

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CAREFIRST OF MARYLAND, INC., GROUP)	
HOSPITALIZATION AND MEDICAL SERVICES,)	
INC., CAREFIRST BLUECHOICE, INC., BLUE)	
CROSS AND BLUE SHIELD OF SOUTH)	
CAROLINA, BLUECHOICE HEALTHPLAN OF)	Civil No.:
SOUTH CAROLINA, INC., LOUISIANA HEALTH)	
SERVICE & INDEMNITY COMPANY, D/B/A)	
BLUE CROSS AND BLUE SHIELD OF)	Jury Trial Demanded
LOUISIANA, and HMO LOUISIANA, INC.,)	
)	
Plaintiffs,)	
v,)	
)	
WALGREEN CO. AND WALGREENS BOOTS)	
ALLIANCE, INC.,)	
)	
Defendants.)	

COMPLAINT

Plaintiffs CareFirst of Maryland, Inc. (“CFMI”), Group Hospitalization and Medical Services, Inc. (“GHMSI”), CareFirst BlueChoice, Inc. (“CareFirst BlueChoice”), Blue Cross and Blue Shield of South Carolina (“BCBSSC”), BlueChoice HealthPlan of South Carolina, Inc. (“BCHPSC”), Louisiana Health Service & Indemnity Company, d/b/a/ Blue Cross and Blue Shield of Louisiana (“BCBSLA”), and HMO Louisiana, Inc. (“HMOLA”) (collectively, “Plaintiffs”) bring this Complaint against Defendants Walgreen Co. and Walgreens Boots Alliance, Inc. (collectively, “Walgreens” or “Defendants”) seeking damages for fraud, fraudulent nondisclosure, unjust enrichment, and state statutory claims. In support of this action, Plaintiffs state and allege as follows:

I. PRELIMINARY STATEMENT

1. For more than a decade, Walgreens—one of the largest retail drugstore chains in the United States—has knowingly and intentionally engaged in an ongoing fraudulent scheme to

overcharge Plaintiffs for prescription drugs by submitting claims for payment at artificially inflated prices. To conceal its scheme, Walgreens has made false statements and omitted material facts in connection with its *true* usual and customary (“U&C”) prices—the payment ceiling generally defined as the cash price to a member of the general public paying for a prescription drug without insurance—for prescription drugs dispensed to individuals covered by Plaintiffs’ health plans. Walgreens fraudulently submitted inflated U&C prices on millions of claims reimbursed by Plaintiffs. Through its fraudulent scheme, Walgreens has overcharged Plaintiffs hundreds of millions of dollars for prescription drugs.

2. Significantly, on January 15, 2019, Walgreens settled claims brought by the United States, 39 states, and the District of Columbia alleging that, from January 2008 through December 2017, Walgreens violated the False Claims Act, 31 U.S.C. § 3729, *et seq.*, by submitting false U&C prices that were higher than the prices it charged for the same drugs sold through its Prescription Savings Club cash discount program (“PSC Program”), thereby obtaining more money in reimbursements for Medicaid fee-for-service claims than it was entitled to receive.¹ Walgreens has now admitted—for the first time—that “in submitting claims for reimbursement,” Walgreens “did not identify its PSC program prices as its U&C prices for drugs on the PSC program formulary,” despite being so required.² Walgreens further admitted—for the first time—facts demonstrating that the PSC Program itself was a sham, including that it “offered a savings guarantee pursuant to which PSC program members could recoup (in the form of store credit) the difference between the amount they paid to enroll in the program in a given year and the amount

¹ *U.S. ex rel. Baker v. Walgreens, Inc. and Walgreen Co.*, No. 12 Civ. 00300-JPO, Stipulation and Order of Settlement and Dismissal ¶ 2(e) (S.D.N.Y. docket filed Jan. 24, 2019) (ECF No. 53) (hereinafter “Walgreens’ DOJ Settlement”).

² *Id.*

they received in discounted savings under the program in that year.”³ Plaintiffs similarly have been damaged by the same fraudulent course of conduct, as described and admitted to by Walgreens in the Walgreens’ DOJ Settlement.

3. Plaintiffs are health care plans offering comprehensive health care services and coverage, including prescription drug coverage, to their members residing in Maryland, Virginia, the District of Columbia, South Carolina, Louisiana, and other states in which they operate. When plan members fill prescriptions covered by Plaintiffs at a Walgreens pharmacy, Walgreens submits electronic claims to Plaintiffs for reimbursement for those prescriptions (through Plaintiffs’ contracted pharmacy benefit managers (“PBMs”)). In submitting electronic claims for payment, Walgreens is required to truthfully and accurately submit its U&C price for each dispensing event, in accordance with, *inter alia*, the National Council for Prescription Drug Program (“NCPDP”)⁴ requirements.

4. Plaintiffs calculate the drug price to be paid to the pharmacy based on whether the U&C reported by Walgreens for a particular drug is less than or greater than the price that has been otherwise negotiated for that drug. The U&C price functions as a reimbursement ceiling, ensuring that health plans do not pay Walgreens more than what Walgreens charges cash-paying customers paying without insurance. This payment methodology is consistent across government standards, PBM instructions manuals, and decades-long industry practice, which recognize that reimbursements are to be adjudicated under this formula.

5. In 2006, “big box” retailers like Walmart, Target, and Costco disrupted the retail pharmacy market by offering deeply discounted generic drugs—\$4 for 30-day supplies—to their

³ *Id.*

⁴ NCPDP is an accredited, non-profit organization that maintains the industry standard for electronic transmission and adjudication of pharmacy claims.

customers while also giving third-party payors, including Plaintiffs, the benefit of that deal by reporting their discount prices as their U&C prices for the same drugs, consistent with NCPDP and industry standards. Federal health regulators at the Centers for Medicare and Medicaid Services (“CMS”) also made clear that generic discount program prices were to be considered the pharmacy’s U&C prices for the purposes of billing government healthcare programs.

6. Walgreens recognized the need to retain and attract new customers, but—unlike the “big box” retailers—decided not to absorb substantially reduced margins in connection with lowering its U&C prices submitted to third-party payors, including Plaintiffs. Concerned with maintaining its massive pharmacy revenue, which historically accounts for a vast majority of Walgreens’ total revenue, and at the same time competing with “big box” retailers and other pharmacies for in-store traffic and cash sales, Walgreens developed and carried out a massive fraud that resulted in substantial financial harm to Plaintiffs.

7. In or around 2007, Walgreens created the PSC Program to maintain its margins on brand and generic drugs by systematically overcharging Plaintiffs for prescription drugs dispensed to their members. Walgreens created the PSC Program for two reasons: *first*, to maintain and increase its market share for cash customers by offering deep discounts on prescription drugs, and *second*—and more importantly—to obfuscate its true U&C prices from third-party payors, including Plaintiffs. Walgreens artificially divided its cash business, which formerly consisted solely of customers who pay cash, into two segments: customers who pay the high cash price (which it would include in its U&C price) and customers who pay the low cash price (*i.e.*, the price offered by the PSC Program or other similar programs, which would be excluded from U&C). In short, Walgreens created the PSC Program in a covert attempt to insulate its high U&C prices by artificially dividing its customer base in a way that would undermine the central purpose of any

health insurance company's prescription drug benefit—that Plaintiffs do not pay more than what cash customers pay for the same drugs.

8. But unbeknownst to Plaintiffs, Walgreens submitted U&C prices that were regularly five, ten, or even twenty times higher than what Walgreens actually charged cash customers through its PSC Program (and other programs). Still, on its claims for reimbursement to Plaintiffs, Walgreens reported those artificially inflated “U&C” prices, which were neither usual nor customary, as its U&C prices. By submitting false and inflated U&C prices to Plaintiffs, Walgreens knowingly and wrongfully overcharged Plaintiffs on millions of claims.

9. Walgreens knowingly and intentionally concealed from Plaintiffs the *actual* cash prices offered to members of the general public paying without insurance—*i.e.*, Walgreens' *true* U&C prices—on both brand and generic prescription drugs. To conceal its fraudulent scheme, Walgreens knowingly made false statements and omitted material facts in connection with its true U&C prices, including, but not limited to, the scope of PSC Program membership; PSC Program eligibility; the enrollment process; the enrollment “fee”; and frequency, share, number, and other key data points related to Walgreens' cash sales under the PSC Program and other similar discount programs; and other discounts (not associated with a discount program) offered to the individuals paying without insurance for drugs also dispensed to Plaintiffs' Members.

10. For example, Walgreens also effectuated this fraud by offering a prescription savings club called “JustRx” (“JustRx Program”) to customers at more than 1,900 Walgreens-owned Rite Aid-branded pharmacy locations and at Walgreens and Duane Reade pharmacy locations and failing to report these prices as U&C. Additionally, Walgreens further effectuated this fraud by charging third-party branded discount card prices to individuals who pay without

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