, the company has also stated that TrueCost factors “individual network negotiations,” which disadvantage smaller and unaffiliated pharmacies that lack negotiating leverage.²²

¹⁸ See 15.

¹⁹ “FTC Secures Major Settlement with Caremark, Resolving Antitrust Case Against Second Middlemen,” Federal Trade Commission, July 14, 2026, <https://www.ftc.gov/news-events/news/press-releases/2026/07/ftc-secures-major-settlement-caremark-resolving-antitrust-case-against-second-drug-middleman>.

²⁰ See 11 and 15.

²¹ “Helping enable a more transparent, simple health care system,” CVS Health, March 19, 2024, <https://www.cvshealth.com/news/pharmacy/helping-enable-a-more-transparent-simple-health-care-system.html>.

²² “What CVS Pharmacy’s New Cost-Plus Reimbursement Approach Means for PBMs, Pharmacies, Plan Sponsors, and Prescription Prices,” Drug Channels, Dec. 6, 2023, <https://www.drugchannels.net/2023/12/what-cvs-pharmacys-new-cost-plus.html>.

Likewise, these terms condition fair reimbursement on retail community pharmacies agreeing to share sensitive acquisition cost data with CVS Caremark, whose sister subsidiaries include their competitors: CVS Specialty Pharmacy, CVS Caremark's Mail Order Pharmacy, and CVS Retail Pharmacy.²³ They also exclude non-standard offerings and medium to large pharmacy chains, which are similarly harmed by CVS Caremark's business practices.²⁴

Finally, the vague language raises questions about whether the reimbursement requirements—based on acquisition cost plus an unspecified dispensing fee—will be sufficient. Indeed, retail community pharmacies reported that Express Scripts updated its network contract terms to further slash reimbursement in the wake of its proposed agreement with the FTC.²⁵

- *Protect unaffiliated network pharmacies that participate in hub arrangements.* This term—unique to the proposed agreement between the FTC and CVS Caremark—protects unaffiliated network pharmacies that participate or wish to participate in Big Pharma manufacturers' hub arrangements²⁶ from interference or retaliation by CVS Caremark, such as anticompetitive contractual prohibitions or restrictions, under certain circumstances.²⁷
- *Include direct-to-consumer pricing through TrumpRx as a covered benefit.* This term needlessly loops in TrumpRx, a constellation of unenforceable deals between the current administration and Big Pharma manufacturers that hinge on promised relief from tariffs that the Supreme Court has since invalidated.²⁸ These deals circumvent meaningful PBM reform²⁹ and stand to enrich Donald Trump Jr.³⁰ Unlike the proposed agreement between the FTC and Express Scripts, this term exempts plan sponsors from counting payments made on the TrumpRx platform toward members' out-of-pocket costs for any drug against which they have a religious or moral objection.

²³ Noah Tong, "Express Scripts-FTC deal making matters worse, pharmacies say," *Modern Healthcare*, March 30, 2026, <https://www.modernhealthcare.com/insurance/mh-ftc-express-scripts-pbm-pharmacies/>.

²⁴ Matt Stoller, "The Real Reason Walgreens Collapsed," *BIG*, March 13, 2025, <https://www.thebignewsletter.com/p/the-real-reason-walgreens-collapsed>.

²⁵ See 17.

²⁶ Brand-name drug manufacturers fund hubs to route expensive prescriptions—often with a coupon or voucher—to independent hub pharmacies, circumventing major PBMs, like CVS Caremark, and their affiliated pharmacies. Doing so spares them PBM formulary restrictions, prior authorization requirements, and other hassles.

²⁷ See 15.

²⁸ Amanda Chu, "RFK Jr.'s days of going wild on health may be over," *Politico*, updated Feb. 22, 2026, <https://www.politico.com/news/2026/02/21/rfk-midterms-maha-pesticides-vaccines-food-00792018>; Slip Opinion, *Learning Resources, Inc., et al., v. Trump, President of the United States, et al.*, No. 24-1287, Supreme Court of the United States, Feb. 20, 2026, https://www.supremecourt.gov/opinions/25pdf/24-1287_4gcj.pdf.

²⁹ Beyond this settlement, direct-to-consumer pricing through TrumpRx is only available to cash-pay patients who are either uninsured or choosing not to use their insurance benefits. Such purchases also do not count toward insured patients' cost-sharing requirements. Patients who use TrumpRx could needlessly pay more than they would using their insurance or other discount cards and websites.

³⁰ Annie Linskey and Josh Dawsey, "Trump Wants to Overhaul Drug Sales. A Company Tied to His Son Stands to Benefit," *The Wall Street Journal*, Oct. 7, 2025, <https://www.wsj.com/health/pharma/trumprx-drug-companies-blincrx-2b6e1761?>

- *Ensure CVS Caremark’s middleman, Zinc, remains based in the United States.* This term requires CVS Caremark to ensure that Zinc—a PBM group purchasing organization (GPO) that reportedly accounts for fewer than two dozen jobs³¹ and exists solely to circumvent PBM legislative and regulatory reform efforts³² — remains based in the United States.

Recommendations

We urge the FTC to strengthen these terms before finalizing the agreement. Specifically, the FTC should ensure the terms:

- *Apply to all formularies, offerings, insulin products (in the case of the monthly out-of-pocket co-pay cap), pharmacies (in the case of reimbursement requirements), and markets, without the option for health plan sponsors to opt out or exemptions for drugs not actively in shortage.* Because the prayer for relief in the FTC’s original complaint included blanket prohibitions against misconduct, including favoring higher list-price drugs and basing out-of-pocket costs on list prices, any settlement should at least match that scope. In addition, any settlement should also require continuity of care protections for insulin-dependent patients affected by formulary changes.
- *Require the provision and promotion of a standard offering that bases members’ out-of-pocket costs on net unit price, as in the proposed agreement between the FTC and Express Scripts, rather than the “Client Contracted Amount,” with no carve-out for CVS Caremark’s TrueCost program.* The Client Contracted Amount is an opaque self-referential benchmark determined by CVS Caremark, raising concerns that the PBM will use it to circumvent rebate restrictions; in contrast, list prices are publicly reported, ensuring more accountability for plan sponsors and members.
- *Require disclosures (including those on costs, broker fees, and manufacturer rebates) to be reported to the FTC or a state regulator in addition to plan sponsors.*
- *Ensure retail community pharmacy reimbursements are based on publicly available NADAC data, rather than requiring those pharmacies to provide sensitive acquisition cost data to a direct competitor, and include a dispensing fee in line with pharmacies’ actual costs, including the \$10 to \$15 dispensing fee per prescription recommended by publicly audited cost-of-dispensing surveys, and clarify related enforcement methods.*³³ Otherwise, CVS Caremark may use the provided acquisition cost data or establish a

³¹ Laura Wadsten and Nathaniel Horwitz, “‘Bullshit’—The New Way Health Giants Hide Billions,” Hunterbrook, Jan. 6, 2026, <https://hntbrk.com/pbmgpo/>.

³² “FTC Deepens Inquiry into Prescription Drug Middlemen,” Federal Trade Commission, May 17, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-deepens-inquiry-prescription-drug-middlemen>; “Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies,” Federal Trade Commission, July 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/pharmacy-benefit-managers-staff-report.pdf.

³³ “Cost of Dispensing Survey,” North Carolina Division of Health Benefits, Oct. 14, 2025, <https://medicaid.ncdhhs.gov/blog/2025/10/14/cost-dispensing-survey>.

dispensing fee such that retail community pharmacies see further cuts to their reimbursements, without any accountability.

- *Exclude TrumpRx*. If TrumpRx is included, other discount cards and websites should also be included.
- *Dissolve Zinc*. Short of that, the FTC should ensure the terms apply to all subsidiaries, including Zinc, and in all markets, particularly in the case of pass-through and disclosure requirements.

The FTC should also continue investigating CVS Caremark, given evidence that the PBM's allegedly illegal rebating scheme extends beyond insulin, including to treatments of autoimmune diseases and other inflammatory conditions, as laid out in the FTC's original complaint.³⁴ Other focus areas include CVS Caremark's pharmacy reimbursement and patient steering practices, both of which have potentially negative implications for unaffiliated pharmacies and consumers, and its various subsidiaries, including Zinc and the offshore private drug labeler Cordavis, both of which provide alternative revenue streams to rebates, which face increasing scrutiny from policymakers.³⁵

Finally, the FTC should use its authority to make legislative recommendations to Congress by supporting the structural separation of PBMs from pharmacies and prohibiting PBMs' anticompetitive business practices. Specifically, we endorse the following bipartisan legislation:

- The Break Up Big Medicine Act (S. 3822)³⁶ by Sens. Elizabeth Warren (D-MA) and Josh Hawley (R-MO), which would prohibit insurers, PBMs, and wholesaler drug distributors from owning or controlling health care providers.
- The Patients Before Monopolies Act (H.R. 8779, S. 4509)³⁷ by Reps. Diana Harshbarger (R-TN-1) and Jake Auchincloss (D-MA-04) and Senators Warren and Hawley, which would prohibit PBMs from owning pharmacies, achieving a component of the former bill.
- The Pharmacists Fight Back Act (H.R. 6609, H.R. 6610)³⁸ by Representatives Harshbarger, Auchincloss, and James Comer (R-KY-01), which would bolster independent pharmacy revenue by setting baseline reimbursement rates in federal health care programs and prohibiting PBMs acting on behalf of those programs from engaging

³⁴ See 12.

³⁵ See "Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies" at 32.

³⁶ "S. 3822 - Break Up Big Medicine Act," Library of Congress, accessed Aug. 28, 2026, <https://www.congress.gov/bill/119th-congress/senate-bill/3822>.

³⁷ "H.R. 8779 - PBM Act," Library of Congress, accessed Aug. 28, 2026, <https://www.congress.gov/bill/119th-congress/house-bill/8779>; "S. 5503 - PBM Act," Library of Congress, accessed Aug. 28, 2026, <https://www.congress.gov/bill/119th-congress/senate-bill/4509>.

³⁸ "H.R. 6609 - Pharmacists Fight Back in Medicare and Medicaid Act," Library of Congress, accessed Aug. 28, 2026, <https://www.congress.gov/bill/119th-congress/house-bill/6609>; "H.R. 6610, Pharmacists Fight Back Act [in Federal Employee Health Benefit Plans Act]," Library of Congress, accessed Aug. 28, 2026, <https://www.congress.gov/bill/119th-congress/house-bill/6610>.

in certain anticompetitive practices, including patient steering and spread pricing.

Conclusion

Despite its positive terms, the proposed agreement ultimately spares CVS Caremark a costly trial that would have required its executives to testify under oath, exposing its business practices more broadly and potentially providing more lasting accountability. Given these limitations and the scope of the original complaint, the FTC should heed these recommendations in its final agreement with CVS Caremark—as well as in any others with Express Scripts and Optum Rx—to achieve its stated goal: “fundamental changes” to CVS Caremark’s business model that will lower patients’ costs and ensure the financial viability of community pharmacies.³⁹

³⁹ See 19.