

EXHIBIT 3



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August 5, 2011

VIA FEDERAL EXPRESS

Ms. Julia G. Brncic
Assistant General Counsel
Express Scripts
One Express Way
St. Louis, MO 63121

Dear Ms. Brncic:

I write in response to your letter to WHS Legal (MU) dated July 27, 2011, in which Express Scripts, Inc., (“ESI”) objects to Walgreens providing a letter to patients enrolled in Medicare Part D prescription drug plans managed by ESI on the grounds that the letter may violate the “Medicare Marketing Guidelines” (“Guidelines”) issued by the Centers for Medicare and Medicaid Services (“CMS”) and certain provisions of the Pharmacy Provider Agreement between ESI and Walgreens that is effective through December 31, 2011. For the reasons stated below, Walgreens disagrees that its letter is subject to the Guidelines, thereby rendering violation of those Guidelines impossible, and also disputes that it has violated the Pharmacy Provider Agreement.

As a threshold matter, Walgreens is compelled to address ESI’s claim that “numerous” Medicare Part D plan enrollees were confused by our letter and are “unnecessarily anxious” about their ability to obtain their drugs at Walgreens pharmacies in 2011. This allegation is entirely inconsistent with the letter’s self-evident purpose – to reassure its impacted patients (including, but not limited to, Medicare Part D patients) that they would have no disruption in accessing their prescription drugs at Walgreens during 2011. Indeed, our letter states four times – twice in the body and twice in the “Frequently Asked Questions” section – that all enrollees in ESI-administered plans, including Medicare Part D plans, may continue to fill their prescriptions at Walgreens pharmacies through the end of 2011. The two statements in the body of the letter are in bolded type and the second is set off in a text box. Walgreens clearly took extraordinary care to emphasize and reiterate this point in order to prevent confusion among recipients of the letter and to reassure them that there would be no disruption during 2011.

Turning to the substantive allegations in your letter, ESI’s assertion that the letter at issue may violate various aspects of the Guidelines is premised on the erroneous conclusion that all communications to plan enrollees from pharmacies that are contractors or subcontractors to Medicare Part D plan sponsors are subject to the Guidelines. As you selectively quoted, Section 70.12.2 of the Guidelines does provide that plan sponsors are to “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].” However, in language you chose to omit, Section 70.12.2 also clearly

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states that this requirement applies *only* to providers' activities when providers are acting *on behalf* of the plans with which they have contracted: (a) "CMS holds plan sponsors responsible for any comparative/descriptive material developed and distributed *on their behalf* by their contracting providers." (§ 1); and (b) "The 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." (§ 2) (emphasis supplied). Outside of this context, CMS explicitly has acknowledged: "[W]e have no authority under the [Medicare Prescription Drug, Improvement, and Modernization Act of 2003] to regulate pharmacies' marketing activities." CMS, "Medicare Program; Medicare Prescription Drug Benefit," 70 Fed. Reg. 4194, 4270 (Jan. 28, 2005).

Walgreens did not disseminate its letter on behalf of *any* Medicare Part D plan with which it currently contracts or expects to contract in 2012. Rather, the letter was solely funded and disseminated by Walgreens, as a pharmacy, on *its own behalf* and the letter itself does not state or suggest otherwise. Accordingly, the letter is not subject to the Guidelines and thus cannot violate any of the specific requirements described in your letter.

In addition, your assertions that our letter violates Section 2.10 of the Pharmacy Provider Agreement and Section II.7 of the Medicare Addendum to that Agreement are both without merit.

Section II.7 of the Medicare Addendum states that

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REDACTED However, nowhere in the letter does Walgreens promote or prefer any Medicare Part D plan. The letter merely informs patients currently enrolled in *all* ESI-administered plans, not only Medicare Part D plan enrollees, that Walgreens does not currently plan to be part of ESI's retail pharmacy network as of January 1, 2012; that, as a result, they will be unable to use the ESI-administered plans in which they are currently enrolled at Walgreens pharmacies as of that date; and that those patients who are enrolled in Medicare Part D plans will have an opportunity later this year to switch plans and thus may switch to a plan for 2012 that includes Walgreens in its retail pharmacy network. All of this information is objectively true and publicly available. The letter does *not* encourage or even ask Medicare Part D plan enrollees to switch plans and does not offer any incentive to induce them to do so. To the contrary, the letter assures recipients that Walgreens will do everything it can to transition enrollees in ESI-administered plans to another pharmacy should that become necessary.

Section 8.1 of the Pharmacy Provider Agreement conclusively demonstrates that Walgreens communication of this information to ESI plan enrollees does not violate Section II.7 of the Medicare Addendum. Section 8.1 of the Agreement

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Walgreens ability to communicate such information under Section 8.1 necessarily means that those communications also would not violate Section II.7; otherwise, the Pharmacy Provider Agreement would be internally inconsistent. Accordingly, ESI itself, as a party to the Agreement, has acknowledged that Walgreens communication of information concerning network status does not "promote or prefer" any plan over another.

Finally, Section 2.10 of the Pharmacy Provider Agreement states that

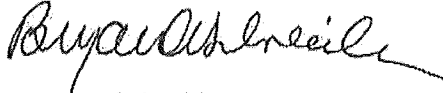
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Walgreens

has not attempted, in this letter or otherwise, to disenroll any individual from its current plan. Even if some Walgreens patients currently enrolled in Medicare Part D plans administered by ESI decide to switch plans during the open enrollment period later this year, those switches would not constitute plan disenrollments, because enrollment in Medicare Part D plans is limited to a single calendar year and thus terminates every December 31.

Based on the foregoing, ESI's cease and desist demand is unfounded.

Very truly yours,



Bryan A. Schneider
Divisional Vice President
Health Law