

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the State of Oklahoma, acting through the Oklahoma Insurance Department (“the Department”) and CVS/Caremark (“Caremark”), each one a “Party” and collectively the “Parties.”

RECITALS

- A. Caremark has engaged in the business of insurance as defined in Okla. Stat. tit. 36, §§ 404 and 6103.2 and transacting insurance as defined in Okla. Stat. tit. 36, §§ 105(4) in the State of Oklahoma. Caremark is a Pharmacy Benefits Manager or “PBM,” as defined in Okla. Stat. tit. 59, §§ 356.1 and 357(6), and has engaged in the business of pharmacy benefits management, as defined and described in Okla. Stat. tit. 59, § 357(6) and (7), in the State of Oklahoma. Caremark holds a license issued by the Department to engage in the business of pharmacy benefits management in Oklahoma.
- B. Caremark is contracted with many health benefits plans and Oklahoma pharmacies to provide pharmacy benefits management services related to business transactions and the adjudication of claims made within Oklahoma.
- C. The Department contends that during the time-period from September 2, 2020 through October 14, 2020, Caremark charged or caused the submission of at least two thousand six hundred seventy-two (2,672) transaction fees to Oklahoma pharmacists and pharmacies related to the adjudication of at least two thousand six hundred seventy-two (2,672) claims by Oklahoma pharmacists or pharmacies for which Caremark was paid EIGHTY-FOUR THOUSAND NINE HUNDRED ONE DOLLARS AND TWENTY-EIGHT CENTS (\$84,901.28) from Oklahoma pharmacies.

- D. Title 36 O.S. § 6962(B)(2)(a) prohibits a PBM from charging "...a pharmacist or pharmacy a fee related to the adjudication of a claim, including without limitation a fee for...the submission of a claim..." Oklahoma contends that on or about the time-period from September 2, 2020 through October 14, 2020, Caremark charged or caused to be charged to Oklahoma pharmacists or pharmacies at least two thousand six hundred seventy-two (2,672) transaction fees related to the adjudication of claims in violation of the Patient's Right to Pharmacy Choice Act, Title 36 O.S. § 6962(B)(2)(a).
- E. Caremark asserts that, with the exception of fees charged related to Federal Employees Health Benefits Program (FEHBP) plans, the total sum of transaction fees charged and collected from all Oklahoma pharmacists and pharmacies during the time period from September 2, 2020 through October 27, 2021 is TWO MILLION THREE HUNDRED SEVENTEEN THOUSAND TWENTY-THREE DOLLARS (\$2,317,023.00).
- F. Caremark estimates that without inclusion of fees charged related to FEHBP plans, the total number of transactions for which it charged and collected fees from all Oklahoma pharmacists and pharmacies during the time-period from September 2, 2020 through October 27, 2021 is TWENTY-FIVE THOUSAND TWO HUNDRED (25,200). Caremark utilized OID's methodology reflected in Recital C above and, therefore this estimate is acceptable to OID.
- G. Caremark asserts that it has charged no transaction fee to any Oklahoma pharmacist or pharmacy from September 2, 2020 through October 27, 2021, apart from fees charged related to Federal Employees Health Benefits Program (FEHBP) plans and the transaction fees addressed within this Agreement. Caremark asserts that the transaction fees addressed within

this Agreement are related only to either Medicare Part D plans or to self-funded Employee Retirement Income Security Act (ERISA) plans.

H. This Agreement is neither an admission of liability nor a concession of applicability of Title 36 O.S. § 6962(B)(2)(a) to Self-funded ERISA and Medicare Part D plans by Caremark nor a concession by the Department that its allegations of violations are not well-founded.

I. In 2019, in the U.S. District Court for the Western District of Oklahoma, case number 5:19-cv-00977-J, *Pharmaceutical Care Management Association v. Mulready et al.* (hereinafter “*Mulready* litigation”), Pharmaceutical Care Management Association (“PCMA”) sued to enjoin the enforcement of several Oklahoma statutory provisions, claiming that they are preempted by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 et seq., and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (“Medicare Part D”), 42 U.S.C. § 1395w-101 et seq. Currently, the *Mulready* litigation remains pending. As more fully described below, and as a part of this Agreement, the Parties agree that the Court’s rulings in the *Mulready* litigation shall guide the final resolution and distribution of monies addressed within this Agreement.

J. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above alleged violations, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. The “Covered Conduct” referred to in this Agreement includes any fee or fees (also known as a “transaction fee” or “transaction fees”) related to the adjudication of a claim which were charged or caused to be charged by Caremark to Oklahoma pharmacists and Oklahoma pharmacies for self-funded ERISA and Medicare Part D plans during the time-

period from September 2, 2020 through October 27, 2021. Oklahoma contends that charging or causing the submission of such charges to Oklahoma pharmacists or pharmacies for such plans is a violation of the Patient's Right to Pharmacy Choice Act, Title 36 O.S. § 6962(B)(2)(a);

2. The "Transaction Fee" or "Transaction Fees" referred to in this Agreement include any fee or fees charged or caused to be charged to a pharmacist or pharmacy, which is related to the adjudication of a claim, including without limitation, a fee for the submission of a claim, for enrollment or participation in a retail pharmacy network, or for the development or management of claims processing services or claims payment services related to participation in a retail pharmacy network;
3. For purposes of this Agreement, the term "final resolution" is defined as follows: The date on which all disputed claims have been allowed or disallowed by final non-appealable Order of the Court, and there exists no possibility for further action, appeal, reconsideration, remand, or change of the judgment of the Court. With respect to the fees placed in escrow, "final resolution" of the *Mulready* litigation means the decision of the U.S. District Court for the Western District of Oklahoma regarding ERISA and/or Medicare Part D preemption, regardless of any further action, appeal, reconsideration, remand or change in the decision. With respect to the penalty amount placed in escrow, "final resolution" of the *Mulready* litigation means the date on which all disputed claims have been allowed or disallowed by final non-appealable Order of the Court, and there exists no possibility for further action, appeal, reconsideration, remand, or change in the decision. In no instance shall the date of final resolution be determined to be a date subsequent to dismissal of the *Mulready* litigation;

4. The date upon which this Agreement is effective (the “Effective Date”) is the date of signature of the last signatory to the Agreement. Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement;
5. No later than fourteen (14) days after the Effective Date of this Agreement, Caremark shall provide to the Department any and all information necessary for the Department to independently verify the type of health plan related to every transaction fee charged or caused to be charged by Caremark to Oklahoma pharmacists and pharmacies for the time period from September 2, 2020 through October 27, 2021, that each transaction fee charged is related to either a Medicare Part D plan, a self-funded ERISA plan or a FEHBP plan, and that any and all reimbursements made to Oklahoma pharmacies pursuant to Section 10 below are done so appropriately, accurately, and in accordance with this Agreement. Such information shall include but not be limited to: Claim data queried from the Caremark transaction fee source system between the time period of 9/1/2020 and 10/31/2021 for all pharmacies in the State of Oklahoma, including: client carrier ID, by year and month, and the sum of their transaction fee amount, 2) cross referenced against the list of FEHBP and ERISA client carrier IDs as well as a list of Medicare Part D carrier IDs, which allows for the transaction fee amounts to be bucketed by ERISA, FEHBP and Medicare Part D lines of business;
6. The parties agree that if it is discovered that Caremark charged a transaction fee or fees to any Oklahoma pharmacist or pharmacy between September 2020 through October 27, 2021, pertaining to the adjudication of a claim not related to a Medicare Part D plan, a self-funded ERISA plan, or a FEHB plan, Caremark shall immediately refund any and all such transaction fee or fees to the Oklahoma pharmacy charged and notify the Department of the

same. In the event any such fees are later discovered, no provision of this Agreement shall be construed to release Caremark from any civil or administrative monetary claim the Department may have, or to prevent the Department from taking any regulatory action related to such claims;

7. Caremark shall deposit into an escrow account, by and through the Oklahoma Insurance Department, the sum of FOUR MILLION EIGHT-HUNDRED SEVENTEEN THOUSAND TWENTY-THREE DOLLARS (\$4,817,023.00) (Settlement Amount), which is due no later than thirty (30) days after the Effective Date of this Agreement. This amount includes the following:

a. An amount of TWO MILLION THREE HUNDRED SEVENTEEN THOUSAND TWENTY-THREE DOLLARS (\$2,317,023.00) comprising all transaction fees charged by Caremark to Oklahoma pharmacists and pharmacies for the time-period from September 2, 2020 through October 27, 2021 pertaining to prescription claims related to self-funded ERISA plans and Medicare Part D plans; and

b. A total penalty amount of TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00) based on 25,200 counts of alleged violations at approximately a ONE HUNDRED DOLLARS (\$100) penalty per count;

8. Upon the U.S. District Court's ruling on the merits of the case in the *Mulready* litigation, the total transaction fees being held in escrow shall be distributed appropriately (either by direct payments to the Oklahoma pharmacies, from which Caremark previously collected these fees, or by payments made through the pharmacies' respective pharmacy service administrative organizations (PSAOs"), or by refund to Caremark) according to and dependent upon the U.S. District Court's judgment and determination of whether, when,

how, and to what extent the enforcement of Oklahoma statutory provisions is preempted by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 et seq., and/or the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (“Medicare Part D”), 42 U.S.C. § 1395w-101 et seq. Further, the total transaction fees being held in escrow shall be distributed as described herein above, regardless of whether any party in the *Mulready* litigation subsequently appeals any part of the District Court’s ruling. Should any part of the U.S. District Court’s ruling in the *Mulready* litigation be appealed to a higher court, no ruling on appeal, reconsideration, or remand in the *Mulready* litigation shall pertain to this matter for purposes of this Agreement;

9. Upon a final resolution of the *Mulready* litigation, inclusive of any rulings on appeal, reconsideration, or remand of any part of the U.S. District Court’s ruling in the *Mulready* litigation, the total penalty amount being held in escrow, along with any interest which may have accrued thereon, shall be distributed appropriately and proportionately (either by payment to the Department or by refund to Caremark) according to and dependent upon the Court’s judgment and determination of whether, when, how, and to what extent the enforcement of Oklahoma statutory provisions is preempted by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 et seq., and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (“Medicare Part D”), 42 U.S.C. § 1395w-101 et seq.;
10. Within fourteen (14) days following the U.S. District Court’s ruling (final resolution with respect to Transaction Fees) and within fourteen (14) days following the date of final resolution of the *Mulready* litigation (with respect to the penalty amount), respectively, each party shall submit to each other an accounting and breakdown of what they believe the

appropriate and proportionate distributions of monies should be based on their respective interpretations of the Court's rulings in the *Mulready* litigation.

- a. Upon an agreed accounting and breakdown of the appropriate and proportionate distributions of monies, the respective transaction fees and penalty amounts being held in escrow shall be immediately distributed in accordance with this Agreement.
 - b. In the event the Court's ruling is not definitive on the preemption issues concerning self-funded ERISA and/or Medicare Part D plans, or should a dispute arise between the Parties related to the appropriate or proportionate distribution of monies based on their respective interpretations of the Court's rulings in the *Mulready* litigation, this matter shall be referred to the Oklahoma Attorney General for purposes of making a final determination of the appropriate and proportionate distributions of monies relating to this Agreement. Upon receiving such a determination from the Oklahoma Attorney General, the monies shall immediately be distributed in accordance with the Attorney General's decision, without any further delay or appeal;
11. Subject to the exceptions in paragraph six (6) above and in paragraph twelve (12) below, and conditioned upon Caremark's full payment of the Settlement Amount, the Department releases Caremark from any civil or administrative monetary claim the Department has pertaining to the Covered Conduct under Title 36 O.S. § 6966 of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title 59 of the Oklahoma Statutes; or the common law theories of payment by mistake, unjust enrichment, and fraud;

12. Notwithstanding the releases given in paragraph eleven (11) of this Agreement, or any other term of this Agreement, the Commissioner has no authority over the following claims:
- a. Any liability arising under Okla. Stat. tit. 68, Revenue and Taxation (the Oklahoma Tax Code);
 - b. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal and State health care programs;
 - c. Any liability to the State of Oklahoma (or its agencies) for any conduct other than the Covered Conduct;
 - d. Any liability based upon obligations created by this Agreement; and
 - e. Any liability of individuals except as explicitly stated in this Agreement;
13. Caremark waives and shall not assert any defenses it may have to any administrative and other judicial action relating to the Covered Conduct that may be based in whole or in part on a contention that the Excessive Fines Clause in the Eight Amendment of the United States Constitution and Article II, § 9 of the Oklahoma Constitution, this Agreement bars a remedy sought in such administrative and other judicial action;
14. Caremark fully and finally releases the Department, its officers, agents, employees, and servants from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Caremark has asserted, could have asserted, or may assert in the future against the Department, its officers, agents, employees, and servants, related to the Covered Conduct and the Department's investigation and prosecution thereof;
15. Caremark agrees not to resubmit, recharge, or cause to be resubmitted or recharged to Oklahoma pharmacist or pharmacy any charges or fees related to the Covered Conduct;

16. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in paragraph seventeen (17), below;
17. Caremark agrees that it waives and shall not seek payment or reimbursement for any transaction fees covered by this Agreement (i.e. included in the Covered Conduct) from any pharmacists, pharmacies, providers, health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors that, based upon the final resolution of the *Mulready* litigation, it could have charged under Oklahoma law. The Department agrees that it will not refer any case for administrative enforcement which arises out of or is connected with the Covered Conduct;
18. Each Party shall bear its own legal expenses and other costs incurred in connection with this matter, including the preparation and performance of this Agreement;
19. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion;
20. This Agreement is governed by the laws of the State of Oklahoma. Except as otherwise provided herein, the jurisdiction and venue for any dispute relating to this Agreement is the District Court of Oklahoma County. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute;
21. This Agreement constitutes the complete agreement between both Parties. This Agreement may not be amended except by written consent of the Parties;
22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement;

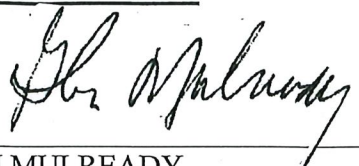
23. This Agreement is binding on Caremark's subsidiaries, successors, transferees, heirs, and assigns; and

24. This Agreement is subject to the Oklahoma Open Records Act, 51 O.S. § 24.A.1, et seq.

OKLAHOMA INSURANCE DEPARTMENT

DATED: January 14, 2022

BY:


GLEN MULREADY
Oklahoma Insurance Commissioner

CVSHealth/CAREMARK

DATED: _____

BY: _____

_____, Individually

DATED: January 13, 2022

BY:


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