IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel. **THOMAS J. MILLER**, **ATTORNEY GENERAL OF IOWA**, 99 AG 25112 Plaintiff v. **MEDCO HEALTH SOLUTIONS, INC.**, **and MERCK-MEDCO MANAGED** **CARE, L.L.C.**, Defendants.	)))))))))))))	 Equity No. ______________ **PETITION IN EQUITY**

INTRODUCTION

1. This civil action is brought by the Iowa Attorney General in the public interest, arising out of the defendants' unfair or deceptive acts and practices in connection with the sale of, and performance of, pharmacy and pharmacy benefit management services. By this action, the Attorney General seeks permanent injunctive relief prohibiting the defendants from committing unfair and deceptive acts and practices in the future, as well as restitution for persons injured by the defendants' unlawful actions, and other remedies provided by Iowa Code Section 714.16, the Iowa Consumer Fraud Act.

THE PARTIES

2. This action is brought by the Iowa Attorney General on behalf of Iowa citizens, pursuant to Iowa Code Section 714.16.(7).

3. The Iowa Attorney General is authorized to bring this action pursuant to Iowa Code 714.16(7)

4. Defendant, Medco Health Solutions, Inc., is a Delaware Limited Liability

Corporation that conducts business nationwide, with pharmacy facilities located in 12 states. It is the corporate successor to the defendant, Merck-Medco Managed Care, L.L.C. Medco Health Solutions, Inc. and Merck-Medco Managed Care, L.L.C. are collectively referred to as "Medco." Medco provides pharmacy benefit management services to persons in Iowa and nationwide.

5. Medco operates, or has operated, prescription drug mail order pharmacies under the names of wholly owned subsidiaries including, but not limited to, Merck-Medco Managed Care of California, Inc.; Merck-Medco Rx services of Florida No. 2, L. C. ("Tampa II"); Merck-Medco Rx services of Florida, L.C. ("Tampa I"); Merck-Medco Rx services of Massachusetts, L.L.C.; Merck-Medco Rx services of Nevada, Inc.; Merck-Medco Rx services of New Jersey, L.L.C.; Merck-Medco Rx services of New York, L.L.C.; Merck-Medco Rx services of Ohio, Ltd.; Merck-Medco Rx services of Ohio No. 2, Ltd.; Merck-Medco Rx services of Oklahoma, L.L.C.; Merck-Medco Rx services of Pennsylvania, L.L.C.; Merck-Medco Rx services of Pennsylvania No. 2, L.L.C.; Merck-Medco Rx services of Texas, L.L.C.; Merck-Medco Rx services of Virginia, L.L.C.; and Merck-Medco Rx services of Washington, Inc. (collectively "mail order pharmacies"). Each of Medco's mail order pharmacies is licensed as a pharmacy under the laws of the state in which it is located, and is licensed by each state to which that mail order pharmacy ships prescriptions. Each of the mail order pharmacies is controlled by, and are alter egos of, Medco.

6. Systemed, L.L.C. is also a wholly owned subsidiary of Medco. Systemed engaged in similar or identical pharmacy benefit manager practices as Medco, except with a client focus on smaller to medium sized businesses. For purposes of this complaint, Systemed is the alter ego of Medco.

JURISDICTION AND VENUE

7. This court has jurisdiction over the subject matter of and defendants in this action pursuant to Iowa Code Section 714.16(7)]. Venue is proper in Polk County, Iowa, because the defendant has done and continues to do business in Polk County.

FACTS

I. **Medco's Pharmacy Benefit Manager Business**

8. More than 150 million Americans have insurance coverage which includes a pharmacy benefit component that pays for prescription drugs, in whole or in part. Whether provided by an employer, a health plan, a government agency, a union or another entity (the "client"), this pharmacy benefit is typically managed by a pharmacy benefit manager ("PBM"). The PBM is a business which specializes in administering the pharmacy benefit in return for payment – in some form – by the client. Medco is a PBM. According to Medco, it is the nation's largest PBM, based on 2002 net revenues of more than $32 billion.

9. As a PBM, Medco generally performs the following tasks for its clients:

a) Organizing a network of retail pharmacies ("retail network"), now numbering more than 55,000 pharmacies, that agree to fill prescriptions for a negotiated price.

b) Operating mail order pharmacies which sell prescription drugs, including more than 82 million prescriptions in 2002, directly to patients.

c) Administering the pharmacy benefit by processing and paying claims through operation of a proprietary computer system.

d) Providing beneficiaries, physicians, and clients with information about the operation of their pharmacy benefit and cards or other methods to access the benefits.

e) Providing expert advice concerning the design of prescription drug plans in order to provide a quality program while containing costs to the client and the beneficiaries. Aspects of a pharmacy benefit plan design include levels of co-payment by beneficiaries, limits on total amount of drug spending covered, use and pricing of generic drugs, pre-authorization requirements, and formulary decision making such as when plans should require use of older, cheaper drugs before paying for newer, more expensive drugs.

f) Providing expert advice concerning the development and management of formularies, as described further below.

10. Formularies are lists of preferred drugs for which a plan agrees to pay on behalf of the beneficiary, either in whole or in part. For example, "open formularies" permit payment for any prescription drug. "Closed formularies" limit payment to specific drugs – for example, only generics, or only one drug within a so-called "therapeutic class." "Tiered formularies" require beneficiaries to pay lower or higher co-pays depending on whether a drug is generic, preferred brand, or non-preferred brand.

11. Medco maintains a Pharmacy & Therapeutics Committee ("P&T Committee"), composed of doctors and pharmacists, to make clinical and/or medical determinations about which drugs to include on Medco formularies.

12. Medco represents to its clients that its "Preferred Prescription Drug Formulary" list is reviewed by an independent P&T committee and will allow health plans to achieve quality care as well as cost containment objectives.

II. <u>Medco's Mail Order Pharmacy Business</u>

13. At all material times, Medco provided mail order pharmacy services to clients

including state and local governmental clients, as well as Federal employee and retiree groups and private parties.

14. Mail order pharmacy benefits were provided through contracts between Medco and its clients, including State Government Plans, or through sub-contracts entered into by entities on behalf of the clients.

15. Medco, itself and through the mail order pharmacies, is engaged in the practice of pharmacy and is licensed to do so under the laws of various states in which its mail order pharmacies are located. As a licensed pharmacy, Medco owes certain duties to the beneficiaries whose prescriptions it receives, fills, or arranges to fill. Medco employs licensed professional pharmacists and licensed, certified, or designated pharmacy technicians who perform or assist in performing professional pharmacy services for beneficiaries.

16. Medco Health represents to clients and to beneficiaries that it will provide the same professional pharmacy services performed by professional pharmacists at non-mail order pharmacies. These services, if properly performed, assure quality of care for patients through prevention of adverse drug interactions, verification of drug strength and dosage regimens, recommendation of alternative medically appropriate drugs, and monitoring outcomes.

17. The mail order pharmacy contracts between Medco and its clients, including State Government Plans, require that Medco perform professional pharmacy services consistent with state law requirements, such as drug utilization review ("DUR") and prescription drug counseling. Many of Medco's client contracts provide that Medco's compliance with applicable state pharmacy law is an express condition for payment for each prescription filled by a Medco mail order pharmacy.

18. Client contracts with Medco for mail order pharmacy services also typically include a number of quality assurance standards, for example, concerning accuracy rate in filling prescriptions (*e.g.,* less than one error in 20,000 prescriptions), and concerning standards for prescription turnaround time (*e.g.*, that prescriptions will be filled within an average of three days from receipt of the prescription).

III. Medco's Drug Switching Programs

A. Medco Offers "Drug Switching" and other Formulary Compliance Programs Purportedly to Save Clients Money.

19. The amount of money spent on prescription drugs by public and private health plans and employers has risen dramatically in the past decade. One of the principal benefits touted by Medco when it solicits PBM clients is Medco's ability to save clients money on prescription drug spending.

20. Medco represents to existing and prospective clients that several facets of its PBM services allow Medco to save money for clients. Medco agrees to provide clients prescription drugs at a contractual discount (typically a discount off so-called "AWP", or average wholesale price), either through its retail pharmacy network or directly through Medco's mail order pharmacies. Medco also promises to save money by generating manufacturer rebates and by engaging in "formulary compliance" programs, like drug switching, as alleged further below.

1. *Medco Offers Drug Switching Programs to Generate Rebates from Drug Manufacturers, for the Purpose of Saving Clients Money.*

21. In addition to agreeing to provide clients prescription drugs at a percentage discount, Medco also represents that it will save clients money by negotiating and obtaining "rebates" from drug manufacturers. Medco represents that its ability to earn such rebates from

drug manufacturers, and thereby save clients money, is tied to the formulary established by Medco and to Medco's formulary compliance efforts, including its ability to switch patients from one brand-name drug to another.

22. Specifically, Medco represents to clients and prospective clients that if the client agrees to use Medco's formulary management services, Medco will generate rebates tied to Medco's formulary and to switching programs, and thereby save money. In its typical contract with clients, Medco states that it will: i) receive "Formulary Rebates" as a result of including branded products on Medco's formulary; as well as ii) conduct "therapeutic interchange programs" (i.e., switch programs) for formulary drugs, which lead to cost savings. In its solicitation of clients and in its contracts with clients, Medco represents that formulary and switching-based rebates and savings are integral to Medco's ability to save clients money. In light of Medco's cost-savings claims, many Medco clients, including state governmental clients, participate in Medco's formulary management programs, such as Medco's Preferred Prescription Formulary and its switching programs.

23. Critical to Medco's representation that it will save clients money by obtaining formulary- and switching-based rebates from drug manufacturers is Medco's claim that it will "pass through" to clients those rebates. Medco's agreement to pass rebates through to its clients is essential because, absent that promise, rebates generated by Medco's formulary management or switching programs would not necessarily result in rebates and savings to the plan, which Medco claims are the reason its switching and other formulary compliance measures.

24. In Medco's solicitation of clients, promotional materials, contracts with clients, communications with clients, and communications with beneficiaries and others carrying out its

switch programs, Medco intentionally generates the overall impression that the purpose and effect of its drug switching programs is to save client plans money on prescription drugs.

2. *Medco's Formulary Decisions and Switch Programs Often are Driven by its Agreements to Receive Money from Drug Manufacturers*.

25. Medco's formulary decisions and drug switching programs – *i.e.*, determinations of which drugs will be preferred on the formulary and which drugs will be targeted for brand-to-brand drug switches – turn to a large degree on Medco's contracts with drug manufacturers. In its capacity as mail order pharmacy, Medco contracts with these manufacturers to purchase prescription drugs for mail order dispensing. Medco's contracts with manufacturers typically contain a variety of incentives for Medco and potential payments to Medco based on Medco's conduct. Because Medco contracts with substantially all drug manufacturers, its incentives for selling various drugs are numerous and complex.

26. By way of example, many drug manufacturers pay Medco "base" or "formulary" rebates, typically calculated by applying a flat percentage to Medco's purchases of that manufacturer's drugs. But the same manufacturer contract may contain other flat percentage rebates identified by different names (for example, "cost-effectiveness" rebates), and also may contain more targeted rebates that are tied to specific sales or performance goals (for example, "market share" rebates, where percentage rebate increases on a sliding scale as market share increases).

27. In sum, Medco receives dozens of types of rebates from manufacturers. Some rebates, namely "base" and "formulary" rebates, are classified as "formulary" and thus passed through to clients who receive a portion of formulary rebates. Many other rebates are not classified as "formulary" rebates by Medco, and Medco therefore retains those rebates. Until

very recently, Medco typically did not disclose to its clients the magnitude of non-formulary rebates Medco retained. On information and belief, the vast majority of Medco clients never learned the magnitude of Medco retained rebates. From 1997 through 2002, the total of Medco-retained rebates was roughly equal in magnitude to the total of formulary rebates, which typically were disclosed and passed through to Medco clients (in accordance with contracts).

3. Medco's Managed Care Pharmacists Carry Out Medco's Drug Switches.

28. Medco's mail order drug switching programs are carried out by pharmacists and other personnel in the Managed Care departments at Medco's mail order pharmacies. Medco provides training, instruction, phone scripts and other form communications to all Managed Care personnel concerning how to solicit drug switches from prescribing doctors.

29. Medco's Managed Care Department's principal purpose is to switch beneficiaries' prescriptions from a currently prescribed drug to a target drug. These drug switches sometimes reduce costs to clients, but always promote Medco's financial interests, sometimes without sufficient regard to the switch's negative impacts on client plans or beneficiaries, as alleged below.

B. Medco Conducted Drug Switches That Benefitted Medco but Did Not Save Clients Money, or Did Not Save Enough Money to Justify the Intervention.

30. Notwithstanding Medco's representations that its switch programs are designed to save clients money and will save clients money, Medco engaged in certain drug switches that failed to advance these purposes.

31. On information and belief, Medco carried out switch programs that may not have saved money because the proposed switches either favored target drugs that were more expensive or had the effect of favoring drugs without a generic equivalent over drugs with a

generic equivalent.

32. Medco has engaged in drug switches and made formulary decisions that generated revenue for Medco but failed to generate cost savings or other benefits for Medco's clients. Medco solicited and obtained agreements with drug manufacturers by which the manufacturer would pay Medco for drug switches, formulary preferences or formulary compliance measures favoring the manufacturer's products, but where the manufacturer's payments to Medco would not be "passed through" to Medco's clients. On information and belief, when Medco, pursuant to such agreements, carried out switches and formulary decisions to generate revenue for itself without passing through revenue to its clients, Medco's switch programs and formulary decisions were driven by Medco's conflicted interest, not by cost savings for the client.

33. Medco also engaged in switch programs and formulary decisions that favored Medco's former parent company, Merck, but failed to achieve costs savings for Medco's clients.

34. Each of these types of switch initiatives increased, rather than decreased, prescription drug spending by Medco's clients, while enriching Medco. In light of this conduct, when Medco solicited clients and solicited client participation in Medco's switching and formulary initiatives, Medco failed to disclose to its clients material information about those initiatives.

C. Medco Conducted Drug Switches that Did Not Save Clients Money Because The Switches Shift Switch-Related Costs to Client Plans and Beneficiaries.

35. Notwithstanding Medco's representations that its switch programs are designed to, and do save clients money, Medco has engaged in certain drug switches that, on information and belief, increased, rather than decreased, total health care costs to Medco's client plans and to beneficiaries.

1. ***Medco Drug Switches Required Clients and Beneficiaries to Pay Costs Attributable to the Switch*.**

36. Medco conducted switches that increased overall costs even though they may have involved a nominally lower priced target drug. These drug switches sometimes raised health care costs to client plans and beneficiaries, contrary to Medco's representations, by shifting switch-related costs from Medco to its client health plans and beneficiaries.

37. With respect to certain drug therapies, a switch from one drug to another in the same therapeutic class often requires one or more tests, and may require one or more doctor visits, to monitor the new drug therapy and ensure the new drug's efficacy. These additional health care costs often would not have been incurred but for Medco's proposed drug switches.

38. By way of example, Medco engaged in several switch programs involving statin drugs, including Mevacor and Zocor (manufactured by Merck), Lipitor (Pfizer), Pravachol (Bristol-Myers Squibb) and Baycol (Bayer). Statins are prescribed to millions of Americans to lower cholesterol levels and to help avoid heart disease.

39. These various statin products are in the same therapeutic class but are not identical. To responsibly change a patient from one statin to another, the prescribing doctor often requires the patient to undergo a fasting lipid/ cholesterol test after commencing the new drug therapy. After analyzing the test results, the doctor should confirm the efficacy of the dosage or adjust it as necessary. The statin drug switch thus may require the patient, and his or her health plan, to incur costs associated with lab tests and/or doctor visits.

40. In addition to statins, Medco conducted drug switch programs involving other therapeutic classes that ultimately caused patients and health plans to incur costs related to tests or doctor visits attributable to the drug switch.

41. Such tests and doctor visits, resulting from Medco's drug switch program, cost money. Medco did not pay for these switch-related costs; the vast majority were borne instead by both clients and beneficiaries. Costs to the beneficiary included applicable co-payments for testing and/or doctor visits for dosage adjustment. The client paid the balance of these costs.

42. On information and belief, with respect to certain of Medco's drug switches, the switch-related costs borne by the client plans and beneficiaries exceeded costs savings attributable to a lower price for the new drug. In those circumstances, certain of Medco's drug switches increased, rather than decreased, overall costs to Medco's client plans and beneficiaries.

***2. Medco Failed to Adequately Disclose, and Failed to Comply with, Its Policy To Cover Statin Switch-Related Costs*.**

43. With respect to at least statin drug switches, Medco represented that it has a policy to address switch-related costs. In communications with doctors soliciting a statin switch, Medco claimed that it will pay additional costs incurred due to a Medco-proposed drug switch. In practice, Medco fails to meaningfully follow its nominal policy to cover switch-related costs for statin switches, instead making it difficult for doctors, plans or beneficiaries to obtain reimbursement.

44. When Medco undertakes certain switch programs, such as statin switches, Medco knows that its proposed switch will result in tests and/or doctor visits for which the health plan and beneficiary will be charged money. Nonetheless, when Medco personnel, following Medco scripts or forms, initially solicit switches from doctors, Medco makes no mention of switch-related costs. Likewise, when Medco notifies the beneficiary of a drug switch, it makes no mention of switch-related costs nor Medco's policy to cover those costs. Medco instructs its Managed Care pharmacists to not discuss switch-related costs unless a doctor or patient

affirmatively demands to have costs covered. Medco's actual practice with respect to statin switch-related costs is designed to undermine its nominal policy to cover those costs, and has the desired effect.

45. Even when a doctor or beneficiary objects to switch-related costs, Medco purposely makes it difficult for either party to obtain the benefit of Medco's nominal policy. Medco pharmacists refer doctors to a separate toll free number in order to process a costs request, even though Medco could automatically process such a doctor request. As a result of Medco's practices, a small percentage of switch-related costs are actually paid by Medco, even in the statin therapeutic class.

46. Even when Medco agrees to reimburse a beneficiary's switch-related costs, that reimbursement is limited to the co-pay incurred by the beneficiary and does not include costs paid by the beneficiary's health plan, Medco's client.

47. On information and belief, Medco knew that certain drug switches would require plans and beneficiaries to incur switch-related costs that would offset savings nominally attributable to certain drug switches. Medco also knew that, if Medco itself covered these switch-related costs consistent with its purported policy, these switches overall would not generate revenue for Medco. Medco nonetheless engaged in these switches so long as they were profitable for Medco, shifting costs to Medco's client plans and beneficiaries so as to increase, not decrease, overall costs to the plan and beneficiaries.

48. In its communications with clients and beneficiaries, Medco fails to disclose its actual practices with respect to switch-related costs and fails to disclose that the vast majority of switch-related costs are covered by plans and beneficiaries, not Medco.

3. *Other Switching Costs Are Incurred by Physicians and the Health Care System Generally*.

49. In addition to Medco shifting switch-related costs to its client plans and beneficiaries, Medco's switching programs shift considerable costs to doctors and the health care system generally. As Medco is aware from written complaints from physicians, Medco's drug switch solicitations demand countless hours from physicians and their staff.

50. To responsibly evaluate most of Medco's drug switch proposals, a physician should: a) review Medco's proposed switch; b) evaluate the patient's history (which typically requires staff to access the patient's file); c) evaluate whether the proposed drug therapy is clinically suitable for the patient; d) evaluate whether side effects or drug interactions counsel against the switch; and e) depending on the evaluation, respond to Medco by phone or facsimile. Many physicians have received multiple switch solicitations from Medco daily, and many physician's staff field calls from Medco Managed Care personnel every day.

51. Such an expenditure of health care resources could conceivably be justified where Medco's switch solicitations meaningfully decrease costs to plans and beneficiaries. But to the extent Medco's drug switches are motivated by Medco's own profit as much as reducing costs, the burden on physicians constitutes another form of inappropriate cost-shifting from Medco to others, in order to unfairly enrich Medco.

D. Medco's Drug Switch Solicitations Failed to Provide Full and Accurate Information to Doctors and Patients.

52. Medco requires its pharmacists to follow drug switching scripts prepared by Medco, which in some ways limits the information made available to pharmacists and prescribing doctors related to drug switches.

53. Medco's Managed Care pharmacists and other employees at Medco's mail order facilities typically solicit drug switches using the following process: a pharmacist or assistant telephones the prescribing physician to propose a switch for one of the doctor's patients. This phone call is sometimes preceded by a facsimile to the doctor's office proposing the switch. Once the Medco pharmacist contacts the prescribing physician or the physician's staff (several calls may be required), the pharmacist solicits physician approval for the drug switch using Medco's script. A doctor also may authorize a switch by completing and returning Medco's facsimile switch request.

54. If a switch is authorized by the prescribing doctor, Medco generates and sends a letter to the prescribing doctor confirming the drug switch. Medco also sends a letter to the beneficiary stating that a switch has been authorized. The beneficiary letter either accompanies the new, switched drug prescription (for mail order prescriptions), or asks the beneficiary to make the switch when his or her prescription is next filled (for prescriptions filled at retail).

55. In several steps this switch solicitation process, Medco makes misleading statements to promote switches or fails to disclose material facts related to switches, as alleged below.

1. ***Medco's Switch Solicitations to Physicians.***

56. Medco's solicitation of drug switches from doctors is misleading because:

a) Medco represents that it is calling on behalf of the beneficiary's health plan but fails to disclose Medco's own financial incentive for the switch.

b) Medco generates the misleading impression that the patient's health plan has initiated the switch request or that Medco is calling at the plan's direction, without disclosing that Medco itself determines when to engage in switch programs.

c) Some Medco personnel, in order to promote a drug switch, create the false impression that the proposed switch is *required* by the beneficiary's health plan, and that the currently prescribed drug will not be covered by the beneficiary's plan.

d) Medco represents that the proposed switch will save the beneficiary and/or the beneficiary's plan money and that Medco's motivation behind the proposed switch is cost containment. These representations are false or misleading with respect to certain switches if: i) the target drug does not cost less; ii) the switch may benefit Medco but not the plan; and/or iii) switch-related costs incurred by the plan and beneficiaries offset any nominal price savings.

57. Medco's cost containment claims are also misleading because Medco refuses to disclose to doctors, beneficiaries, or even its own pharmacists, any actual pricing information concerning currently prescribed and target drugs. Medco's scripts and instructions to its Managed Care personnel do not include information on the price of current and target drugs. Thus, when Medco Managed Care pharmacists initiate drug switches, they have no hard information to support cost savings – supposedly the very basis for their solicitation.

58. Medco's form letters to doctors confirming a switch typically restate many of the misleading aspects of Medco's initial switch solicitation to doctors. These confirming letters fail to disclose Medco's role in the switch, Medco's financial incentives, and material information concerning whether the switch will actually save money for plans and patients.

2. *Medco Communications with Beneficiaries.*

59. Medco's form letters to patients confirming a drug switch also fail to disclose material information, in order to limit the likelihood that patients will object to or seek to reverse the drug switch. Medco tells patients that their doctor initiated the drug switch or "has determined" to switch drugs therapies, failing to disclose that the switch was solicited by Medco. Medco's letters to patients also state that the switch will save money for the patient's plan, but fail to disclose Medco's financial incentives and other material information (set forth above) concerning whether the switch will actually save money for plans and patients.

3. *Medco Switched Drugs without Doctor Authorization*.

60. On occasion, Medco also switched prescription drugs without obtaining authorization from the prescribing doctor. Medco personnel either claimed they had obtained physician authority when they had not, or accepted switch authorization from a member of a physician's staff that Medco knew, or should have known, lacked authority to approve a switch.

IV. **Medco's Drug Switching Programs Implicate State Pharmacy Law and Pharmacist Ethical Standards.**

61. Medco and its pharmacists are engaged in the "practice of pharmacy" under the state law. A non-exclusive list of activities that qualify as being part of the "practice of pharmacy" under state laws include: interpreting prescription orders; dispensing and labeling of drugs; monitoring of drug therapy and use; conducting drug utilization reviews; participating in drug product selection; maintaining records; and providing information on legend drugs.

62. Pharmacy ethics require honesty, integrity, and professionalism at all times. Central to pharmacy ethics is recognition that the relationship between patient and pharmacist is a covenant based on trust and that the well-being of the patient is primary. All engaged in the

practice of pharmacy must be dedicated to the best interests of the patient. Pharmacy ethics include the duty to provide unbiased information and the duty not to provide information made biased by pecuniary interests. Business practices and work conditions that undermine that dedication or that impair a pharmacist's professional judgment are unethical.

63. Because of the potential for improper conflicts of interest, and even where neither the patient nor the plan would be harmed by the switch, pharmacy ethics require full disclosure of material facts, including cost rationality and transparency, relating to drug switching in order for patients and doctors to make fully informed decisions. When a physician or consumer asks Medco about the cost or price of a medicine, Medco and its pharmacists are obligated to provide that information, with respect to both the drug's cost to the plan and the consumer's co-pay.

64. Pharmacy ethics also demand that Medco and its pharmacists monitor the effectiveness and the effects of the drug switches proposed by Medco. Medco has an obligation to monitor the drug switches it proposes, both generally and as to the specific patients involved. In addition, before proposing a drug switch, Medco pharmacists are ethically obligated to form an independent professional judgment that a proposed switch would be in the patient's best interest and appropriate.

65. Drug switches, to be ethically proposed, much also be cost-effective from an overall health-care standpoint. Thus, drug switches that shift cost-burdens to others, such as health plans and beneficiaries, so as to effectively increase overall health care costs, are improper and unethical.

66. Medco has committed unfair or deceptive acts or practices through their violation of pharmacy ethics in at least the following ways:

a) By failing to fully disclose to patients, plans, and physicians all of the material facts supporting proposed drug switches, including the nature and amount of Medco's financial interest, and savings to the patient and the plan, if any;

b) By failing to monitor and track drug switches from a health and safety standpoint, both individually and generally;

c) By failing to require that its pharmacists form an independent professional judgment about the propriety of a drug switch before proposing it, and by promoting protocols and work conditions that operate counter to this obligation;

d) By failing to ensure that proposed drug switches are rational, not just from a cost-of-drug perspective, but from an overall heath-care cost perspective, especially where additional doctor's visits or lab tests should be anticipated;

e) By failing to disclose adequately potential additional health care costs resulting from drug switches; and,

f) By failing to provide cost and price information when requested by either the consumer or the physician.

CAUSES OF ACTION

COUNT ONE

Unfair or Deceptive Acts or Practices

67. The allegations contained in paragraphs 1 - 66 are incorporated herein by reference.

68. The defendants, Medco Health Solutions, Inc. and Merck-Medco Managed Care, L.L.C. ("Medco") have violated Iowa Code Section 714.16 by engaging in various unfair and

deceptive acts or practices, including but not limited to the following:

a) Although Medco represented that the purpose and effect of Medco's drug switching programs were to save money for its client plans and beneficiaries, Medco engaged in drug switching programs that increased, rather than decreased, costs to plans and beneficiaries, including by:

i) advocating drug switches that required follow-up patient testing and doctor visits, which caused client plans and beneficiaries to pay switch-related costs for testing and doctor visits;

ii) advocating drug switches where the switch-related costs borne by client plans and beneficiaries exceeded cost savings attributable to the drug switch;

iii) advocating drug switches to higher priced drugs.

b) Medco failed to adequately follow its policy for paying statin switch-related costs like testing and doctor visits.

c) In soliciting and obtaining drug switches, Medco sometimes made misleading statements to doctors and patients, and failed to disclose material information concerning the proposed drug switches, including:

i) failing to disclose material facts concerning cost containment, that the target drug may be more expensive, Medco's financial interest in the switch, and switch-related costs likely to result from the switch.

ii) failing to disclose to doctors and patients actual pricing information with respect to the currently prescribed and target drugs.

iii) misrepresenting to doctors that Medco was calling on behalf of the patient's health plan, without disclosing Medco's own incentives for the switch solicitation;

iv) misrepresenting to patients that a drug switch was initiated by the patient's doctor, and failing to disclose that Medco initiated the drug switch.

d) Medco switched prescription drugs without first obtaining authorization from the prescribing physician, and solicited and accepted purported authorization from persons whom Medco knew, or should have known, were not authorized to approve a drug switch.

e) Medco carried out switch programs but failed to adequately monitor the potential for side effects and other negative health consequences;

f) Medco's switching practices sometimes encouraged pharmacist conduct contrary to pharmacy ethical rules.

RELIEF REQUESTED

WHEREFORE, the State requests that this court:

1. Issue a permanent injunction prohibiting the defendants, their agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair or deceptive conduct.

2. Order the defendants to make full and complete restitution to each person injured by their unfair or deceptive acts or practices.

3. Order the defendants to pay the State civil penalties, attorneys' fees and costs.

4. Grant such other and further relief as the Court deems equitable and proper.

Respectfully submitted,

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