PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of **Caremark Rx, LLC;** **Zinc Health Services, LLC;** **Express Scripts, Inc.;** **Evernorth Health, Inc.;** **Medco Health Services, Inc.;** **Ascent Health Services LLC;** **OptumRx, Inc.;** **OptumRx Holdings, LLC;** and **Emisar Pharma Services LLC.**	**Docket No. 9437**

RESPONDENTS' MOTION FOR DISCOVERY PURSUANT TO RULE 3.36

Pursuant to Rule 3.36 of the Commission's Rules of Practice, 16 C.F.R. § 3.36, Respondents Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc., Ascent Health Services LLC, Caremark Rx, LLC, Zinc Health Services, LLC, OptumRx, Inc., OptumRx Holdings, LLC, and Emisar Pharma Services LLC (together the "Respondents") respectfully move for an order authorizing the issuance of subpoenas *duces tecum* to the Office of Personnel Management ("OPM"). OPM administers the Federal Employees Health Benefits ("FEHB") Program, which provides health insurance plans for federal employees, including employees of the Federal Trade Commission ("FTC"). OPM negotiates and enters contracts with insurance carriers to provide benefits to FEHB participants. FEHB plans include prescription drug benefits and OPM negotiates with carriers on benefit design and program administration to encourage the efficient use of prescription drugs. FEHB insurers, in turn, rely on pharmacy benefit managers (PBMs) to manage drug cost and utilization for their enrolled population. In providing benefits

for government employees, OPM has engaged in and benefitted from the conduct challenged in this case. The subpoena requests a clearly defined, relevant set of documents. Complaint Counsel has indicated that it takes no position on Respondents' motion for a subpoena containing these requests.

I. INTRODUCTION

The FTC's complaint alleges that Respondents' conduct—including the offering of exclusionary formularies and the use of rebates—has increased prices in the relevant market and harmed consumers and clients, including "government entities." Compl. ¶¶ 28, 125, 214-233. OPM administers FEHB Plans that provide prescription drug benefits to federal employees. OPM issues Requests for Proposals for the FEHB that require insurance carriers to submit information regarding benefits, formulary structure, rates, and anticipated out-of-pocket costs for prescription drugs. OPM has approved closed formularies and benefited from the rebates negotiated by PBMs with drug manufacturers for placement on those formularies. Relevant evidence in OPM's possession would include information demonstrating that PBMs are successful in reducing the cost of providing prescription drug benefits, and that plan sponsors, not PBMs, make benefit design decisions, including which drugs are on formulary, whether to offer multiple formulary options to employees, the number and type of plans to offer employees, and whether members have out-of-pocket obligations and, if so, what those out-of-pocket obligations are for each offered plan. Respondents seek information to support their defenses that they could not obtain without a subpoena. Respondents' subpoenas are drafted to be narrowly tailored to the FTC's claims and Respondents' affirmative defenses to minimize burden to OPM.

II. ARGUMENT

The grant of a 3.36 motion for a subpoena is appropriate where the requested subpoena is: (1) "reasonably expected to yield information relevant to … [a respondent's] defenses"; (2) reasonable in scope; (3) specified with reasonable particularity; and (4) not reasonably obtainable by other means. *See* 16 C.F.R. §§ 3.31(c), 3.36(b), 3.37(a). Respondents' proposed subpoena satisfies these requirements.

Respondents have met these requirements for the following requests:

- Documents and Data related to the potential use, use, quality, or value of closed Formularies, preferred Formulary status, or Formulary tiering, negotiated by or obtained for any FEHB plan.

- Documents and Data related to the evaluation of any FEHB plan, including without limitation Documents and Data relating to members' premiums and out-of-pocket costs for prescription drugs, including deductibles, coinsurance or copay obligations.

- Documents and Data sufficient to show any programs or initiatives considered or used for any FEHB plan and designed to reduce or mitigate the out-of-pocket costs paid by members for Insulin Products or Other Referenced Drugs.

- Documents and Data related to the use of Rebates received by, on behalf of, or in connection with any FEHB plan, including without limitation Documents and Data relating to the impact of Rebates on Pharmacy Benefit Plan costs to federal agencies, and Documents and Data referring or relating to decisions to direct Carriers to use or not use pharmaceutical Rebates to reduce premiums or other dimensions of member cost, provide point-of-sale discounts for members, expand benefits, or otherwise deliver value to members, to OPM, or to other federal agencies.

- Documents and Data related to any analysis or decision-making concerning the Formulary treatment of any Insulin Product or Other Referenced Drugs for any FEHB plan, including without limitation the inclusion or exclusion of low WAC Insulin Products or Other Referenced Drugs from Formularies, member costs for Insulin Products or Other Referenced Drugs, and the List Prices, net Prices, or costs paid for Insulin Products or Other Referenced Drugs over time.

- Documents and Data sufficient to show the Rebates or discounts negotiated by, obtained for, or paid to any FEHB plan, including without limitation any payments to Carriers, for Insulin Products or Other Referenced Drugs.

- Documents and Data regarding the selection process in response to any Request for Proposal sent by OPM related to any FEHB plan that concern or discuss whether to

select a plan that uses an open or closed Formulary, tiered or preferred Formulary, or custom Formulary and any comparison between pricing, quality, or any other consideration between responses to any Request for Proposal.

- Documents and Data related to competition between PBMs to supply services in connection with any FEHB plan, including without limitation any comparisons between Pricing or quality of services provided by PBMs.

- Documents and Data sufficient to show the Prescription Benefit Plans offered to Federal Trade Commission employees, including without limitation Documents and Data regarding the Prescription Benefit Plan structure, the Formularies for the health insurance plan, the Rebates, if any, collected on any pharmaceutical prescriptions, and how those Rebates are used in connection with any FEHB plan.

A. The Requested Discovery Is Relevant

Respondents seek to defend themselves in this litigation by, among other things, proving that they compete vigorously with other PBMs to supply services to customers and that the conduct alleged in the complaint—including the use of rebates and exclusive formularies that lower the net costs for patients—has benefited customers and reduced net prices. The subpoena seeks relevant documents that relate to OPM's experience providing prescription drug benefits to federal employees, including decisions to use PBMs, closed formularies, and to allow plans to accept manufacturer rebates. *See In re MSC Software Corp.*, 2002 WL 31433985, at *2 (FTC May 9, 2002) (granting 3.36 motion to seek discovery from DOD and NASA to "demonstrate DOD's and NASA's experiences as users of FEA solvers").

OPM benefits from PBM services. It also directs carriers' use of PBM services for FEHB plans and maintains records regarding the FEHB program, the net cost of prescription drugs, the use of PBMs, and the value of PBM negotiated discounts and rebates. As this Court has previously recognized, subpoenas that are directed to participants in the alleged relevant market are "likely to lead to the discovery of relevant evidence." *In re Axon Enterprise, Inc.*, 2020 WL 1041714, at *1 (FTC Feb. 25, 2020) (granting 3.36 Motion where targets of subpoena were "either past, current, or potential customers of body-worn camera systems, which are products at issue in this

proceeding"); *see also In re Axon Enterprise, Inc.*, 2020 WL 5701022, at *1 (FTC Sept. 17, 2020) (granting 3.36 motion to seek from an agency "Requests for Proposals ('RFPs'), department purchases, needs, and policies, customer responses to the Acquisition, and the Acquisition's effect on products and customer support").

B. The Discovery Is Reasonable In Scope, Stated With Particularity, And Cannot Be Otherwise Obtained

The requested discovery is reasonable in scope and stated with particularity. 16 C.F.R. §§ 3.36(b)(1), 3.37(a). The requested discovery is limited to discrete topics and specific types of materials to allow identification of readily accessible responsive materials. The requests are also narrowly tailored to support Respondents' defense and rebut the FTC's allegations, are targeted in scope, and will impose only a limited burden. *In re Intel Corp.*, 2010 WL 2544424, at *3 (FTC June 9, 2010). Respondents cannot otherwise obtain information about FEHB and the value of PBM services provided to FEHB plans. 16 C.F.R. § 3.36(b)(3).

The documents sought are held by OPM, including non-public information related to the determination on how to direct Carriers to structure FEHB plans, the decision on whether to accept a Carrier proposal that uses an exclusive formulary, tiered formulary, or custom formulary, and other relevant internal evidence related to the allegations in this case. *See Axon*, 2020 WL 5701022, at *1 (granting 3.36 motion where "only customers," the government agencies, would have the requested information). Beyond the requested subpoena, Respondents have no other way to obtain these materials.

III. CONCLUSION

An order should issue authorizing the subpoena attached as Exhibit A.

Dated: December 16, 2024

Respectfully submitted,

/s/ Jennifer Milici
Jennifer Milici
Perry A. Lange
John W. O'Toole
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave. NW
Washington, D.C. 20037
Telephone: (202) 663-6000
Facsimile: (202) 663-6363
jennifer.milici@wilmerhale.com
perry.lange@wilmerhale.com
john.otoole@wilmerhale.com

Charles F. Rule
Daniel J. Howley
Margot Campbell
Derek W. Moore
Justin T. Heipp
RULE GARZA HOWLEY LLP
901 7th Street NW
Washington, D.C. 20001
(202) 843-9280
rule@rulegarza.com
howley@rulegarza.com
campbell@rulegarza.com
moore@rulegarza.com
heipp@rulegarza.com

Counsel for Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc., and Ascent Health Services LLC

/s/ Ben A. Sherwood
Ben A. Sherwood
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166
Email: BSherwood@gibsondunn.com

Samuel Liversidge
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Tel: (213) 229-7420
Email: SLiversidge@gibsondunn.com

Michael J. Perry
Sophia A. Hansell
Matthew S. Rozen
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
Washington, DC 20036
Email: MJPerry@gibsondunn.com
Email: SHansell@gibsondunn.com
Email: MRozen@gibsondunn.com

Matthew C. Parrott
GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive, Suite 1200
Irvine, CA 92612
Email: MParrott@gibsondunn.com

Thomas Tyson
GIBSON, DUNN & CRUTCHER LLP
One Embarcadero Center, Suite 2600
San Francisco, CA 94111
Email: TTyson@gibsondunn.com

Counsel for Respondents OptumRx, Inc.; OptumRx Holdings, LLC and Emisar Pharma Services LLC

/s/ Enu Mainigi
Enu Mainigi
Craig Singer
Jonathan Pitt
Steven Pyser
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
Email: emainigi@wc.com
Email: csinger@wc.com
Email: jpitt@wc.com
Email: spyser@wc.com
Tel: (202) 434-5000

Michael Cowie
Rani Habash
Gregory Luib
DECHERT LLP
1900 K Street NW
Washington, DC 20006
Email: mike.cowie@dechert.com
Email: rani.habash@dechert.com
Email: gregory.luib@dechert.com
Tel: (202) 261-3300

Counsel for Caremark Rx, LLC and Zinc Health Services, LLC

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CONFERENCE STATEMENT

Pursuant to Paragraph 4 of the Scheduling Order entered in this matter on October 23, 2024, I hereby certify that counsel for Respondents Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc., Ascent Health Services LLC, Caremark Rx, LLC, Zinc Health Services, LLC, OptumRx, Inc., OptumRx Holdings, LLC, and Emisar Pharma Services LLC, the moving parties, conferred by teleconference with Complaint Counsel on December 2, 2024. On December 3, 2024, Complaint Counsel informed Respondents that they take no position on this motion.

/s/ Jennifer Milici

Counsel for Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc., and Ascent Health Services LLC

EXHIBIT A

Subpoena for Production of Documentary Material

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO

General Counsel
U.S. Office of Personnel Management
1900 E Street, NW
Washington, DC 20415-1000

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION

Wilmer, Cutler, Pickering, Hale & Dorr LLP
2100 Pennsylvania Avenue, NW
Washington, DC 20037

4. MATERIAL WILL BE PRODUCED TO

Counsel for Respondents Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc., and Ascent Health Services LLC

5. DATE AND TIME OF PRODUCTION

TBD

6. SUBJECT OF PROCEEDING

In the Matter of Caremark Rx, LLC, et al. ("Insulin"), FTC Dkt. No. 9437

7. MATERIAL TO BE PRODUCED

See attached Subpoena Duces Tecum Attachment to the Office of Personnel Management

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell
Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL AND PARTY ISSUING SUBPOENA

Jennifer Milici
Wilmer, Cutler, Pickering, Hale, & Dorr LLP
2100 Pennsylvania Avenue, NW
Washington, DC 20037
202-663-6000
Counsel for Respondents Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc., and Ascent Health Services LLC

DATE SIGNED

SIGNATURE OF COUNSEL ISSUING SUBPOENA

INSTRUCTIONS AND NOTICES

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within the earlier of ten days after service thereof or the time for compliance therewith. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 9.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel. Witness travelers can contact the FTC travel office for guidance at (202) 326-3299 or travel@ftc.gov. PLEASE NOTE: Reimbursement for necessary transportation, lodging, and per diem expenses cannot exceed the maximum allowed for such expenses by an employee of the federal government.

A copy of the Commission's Rules of Practice is available online at http://bit.ly/FTCsRulesofPractice. Paper copies are available upon request.

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RESPONDENTS' SUBPOENA *DUCES TECUM* ATTACHMENT TO THE OFFICE OF PERSONNEL MANAGEMENT

Pursuant to Rules 3.34 and 3.36 of the Federal Trade Commission's Rules of Practice (16 C.F.R. §§ 3.34, 3.36), Respondents Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc., Ascent Health Services LLC, Caremark Rx, LLC, Zinc Health Services, LLC, OptumRx, Inc., OptumRx Holdings, LLC, and Emisar Pharma Services LLC (collectively, "Respondents"), by and through their attorneys, request that the Office of Personnel Management and its staff produce all documents, electronically stored information, and other materials in their possession, custody, or control that are responsive to the requests made below.

DEFINITIONS

1. "Action" means the above-captioned litigation, *In the Matter of Caremark Rx, LLC, et al.*, FTC Docket No. 9437 (F.T.C.).

2. The terms "all," "any," and "each" shall be construed as encompassing any and all; and "every" means each and every.

3. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope. The use of the singular form of any word includes the plural and vice versa.

4. "Carriers" means the health insurance companies that participate in, or have participated in, the FEHB.

5. The terms "concerning" and "regarding" mean to comprise, reflect, record, memorialize, embody, discuss, contradict, evaluate, consider, review or report on, concern, refer to, or relate to the subject matter of the Request or to have been created, generated or maintained in connection with or as a result of the subject matter of the Request.

6. "Data" shall mean any recorded information, including but not limited to, all spreadsheets, databases, images, audio or video files, logs, metadata, or any other material that captures information. "Data" encompasses structured data (such as databases or tables), unstructured data (such as email or word processing files), and any embedded or associated metadata. It shall also include all drafts, versions, deletions, and hidden or deleted information, whether stored on local computers, servers, cloud storage, mobile devices, or other data storage locations.

7. The terms "discuss" or "discussing" means in whole or in part constituting, containing, describing, or addressing the designated subject matter, regardless of the length of the treatment or detail of analysis of the subject matter, but not merely referring to the designated subject matter without elaboration. In addition, a Document that "discusses" another Document includes the other Document itself (e.g., a Document that "discusses" an agreement or contract includes the agreement or contract itself). Further, these terms include any operating or financial

Data about the designated subject matter where such data are separately set out as in a chart, listing, table, or graph.

8. "Document(s)" mean any information, on paper or in electronic format, including written, printed, recorded, and graphic materials of every kind, in the possession, custody, or control of OPM. The term "Documents" includes, without limitation: computer files; email messages; text messages; instant messages and chat logs; group chats; voicemails and other audio files; calendar entries; schedulers; drafts of documents; metadata and other bibliographic or historical Data describing or relating to documents created, revised, or distributed electronically; notes of Meetings or telephone calls; and copies of documents the originals of which are not in the possession, custody, or control of OPM. This term includes the transmittal or transfer of communications and information (in the form of facts, ideas, inquiries, or otherwise) by any means, including email, instant messages, text messages, iMessages, WhatsApp Messages, Telegram, and Signal messages. "Document(s)" include the original and, separately, each non-identical copy (including, but not limited to, non-identical copies containing unique notes, inserted material, or attachments).

9. "FEHB" means the Federal Employees Health Benefits Program.

10. "Formulary" means a Payor's, Health Care Provider's or PBM's list of medicines, drugs, or pharmaceutical products that are approved to be prescribed, covered, or reimbursed at a hospital, in a particular health system, or under the pharmaceutical benefit of a health insurance policy.

11. "Health Care Provider" refers to any doctor, hospital, clinic, or other Person or entity that provides health care services.

12. "Insulin Product" means each insulin pharmaceutical and related device, equipment, or other mechanical part approved by the U.S. Food and Drug Administration to treat diabetes,

including those Insulin Products marketed in pen, cartridge, or vial presentations in the United States.

13. "List Price" means the WAC price at which an Insulin Product is listed.

14. "Meeting" means an assembly of two or more people, in-person or via telephone, voiceover-IP, video, video conferencing, or other similar means of communication.

15. "OPM," "You," "Your," or "Yours" means the Office of Personnel Management and any other person acting or purporting to act on behalf of or under the direction, authorization, or control of the Office of Personnel Management, including staff and advisors.

16. "Other Referenced Drugs" means any of the drugs named in the Complaint in this Action, and their unbranded, biosimilar or generic alternatives, including but not limited to treatments for Hepatitis C, autoimmune diseases, and inflammatory conditions, including but not limited to Epclusa/Harvoni, Cyltezo, Amjevita, Enbrel, and Taltz.

17. "Payor" means any entity, other than the receiving patient, that pays or reimburses in whole or in part for the administration or sale of a pharmaceutical product. Payors include, but are not limited to, Plan Sponsors, federal and state government programs such as TRICARE, Medicare, and Medicaid; private insurers and health-maintenance organizations (HMOs); and health-and-welfare funds.

18. "PBM" or "Pharmacy Benefit Manager" means any entity that negotiates Rebate agreements; creates or manages a Formulary; or otherwise deals with pharmaceutical manufacturers or sellers and serves as a third-party administrator of a Payor's or Plan Sponsor's Pharmacy Benefit Plan.

19. "Person" includes OPM and means any natural person, corporate entity, sole proprietorship, partnership, association, governmental entity, or trust, including any individuals

employed by, serving as the agent of, or are otherwise contracted or affiliated with the Person or any subsidiaries thereof.

20. "Pharmacy" refers to any entity, including mail-order vendors, retail vendors, hospitals, clinics, and inpatient facilities, that dispenses pharmaceutical products to patients, including pursuant to a prescription issued by a Health Care Provider.

21. "Pharmacy Benefit Plan" means a plan that provides insurance coverage to a patient for certain drugs from Pharmacies and other drug sources, often service by a PBM.

22. "Plan Sponsor" means the financial entities (e.g., Self-Funded employers, insurance companies, union health plans) that pay for prescription drugs through Pharmacy Benefit Plans.

23. "Price" or "Pricing," when used with regard to one or more products, means the amount charged by the supplier for such product(s) or the amount paid by the buyer of such product(s) to the seller, whether or not the seller is the manufacturer of the product(s). The terms "price" and "pricing" also include amounts denominated as price, gross price, net price, average price, unit price, effective price, dead net price, Rebate, package price, bundled price, discount, credit, charge or chargeback, allowance, debit, or any other payment or receipt of anything of value incurred in whole or in part as a result of the sale of the applicable product.

24. "Rebate" means a retrospective payment returning a portion of the List Price paid for a drug to the direct or indirect purchaser.

25. The terms "relate," "related to," and "relating to" mean, in whole or in part, addressing, analyzing, concerning, constituting, containing, commenting on, discussing, describing, identifying, referring to, reflecting, reporting on, stating, or dealing with.

26. "Wholesale Acquisition Cost" or "WAC" means the pharmaceutical manufacturer's price for a drug to wholesalers or direct purchasers in the United States, not including prompt pay

or other discounts, Rebates or reductions in Price, as reported in wholesale price guides or other publications of drug pricing data.

INSTRUCTIONS

1. Respondents seek production of the Documents set forth in the numbered Requests below that are in Your possession, custody, or control. A Document is to be deemed in Your possession, custody, or control if You (a) own such Document in whole or in part; (b) have a right by contract, statute or otherwise, to use, access, inspect, examine, or copy such Document on any terms; or (c) have an express or implied understanding that You may use, access, inspect, examine or copy such Document on any terms.

2. In addition to the specific instructions set forth below, these Requests incorporate by reference all provisions of the Protective Order Governing Confidential Material, as entered by Chief Administrative Law Judge Chappell on October 1, 2024 ("Protective Order"). Subject to a valid claim of privilege, please produce the entire document if any part of that Document is responsive.

3. Any alteration of a responsive Document, including any marginal notes, handwritten notes, underlining, stamps, drafts, revisions, modifications, and other versions of a responsive Document is a separate and distinct Document and it must be produced in addition to the unaltered responsive Document.

4. No part of a Request may be left unanswered, or Documents not produced, merely because a different portion of a Request is objected to. Where an objection is made to any Request, or subpart thereof, the objection must state with specificity all grounds for the objection. If an objection is made to any Request, the response shall state whether Documents are being withheld

from production on the basis of such objection, or whether inspection and production of the responsive Documents will occur not withstanding such objection.

5. For any Document withheld or redacted, in whole or in part, based on any claim of privilege or work product protection, You shall, pursuant to 16 C.F.R. § 3.38A and any additional provisions as detailed in the Protective Order, produce a privilege log that describes the nature of Documents, communications, or tangible things not produced or disclosed, in a manner that will enable Counsel for Respondents to assess the claim of privilege.

6. If no Document responsive to a Request exists, please state so in Your response.

7. Each Document should be produced in the manner, form and position in which it is kept in the ordinary course of business.

8. Unless otherwise stated, each request covers Documents and information from January 1, 2017, through the close of fact discovery in this Action.

REQUESTS FOR PRODUCTION

DOCUMENT REQUEST NO. 1

All Documents and Data related to the potential use, use, quality, or value of closed Formularies, preferred Formulary status, or Formulary tiering, negotiated by or obtained for any FEHB plan.

DOCUMENT REQUEST NO. 2

All Documents and Data related to the evaluation of any FEHB plan, including without limitation Documents and Data relating to members' premiums and out-of-pocket costs for prescription drugs, including deductibles, coinsurance or copay obligations.

DOCUMENT REQUEST NO. 3

Documents and Data sufficient to show any programs or initiatives considered or used for any FEHB plan and designed to reduce or mitigate the out-of-pocket costs paid by members for Insulin Products or Other Referenced Drugs.

DOCUMENT REQUEST NO. 4

All Documents and Data related to the use of Rebates received by, on behalf of, or in connection with any FEHB plan, including without limitation Documents and Data relating to the impact of Rebates on Pharmacy Benefit Plan costs to federal agencies, and Documents and Data referring or relating to decisions to direct Carriers to use or not use pharmaceutical Rebates to reduce premiums or other dimensions of member cost, provide point-of-sale discounts for members, expand benefits, or otherwise deliver value to members, to OPM, or to other federal agencies.

DOCUMENT REQUEST NO. 5

All Documents and Data related to any analysis or decision-making concerning the Formulary treatment of any Insulin Product or Other Referenced Drugs for any FEHB plan, including without limitation the inclusion or exclusion of low WAC Insulin Products or Other Referenced Drugs from Formularies, member costs for Insulin Products or Other Referenced Drugs, and the List Prices, net Prices, or costs paid for Insulin Products or Other Referenced Drugs over time.

DOCUMENT REQUEST NO. 6

Documents and Data sufficient to show the Rebates or discounts negotiated by, obtained for, or paid to any FEHB plan, including without limitation any payments to Carriers, for Insulin Products or Other Referenced Drugs.

DOCUMENT REQUEST NO. 7

All Documents and Data regarding the selection process in response to any Request for Proposal sent by OPM related to any FEHB plan that concern or discuss whether to select a plan that uses an open or closed Formulary, tiered or preferred Formulary, or custom Formulary and any comparison between pricing, quality, or any other consideration between responses to any Request for Proposal.

DOCUMENT REQUEST NO. 8

All Documents and Data related to competition between PBMs to supply services in connection with any FEHB plan, including without limitation any comparisons between Pricing or quality of services provided by PBMs.

DOCUMENT REQUEST NO. 9

Documents and Data sufficient to show the Prescription Benefit Plans offered to Federal Trade Commission employees, including without limitation Documents and Data regarding the Prescription Benefit Plan structure, the Formularies for the health insurance plan, the Rebates, if any, collected on any pharmaceutical prescriptions, and how those Rebates are used in connection with any FEHB plan.

PUBLIC

Dated: December 16, 2024

Respectfully submitted,

/s/ Jennifer Milici
Jennifer Milici
Perry A. Lange
John W. O'Toole
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave. NW
Washington, D.C. 20037
Telephone: (202) 663-6000
Facsimile: (202) 663-6363
jennifer.milici@wilmerhale.com
perry.lange@wilmerhale.com
john.otoole@wilmerhale.com

Charles F. Rule
Daniel J. Howley
Margot Campbell
Derek W. Moore
Justin T. Heipp
RULE GARZA HOWLEY LLP
901 7th Street NW
Washington, D.C. 20001
(202) 843-9280
rule@rulegarza.com
howley@rulegarza.com
campbell@rulegarza.com
moore@rulegarza.com
heipp@rulegarza.com

Counsel for Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc., and Ascent Health Services LLC

s/ Ben A. Sherwood
Ben A. Sherwood
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166
Email: BSherwood@gibsondunn.com

Samuel Liversidge
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Tel: (213) 229-7420
Email: SLiversidge@gibsondunn.com

Michael J. Perry
Sophia A. Hansell
Matthew S. Rozen
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
Washington, DC 20036
Email: MJPerry@gibsondunn.com
Email: SHansell@gibsondunn.com
Email: MRozen@gibsondunn.com

Matthew C. Parrott
GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive, Suite 1200
Irvine, CA 92612
Email: MParrott@gibsondunn.com

Thomas Tyson
GIBSON, DUNN & CRUTCHER LLP
One Embarcadero Center, Suite 2600
San Francisco, CA 94111
Email: TTyson@gibsondunn.com

Counsel for Respondents OptumRx, Inc.; OptumRx Holdings, LLC and Emisar Pharma Services LLC

s/ Enu Mainigi
Enu Mainigi
Craig Singer
Jonathan Pitt
Steven Pyser
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
Email: emainigi@wc.com
Email: csinger@wc.com
Email: jpitt@wc.com
Email: spyser@wc.com
Tel: (202) 434-5000

Michael Cowie
Rani Habash
Gregory Luib
DECHERT LLP
1900 K Street NW
Washington, DC 20006
Email: mike.cowie@dechert.com
Email: rani.habash@dechert.com
Email: gregory.luib@dechert.com
Tel: (202) 261-3300

Counsel for Caremark Rx, LLC and Zinc Health Services, LLC

PUBLIC

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of **Caremark Rx, LLC;** **Zinc Health Services, LLC;** **Express Scripts, Inc.;** **Evernorth Health, Inc.;** **Medco Health Services, Inc.;** **Ascent Health Services LLC;** **OptumRx, Inc.;** **OptumRx Holdings, LLC;** and **Emisar Pharma Services LLC.**	**Docket No. 9437**

[PROPOSED] ORDER ON RESPONDENTS' MOTION FOR DISCOVERY PURSUANT TO RULE 3.36

Upon consideration of Respondents' Motion for Discovery Pursuant to Rule 3.36:

IT IS HEREBY ORDERED that Respondents' motion is GRANTED.

IT IS HEREBY FURTHER ORDERED that Respondents are authorized to issue the subpoena to the Office of Personnel Management attached as Exhibit A of the Motion.

ORDERED: _____

D. Michael Chappell
Chief Administrative Law Judge

Date: _____

PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2024, I filed the foregoing document electronically using the FTC's E-Filing system, which will send notification of filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Office of Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Ave. NW, Rm. H-110
Washington, DC 20580
oalj@ftc.gov

I further certify that on December 16, 2024, I caused the foregoing document to be served via email to:

Rebecca L. Egeland
Bradley S. Albert
Armine Black
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20580
Email: regeland@ftc.gov
Tel: (202) 326-2990
regeland@ftc.gov
balbert@ftc.gov
ablack1@ftc.gov
1035-Insulin-DL@ftc.gov

Counsel Supporting the Complaint

Mike Cowie
Rani A. Habash
DECHERT LLP
1900 K Street NW
Washington, DC 20006
Tel: 202-261-3339
mike.cowie@dechert.com
rani.habash@dechert.com

Enu Mainigi
Craig Singer
Steven Pyser
WILLIAMS & CONNOLY LLP
680 Maine Ave. SW
Washington, DC 20024
Tel: 202-434-5420
emaingini@wc.com
csigner@wc.com
spyser@wc.com

Counsel for Respondents Caremark Rx LLC; Zinc Health Services, LLC

Sophia A. Hansell
Michael J. Perry
Matthew C. Parrott
GIBSON, DUNN & CRUTCHER LLP
1700 M Street NW
Washington, DC 20006
Tel: 202-887-3625
SHansell@gibsondunn.com
MJPerry@gibsondunn.com
MParrott@gibsondunn.com

Counsel for Respondents OptumRx, Inc.; OptumRx Holdings, LLC; and Emisar Pharma Services LLC

Respectfully submitted,

/s/ Jennifer Milici

Counsel for Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc., and Ascent Health Services LLC