

# EXHIBIT 2



## EXPRESS SCRIPTS®

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### VIA FEDERAL EXPRESS

WHS Legal (MU)  
Walgreen, Co.  
1411 Lake Cook Road, MS L319  
Deerfield, IL 60015

### **Re: Cease and Desist/Marketing to Medicare Part D Members**

To Whom It May Concern:

It has recently come to our attention that Walgreen, Co. ("Walgreens") is distributing marketing materials in the form of the letter attached hereto (the "Marketing Letter") to members of Medicare Part D Prescription Drug Programs administered by Express Scripts, Inc. (the "ESI Part D Members") and ("ESI") respectively, which may be a violation of the Medicare Marketing Guidelines ("Guidelines") issued by the Centers for Medicare and Medicaid Services ("CMS") and the terms of your Provider Agreement with ESI ("Provider Agreement").

We have been contacted by Medicare Part D plan sponsors for whom we provide pharmacy benefit management services, expressing concern that the purpose and desired effect of the Marketing Letter is to create member confusion and obtain a financial benefit for Walgreens by steering ESI Part D Members from their existing Part D plans to Part D plans that will allow Medicare Part D patients to use Walgreens pharmacies after December 31, 2011, the date Walgreens intends to sever its contractual relationship with ESI. In addition, we have been contacted by numerous ESI Part D Members who are confused by the Marketing Letter and unnecessarily anxious about their ability to continue to obtain the drugs they have been prescribed.

The Marketing Letter states in pertinent part:

For our Medicare Part D patients, you'll have an opportunity during the Annual Enrollment Period beginning on Oct 1 to switch to a Medicare Part D plan that includes Walgreens. This will allow you to continue using your Medicare Part D coverage at Walgreens in 2012.

The Guidelines were specifically established by CMS to prevent the sort of member confusion that the Marketing Letter has created, and to prevent activities that "steer or attempt to steer a potential enrollee toward a plan, or a limited number of plans, for which the individual or entity performing marketing activities expects compensation directly or indirectly for such marketing activities." *emphasis added* (Guidelines, Section 10) The Guidelines state that plan sponsors are responsible for materials distributed on their behalf, and that "the plan sponsors must ensure

that any providers contracted (and its subcontractors, including downstream providers or agents) with the plan sponsor comply with the requirements outlined [in the Guidelines]." (Guidelines, Section 70.12.2)

ESI for itself as a Part D plan sponsor, and as a subcontractor to our client plan sponsors, is required to comply with the Guidelines. Similarly, Walgreens, as a subcontractor and downstream provider to ESI's Part D plan and those of our clients, is also obligated to comply with the Guidelines. Providing a marketing letter without prior approval from ESI (as a Part D plan sponsor) and from the Part D plan sponsors with which ESI contracts, apparently violates the Guidelines. Under the Guidelines, a communication that includes annual election period information and network provider changes such as the one Walgreens distributed, must be submitted and approved by CMS and Part D plan sponsors prior to use. It is also unlawful to begin to market plan options for 2012 prior to October 1. Moreover, communications may not be materially inaccurate or misleading or otherwise make material misrepresentations. (Guidelines, Section 90.1) The Marketing Letter informs ESI Part D Members that they may switch Part D plans during the Annual Election Period starting October 1. This is inaccurate as the Annual Election Period begins on October 15.

In addition, the terms of our Provider Agreement support the Guidelines. Specifically,

REDACTED

Lastly, the Guidelines also directly prohibit a provider (which includes pharmacies and pharmacists, see Guidelines Section 70.12) from steering Medicare Part D members to one Part D plan or another and remind providers to remain neutral parties with respect to marketing or enrollment decisions:

Plan sponsor must ensure that any providers contracted (including subcontractors or agents) with the plan sponsor to perform functions on their behalf related to the administration of the plan benefit, including all activities related to assisting in enrollment and education, agree to the same restrictions and conditions that apply to the plan sponsor through its contract. In addition, the plan sponsor (and subcontractors, including providers or agents) are prohibited from steering, or attempting to steer an undecided potential enrollee toward a particular provider, or limited number of providers, offered either by the plan sponsor or another plan sponsor, based on the financial interest of the provider or agent (or their subcontractors or agents); and

Providers may face conflicting incentives when acting as a plan sponsor representative. For example, some providers may gain financially from a beneficiary's selection of one plan over another plan. Additionally, providers generally know their patients' health status. The potential for financial gain by the provider influencing a beneficiary's selection of a plan could result in recommendations that do not address all of the concerns or needs of a potential plan enrollee. (Emphasis added.) (Guidelines, Section 70.12.2)

Walgreens has publically stated that ESI's proposal would:

- "cut reimbursement rates below the industry average cost" (June 21, 2011 press release);
- "cut reimbursement rates to levels below the industry average" (letter to benefits consultants);
- "cut reimbursement to unacceptable levels below the industry average cost" (letter to mutual Walgreens/Express Scripts customers; letter to employers who are out to bid for PBM services);
- "undervalue" Walgreens (handout to Walgreens' pharmacy patients in an ESI prescription drug plan); and
- make Walgreens feel like an "undervalued partner" (Q3 2011 earnings call).

We think these statements are indicative of the fact that Walgreens believes it will gain financially should its Medicare Part D patients become members of any PBM other than ESI and that this is the motivation behind Walgreens' attempts to influence Medicare Part D members.

**ESI's plan sponsors are concerned that Walgreens' actions have jeopardized their positions with CMS. In addition, ESI as a Part D plan sponsor, shares this concern with respect to its own position with CMS.**

**Consistent with the foregoing, ESI hereby demands that you immediately cease and desist from publication, distribution or circulation of the Marketing Letter or any further marketing activities directed to ESI Part D Members, as well as from any conduct that would constitute a breach of Walgreens' obligation as a participating provider in ESI network(s) under the Provider Agreement. Walgreens' efforts to market directly to ESI Part D Members is not only conduct that constitutes a breach of Walgreens' obligation as a participating provider under the Provider Agreement, it may be a potential violation of the CMS Marketing Guidelines that Walgreens is contractually bound to follow.**

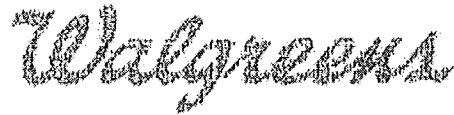
Please be reminded that ESI is prepared to pursue all available legal and equitable remedies to enforce its rights under the Provider Agreement, including termination of participation in ESI's networks, or contacting CMS.

Sincerely,



Julia Brodic  
Assistant General Counsel

Attachment



## Non-Military Member Letter A

To patients in an Express Scripts prescription drug plan:

As a valued Walgreens pharmacy patient, we want to let you know that our pharmacies are not planning to participate in the Express Scripts pharmacy provider network as of January 1, 2012, as negotiations on a contract renewal have been unsuccessful. (Express Scripts is the "pharmacy benefit manager" that administers your employer's, health plan's or Medicare Part D pharmacy benefits.)

However, we want to make sure you know **Walgreens will continue honoring all prescription plans administered by Express Scripts – and filling the covered prescriptions – through the end of 2011.**

We are moving forward without Express Scripts given its position in contract renewal negotiations that we believe undervalued our services and convenience to patients – especially our trusted pharmacists and clinicians who stand ready to deliver critical health care advice, and the most convenient locations with more drive-thru and 24-hour pharmacies than any other national drugstore chain.

Regardless of our business disagreement with Express Scripts, Walgreens will do everything we can to help you transition next year to another pharmacy.

**You can continue using your prescription  
benefits  
at Walgreens through Dec. 31, 2011.**

For our Medicare Part D patients, you'll have an opportunity during the Annual Enrollment Period beginning Oct. 1 to switch to a Medicare Part D plan that includes Walgreens. This will allow you to continue using your Medicare Part D coverage at Walgreens in 2012.

If you are unsure about any of this information or have any questions about your prescription insurance coverage, please see the attached Frequently Asked Questions or contact your employer's, health plan's or Medicare plan's benefits department. We appreciate having you as a customer and hope to continue to be your destination for your pharmacy, health and wellness products and services.

Sincerely,



Kermit Crawford  
President - Pharmacy, Health and Wellness  
Walgreens

### **Frequently Asked Questions Regarding Walgreens and Express Scripts**

#### **Why has Walgreens decided to not participate in Express Scripts' network?**

Under the contract renewal terms proposed by Express Scripts, it no longer makes good business sense for Walgreens and the strategic direction of our company to continue our relationship with them. Walgreens is committed to providing quality, convenient and cost-effective pharmacy services to our patients, but we cannot continue to deliver these services under the terms and rates Express Scripts offered. As the largest retail provider in their pharmacy network, we were surprised by Express Scripts' ultimate stance during our talks, which made it clear to us that they no longer had an interest in continuing a meaningful relationship.

#### **My prescription insurance plan is managed by Express Scripts. How does this affect me?**

You can continue filling your prescriptions as usual at Walgreens through the remainder of 2011. Since your plan is managed by Express Scripts, you won't be able to use your current insurance at Walgreens beginning in January 2012. We will do everything we can to help you transition next year to another pharmacy. For example, we may be able to print a complete record of your medications that are filled with us.

**My Medicare Part D plan is managed by Express Scripts. How am I affected?**

You can continue filling your prescriptions as usual at Walgreens through the remainder of 2011. Beginning on Oct. 1, you'll have an opportunity during the Annual Enrollment Period to switch to a Medicare Part D plan that includes Walgreens in 2012. This will allow you to continue using your Medicare Part D coverage at Walgreens next year.

**Who is Express Scripts?**

Express Scripts manages prescription benefit plans for employers, Medicare Part D plans and other groups.

**Is it possible Walgreens could return to the Express Scripts network?**

We don't know how our business relationship may change in the future.

**What else can I do?**

If you have any questions about your prescription insurance coverage, such as other plans that may be available to you through your employer, health plan or Medicare Part D, please contact your employer's, health plan's or Medicare Part D benefits administrator.