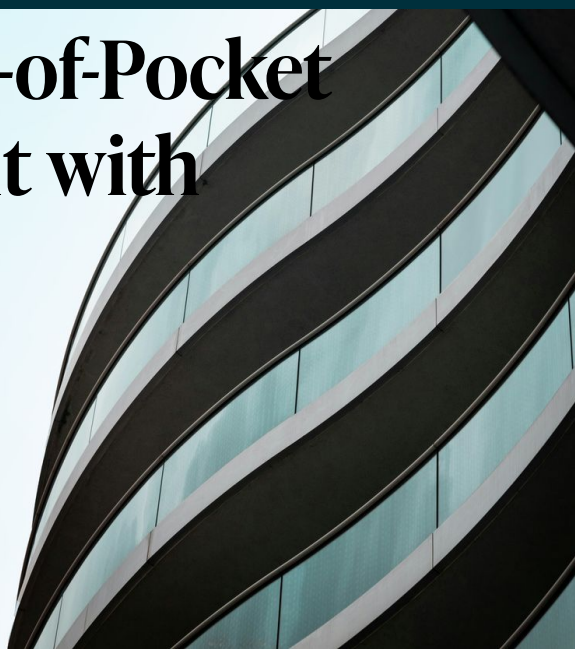
axinn

FTC Prescribes Lower Out-of-Pocket Insulin Costs in Settlement with Caremark



4 MIN READ

July 22, 2026, 10:06 AM
By: Allison M. Vissichelli, Kristyn L. Hansen

On July 14, 2026, the Federal Trade Commission and Caremark Rx LLC and Zinc Health Services LLC (collectively "Caremark") reached a settlement to resolve the agency's claims that Caremark's allegedly anticompetitive formulary design practices, rebating strategies, and vertical integrations, artificially inflated costs of insulin and other medications. The settlement institutes a series of structural reforms to change how one of the three largest prescription drug benefit managers ("PBMs") develops and manages pharmaceutical fomularies and denotes a marked reformulation of the traditionally rebate-driven industry.

Background

The FTC's lawsuit, filed in September 2024, alleged that PBMs Caremark Rx, Express Scripts (ESI), and OptumRx, along with their affiliates, engaged in a "chase-the-rebate" strategy that encouraged manufacturers to compete for formulary placement by increasing drug rebate amounts, rather than competing on drug prices. According to the FTC, as list prices rose, patients paid more at the pharmacy counter while PBMs like Caremark collected billions annually in rebates and other fees from manufacturers.

PBMs manage prescription drug plan benefits for more than 200 million Americans by providing services to payors like health plans (insurers) and health plan sponsors (employers).

The goal of a PBM is to lower payors' costs and create efficiencies by outsourcing benefits administration to an entity with industry expertise. PBMs provide a number of services on behalf of payors, such as developing drug formularies, creating and managing pharmacy networks, processing prescription drug claims, tracking payors' prescription drug spending, and negotiating rebates with drug manufacturers. According to the FTC, because PBMs operate as the intermediary between manufacturers and payors, they can exert influence within the pharmaceutical supply chain, including over drug prices. The FTC estimates that Caremark Rx, ESI, and OptumRx collectively administer approximately 80% of all prescriptions in the United States.

According to the FTC, one way that PBMs can exert control over drug prices is through the design of drug formularies, i.e., the list of medications that are covered under a patient's health plan. These formularies control the drugs that patients can access through their medical benefits and sort drugs into categories, with "preferred" or "tier 1" medications generally being the most often prescribed. For a pharmaceutical manufacturer, obtaining "preferred" or "tier 1" formulary placement is generally necessary to achieve the greatest volume of sales. This incentivizes manufacturers to negotiate with PBMs for not only inclusion of their drug in a given formulary but also for that drug to be listed as a "preferred" or "tier 1" treatment.

In its administrative complaint, the FTC alleged that starting around 2012, PBMs including Caremark began developing exclusionary formularies to position themselves as gatekeepers between drug manufacturers and consumers (i.e., patients). According to the FTC, PBMs' ability to exclude certain drugs from a formulary allowed PBMs to design formularies that maximized the PBM's profit at a patient's expense. The FTC alleged that Caremark and other PBMs did just that.

First, according to the FTC, Caremark effectively conditioned formulary access or preferred formulary placement on receiving concessions from manufacturers, typically in the form of higher rebates. These rebates—post-transaction credits or partial refunds on the sale of a given drug—reduce the manufacturers' profit margin on each sale. While most of the rebated amount generally flows through to the payor, a fraction is retained by the PBM. Over time, to sustain PBMs demands for greater rebates, manufacturers began steadily increasing the upfront, list price of the drug. Second, Caremark assessed certain fees based on drugs' list prices, and gave preferential placement on formularies to more expensive drugs even where less expensive alternative treatments were available. As a result of these practices, the FTC asserted, patients were being charged more out-of-pocket for the same drugs, despite declines in actual post-rebate net prices, while PBMs collected billions annually from retained rebate payments and collected fees.

The Settlement

Among other terms, the Caremark settlement requires Caremark to satisfy each of the following:

- Provide a standard offering to plan sponsors (e.g., employers who provide commercial health benefits to employees) that ensures drug rebates are passed on to patients to lower patients' out-of-pocket costs;

- Create or maintain drug affordability profits to cap patients' out-of-pocket costs for insulin;

- De-link the fees drug manufacturers pay to PBMs and their affiliates from the drugs' list prices; and

- Increase transparency and choice for plan sponsors.

The settlement also prohibits Caremark from discriminating against lower cost (and lower rebate) versions of drugs on its standard formularies. The settlement imposes additional terms and prohibitions relating to Caremark's contracts with pharmacies.

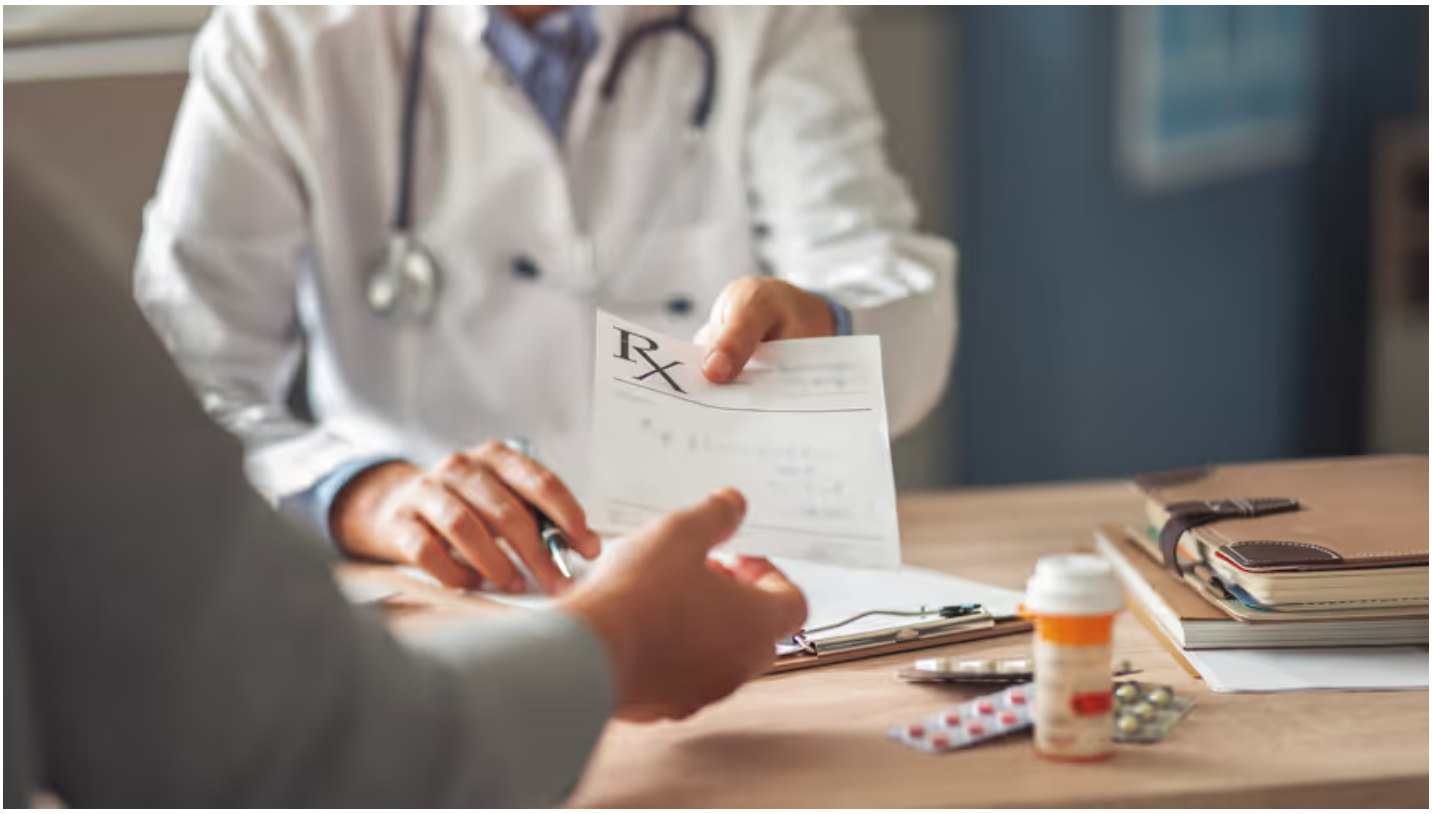
In a press release announcing the settlement, the FTC announced that the terms ensure $8.5 billion in consumer savings over the next decade with up to $4.5 billion in additional savings through point-of-sale rebates over the same period. The public will have 30 days to submit comments on the proposed consent agreement package.

Caremark is the second PBM defendant to settle antitrust claims with the FTC after the agency reached an agreement with ESI in February 2026. The FTC's case against Optum has been withdrawn from adjudication while the parties consider a proposed consent agreement.

Big Picture Takeaways

Although the FTC's lawsuit focused on prices of insulin, the Caremark settlement terms apply structurally to all prescription drugs, preventing Caremark from favoring high-priced treatments over less expensive alternatives across their formularies. The case spotlights the Trump Administration's continued focus on excessive healthcare costs as a target for federal antitrust enforcement and illustrates a growing trend in agencies favoring negotiated settlements in contrast to the Biden-era preference for litigation.

Broader implications of the settlement could also permeate other sectors as private enforcers look to the FTC's theories to challenge conduct related to vertical integration, purported self-preferencing, or exclusive dealing.



Related People

Allison M. Vissichelli

Kristyn L. Hansen

Related Services

Antitrust

To subscribe to our publications, click here.

News & Insights

- 30th Annual IBA Competition Conference
  SPEAKING ENGAGEMENT **ANTITRUST**

- Women Leaders in Life Sciences Law
  SPEAKING ENGAGEMENT **LITIGATION & TRIALS**

- American Bar Association: Inside Antitrust Enforcement—Former Government Perspectives
  WEBINAR **ANTITRUST**

- What's the Skinny on SCOTUS' Skinny Label Decision?
  WEBINAR **INTELLECTUAL PROPERTY**

- National Bar Association Corporate Counsel Leadership Summit
  SPEAKING ENGAGEMENT **ANTITRUST**

- The FTC's Record $12 Million HSR Penalty: Deal Structuring, Avoidance, and the Line Between Them
  AXINN VIEWPOINTS **ANTITRUST**

- DC Bar: The DOJ's New Antitrust Whistleblower Rewards Program: An Overview and the Road Ahead
  SPEAKING ENGAGEMENT **ANTITRUST**

- The ITC's Strategic Reset: One year after Lashify and the revival of Fintiv
  BYLINE ARTICLES **INTELLECTUAL PROPERTY**

- Axinn Partner John DeQ. Briggs Endows Antitrust Professorship at Georgetown Law
  NEWS **ANTITRUST**

- Informa Antitrust Midwest 2026
  SPEAKING ENGAGEMENT **ANTITRUST**

© 2026 Axinn LLP. All Rights Reserved