

EAST BATON ROUGE PARISH Filed Dec 02, 2022 4:06 PM Deputy Clerk of Court E-File Received Dec 02, 2022 3:55 PM	C-726389 30
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**KIM AND STEWART WIXSON, MELANIE
AND CHARLIE JONES, AIMEE AND
TOMMY JOE WOODARD, JR., AND THE
LOUISIANA INDEPENDENT
PHARMACIES ASSOCIATION, INC.**

No. DIVISION:

19TH JUDICIAL DISTRICT COURT

VERSUS

**THE STATE OF LOUISIANA THROUGH
THE OFFICE OF THE GOVERNOR,
DIVISION OF ADMINISTRATION, OFFICE
OF GROUP BENEFITS, AND JAY
DARDENNE, IN HIS OFFICIAL CAPACITY
AS LOUISIANA COMMISSIONER OF
ADMINISTRATION**

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

PETITION FOR INJUNCTIVE RELIEF

NOW BEFORE THE COURT come plaintiffs, Kim and Stewart Wixson, Melanie and Charlie Jones, Aimee and Tommy Joe Woodard, Jr., and the Louisiana Independent Pharmacies Association, Inc., by and through undersigned counsel, and submit this Petition seeking injunctive relief consisting of a preliminary injunction, and thereafter a permanent injunction, and in support thereof allege as follows:

1.

This action is filed for the purpose of obtaining injunctive relief to prevent a senior state official, acting for one of the government agencies under his control, from carrying out his threatened action of entering into a greater than \$2 billion contract on behalf of the State in direct violation of state statutory law. La. R.S. 42:802(D)(1) provides that the proposed contract "shall be subject to review and final approval by the Joint Legislative Committee on the Budget." On November 18, 2022 that committee unanimously rejected the proposed contract, but at that same meeting Jay Dardenne, the Commissioner of Administration, told the committee: "The contract is going to move forward today, even if the body votes not to approve it" and: "As I said the last month's meeting, and I will say it again to the body, we are going forward with this contract. Even if it is not approved by this body today." Because Commissioner Dardenne and the Office of Group Benefits, an agency under his control, have declared their intention to violate the law by entering into a contract which has not received the required approval of the Joint Legislative Committee on the Budget and instead was rejected by that committee, the Plaintiffs seek a preliminary injunction to stop them from doing so.

2.

Made Plaintiffs herein are:

- a) Kim and Stewart Wixson, husband and wife, both residents of lawful age of Avoyelles Parish in the State of Louisiana;
- b) Melanie and Charlie Jones, husband and wife, both residents of lawful age of Ouachita Parish in the State of Louisiana;
- c) Aimee and Tommy Joe Woodard, Jr., husband and wife, both residents of lawful age of East Baton Rouge Parish in the State of Louisiana; and
- d) The Louisiana Independent Pharmacies Association, Inc., hereinafter referred to as "LIPA," a membership association organized as a Louisiana non-profit corporation whose membership consists of independent retail pharmacies operating in the State of Louisiana.

3.

Made Defendants herein are:

- a) The State of Louisiana through the Office of the Governor, Division of Administration, Office of Group Benefits, hereinafter sometimes referred to as "OGB," an agency within the executive branch of Louisiana government, and
- b) Jay Dardenne, in his official capacity as the Commissioner of Administration for the State of Louisiana.

4.

Each of the individual Plaintiffs has standing to seek preliminary and permanent injunctions to prevent Defendants from proceeding with the proposed contract at issue in violation of state statutory law. This case concerns a proposed contract for pharmacy benefit manager services between the Louisiana Office of Group Benefits and CaremarkPCS Health, LLC (hereinafter referred to as "Caremark"). Plaintiffs show that they are all taxpayers, and part of the funds which would be used to pay Caremark under the proposed contract are derived from state taxes with the remainder coming from the beneficiaries' premium payments. Each of the Plaintiffs or their spouses work in the pharmacy industry and fill prescriptions for Office of Group Benefits beneficiaries which are then paid for by that office through its current pharmacy benefit manager, and each of the Plaintiffs is concerned with the proper and lawful operation of the Office of

Group Benefits prescription drug coverage as well as their state's government in general. Plaintiffs Aimee and Tommy Joe Woodard, Jr. are both pharmacists, and they own and operate two locations of Prescriptions To Geaux in Baton Rouge. Plaintiff Melanie Jones is a public school teacher and through that employment is an OGB beneficiary, and her husband Charlie Jones is also an OGB beneficiary through his wife; they own and operate Drennan's Drug Store in West Monroe, Louisiana. Likewise, Plaintiff Stewart Wixson is an OGB beneficiary as a retired state employee who was employed by the Department of Corrections, Division of Probation and Parole, and Kim is an OGB beneficiary through her spouse; they own and operate Cottonport Corner Drug Store. These Plaintiffs all meet the test for standing as set forth in *Alliance for Affordable Energy v. Council of City of New Orleans*, 677 So.2d 424 (La. 1996).

5.

Plaintiff the Louisiana Independent Pharmacies Association, Inc. has associational standing in this matter pursuant to the test set forth in *La. Associated General Contractors, Inc. v. State Through Division of Admin., Office of State Purchasing*, 669 So.2d 1185, 1190 - 91 providing that:

An association will have standing to bring a suit solely on behalf of its members and in the absence of injury to itself when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim nor the relief requested requires the participation of individual members of the lawsuit.

LIPA meets all of these tests, and consequently LIPA has standing to participate as a plaintiff in this case.

6.

This case is not complicated:

- a) The Office of Group Benefits wanted to enter into a proposed contract with Caremark for pharmacy benefit manager services.
- b) La. R.S. 42:802(D)(1) requires that the proposed contract between the Office of Group Benefits and Caremark for pharmacy benefit manager services "shall be subject to review and final approval by the Joint Legislative Committee on the Budget.
- c) The Office of Group Benefits and Commissioner of Administration Jay Dardenne submitted the proposed contract to the Joint Legislative Committee on the

Budget as required by La. R.S. 42:802(D)(1).

- d) After reviewing the contract and conducting hearings, the Joint Legislative Committee on the Budget unanimously rejected the proposed contract between the Office of Group Benefits and Caremark.
- e) Despite the fact that the contract did not receive the approval of the Joint Legislative Committee on the Budget as required by law, and instead was rejected by that committee, Defendants are proceeding with the proposed contract which would require the payment of up to \$2 billion over three years.
- f) Because defendants are acting in violation of the statutory law, plaintiffs are entitled to the entry of a preliminary injunction to prevent them from doing so.

7.

Plaintiffs seek an order enjoining Defendants from taking any actions to proceed with the terms of a proposed contract for pharmacy benefit manager services between the Louisiana Office of Group Benefits and Caremark, from engaging in any efforts to obtain pharmacy benefit manager services for the Office of Group Benefits from Caremark in the absence of a lawful contract, and from authorizing or making any payments to Caremark for pharmacy benefit manager services.

8.

The Office of Group Benefits is an executive branch agency that provides group life insurance and health insurance coverage and benefits, including prescription drug coverage and benefits, to eligible state and public school employees, retirees, and their dependents. OGB is an executive branch agency within the office of the governor, division of administration and is established by statute (La. R.S. 42:801 et seq.).

9.

In Louisiana, the power of the people of the state is exercised through the legislature, and the constitution is not a grant of power but instead contains limitations on this otherwise plenary power. *Board of Commissioners of Orleans Levee District v. Department of Natural Resources*, 496 So.2d 281, 286 (La. 1986). “[T]he legislature has control over the finances of the state, except as limited by constitutional provisions.” *Louisiana Ass’n of Educators v. Edwards*, 521 So.2d 390, 394 (La. 1988). “In its exercise of the entire legislative power of the state, the Legislature may enact any legislation that the state constitution does not prohibit.” *Board of Commissioners, supra*

at p. 286. By contrast, the executive branch has only those powers expressly granted to it in the constitution or provided to it by statute. *Meredith v. Ieyoub*, 700 So.2d 478 (La. 1997). “As our prior jurisprudence indicates, the power over finances must be expressly granted by the constitution to another branch of government or else that power remains with the Legislature.” *Id.* at p. 482.

10.

The Louisiana Legislature granted certain authority to the Office of Group Benefits as set forth in La. R.S. 42:802. This grant of authority included the authority for OGB to enter into contracts for health care plans or systems, “including but not limited to any health care service, delivery system, benefits programs, insurance, or any other plan or programs that may be authorized by law.” La. R.S. 42:802(B)(8)(b)(ii). But this law did not provide OGB with unlimited or unconditional authority to enter into contracts but instead provided that “any new plan of benefits or the annual plan of benefits submitted under the direction of the Commissioner of Administration for the life, health, or other benefit programs offered through the Office of Group Benefits or any professional, personal, and social services contracts” (except for certain contracts not at issue here) “shall be subject to review and final approval by the Joint Legislative Committee on the Budget.” La. R.S. 42:802(D)(1).

11.

The Joint Legislative Committee on the Budget was created by statute (La. R.S. 24:651 et seq.) “as the budgetary and fiscal representative of the Legislature of Louisiana to assist that body in the discharge of its fiscal and budgetary responsibilities under the Constitution of Louisiana and to provide the legislature with information relative to such responsibilities”. The committee currently has 44 members, consisting of the members of the House Appropriations Committee and the Senate Finance Committee, and the chairmen (or his/her designee) of the House Ways and Means Committee and the Senate Revenue and Fiscal Affairs Committee. La. R.S. 24:652. The committee has been assigned broad authority over state budgeting and contracting which includes as examples only: (a) the receipt of information and reports from across state government regarding financial matters; (b) the authority to grant or deny requests for the transfer of funds within an agency; and (c) the power to accept or reject various

types of contracts by state agencies. The committee is also directed to “interpret the legislative intent respecting all fiscal and budgetary matters of the state and conduct general oversight and review of the budget execution processes of the various budget units and other agencies of the state when necessary.” La. R.S. 24:653.

12.

The authority for the Office of Group Benefits to enter into the proposed contract includes the statutory requirement for review and approval by the Joint Legislative Committee on the Budget. The Office of Group Benefits has no lawful authority to enter into this contract by any other means, and it has no authority to bind the State of Louisiana to a contract that has not been approved by that committee.

13.

Through the authority granted to it by La. R.S. 42:802, the Office of Group Benefits decided to contract with a company to provide pharmacy benefit manager (PBM) services. PBMs are also used by many health insurers as third-party administrators to manage their pharmacy benefits by performing functions such as providing verification of coverage, processing and paying prescription claims, negotiating with drug manufacturers, and other related functions.

14.

On February 21, 2020 OGB issued a Request for Proposals for pharmacy benefit manager services and through the process set forth in the state procurement code ultimately decided to award the PBM contract to Caremark in June of 2020.

15.

After a substantial delay resulting from a protest of the award of the contract followed by proceedings in the district and appellate courts, Defendants Dardenne and OGB presented the proposed contract with Caremark for PBM services to the Joint Legislative Committee on the Budget for its review as La. R.S. 42:802(D)(1) requires.

16.

Defendant Dardenne first appeared before the JLCB on September 16, 2022. During this meeting, Defendant Dardenne told the committee that its prior refusal to approve the proposed contract had been appealed, that the court “reversed the action that this committee took, not specifically, but the action that the trial court took and

directed that the award be given to Caremark”, and that the committee’s review of the contract would therefore be “somewhat perfunctory because we do have a final judgment of, of the court, directing the award.” But none of this was correct – in fact, the JLCB had not previously rejected or even reviewed the proposed contract, there was no appeal of any action by the committee, and no court had ordered the Office of Group Benefits to enter into the contract with Caremark.

17.

Commissioner Dardenne again appeared before the Joint Legislative Committee on the Budget on October 21, 2022. During this meeting, Defendant Dardenne argued that the State risked being found liable to Caremark if JLCB did not approve the proposed contract, based upon his claim that Caremark had a “proprietary interest” in the contract. In fact, Caremark could not have a legitimate claim based upon this contract since by law the obligations of the proposed contract cannot and do not exist unless and until the contract is approved by JLCB – Caremark may have a right to enter into the contract with OGB if JLCB approves the contract, but at this time Caremark has no right related to or connected with the object of this action.

18.

At the October 21, 2022 JLCB meeting Defendant Dardenne was asked by a senator whether he planned on signing and executing the contract unilaterally if the committee did not approve the contract, and he responded that he would seek to go on and enforce the provisions of the contract even if the Joint Legislative Committee on the Budget did not want him to proceed. Defendant Dardenne also stated that regardless of the action taken by JLCB he would proceed on the assumption that “CVS Caremark is taking over our program on January 1st, 2023.” Defendant Dardenne declared: “I’m not going to say to CVS Caremark, ‘Your contract is not going to be honored.’” The committee voted to defer its consideration of the contract until its November meeting.

19.

On November 18, 2022 the Joint Legislative Committee on the Budget met again, and again Defendant Dardenne appeared and spoke to the committee. During this meeting Dardenne acknowledged that the law required the committee’s approval for the PBM contract: “I’m just recognizing that the law says that the legislature must

approve it.” Dardenne agreed that the courts which had considered an unsuccessful bidder’s protest of the award to Caremark did not address the statute requiring JLCB’s approval of the proposed contract: “The court opinion did not overrule the statute. I assume when you say the statute, you mean the one that says that this committee has to approve the contract? No, the court opinion had nothing to do with that particular issue.” Representative Turner asked Dardenne: “So if the contract's voted a no today, we don't move forward, which terms are going to be moved forward with?” And Defendant Dardenne responded: ““The contract is going to move forward today, even if the body votes not to approve it”. After Defendant Dardenne completed his remarks and responded to questions the Committee voted unanimously to reject the proposed contract for PBM services between OGB and Caremark.

20.

At this time, although the proposed contract document has been signed by OGB and Caremark there is no contract between the parties because such a contract cannot exist unless and until it is approved by the Joint Legislative Committee on the Budget. According to statements made by Defendant Dardenne before the committee, to make certain that the particular contract being reviewed is the final proposed contract the JLCB requires that a signed contract be submitted for its review. At the November 18, 2022 JLCB meeting Defendant Dardenne stated:

And incidentally, the reason the contract's already signed is because that's what this body has asked us to do, is to submit to you contracts for approval that are already executed. So you don't have a situation where you have an unsigned contract that you could say, "Well, wait a minute, we don't know what's going to go in this contract. We're being asked to approve it and it's not signed." So that's the reason why that it's already been signed.

The paper contract has been signed, but as a matter of law that signature could not bind the State to the contract because of the statutory requirement for JLCB’s review and approval. And now that the committee unanimously rejected the proposed contract there is no contract between OGB and Caremark.

21.

The Office of State Procurement, a state agency which is part of the Division of Administration and under the control of Defendant Dardenne as the Commissioner of Administration, regulates state contracts for obtaining services and materials including

the proposed contract for PBM services. The statutes governing the Office of State Procurement include La. R.S. 39:1561 which grants the authority to set procurement policy and to adopt regulations governing procurement to the Commissioner of Administration. On September 2, 2022 the Office of State Procurement's Assistant Director for Professional Contracts sent the memo attached as Exhibit A to OGB's CEO advising that the proposed contract complied with the State Procurement Code and was ready for submission to the Joint Legislative Committee on the Budget. The memo (which displays Defendant Dardenne's name in its letterhead) also warned, in bold type, that: **"The contract will not receive final approval by OSP until it has been approved by JLCB . . ."**. The Office of State Procurement, which is under the supervision and control of Defendant Dardenne, declared on September 2, 2022 that this proposed contract would not be finalized without first receiving JLCB approval.

22.

"No contract may be enforced against the state until approval of the contract has been granted by the Office of State Procurement." Louisiana Administrative Code Title 34, Part V, § 2605. In addition to the proposed contract not being in force and effect because it has not been approved by the Joint Legislative Committee on the Budget, the contract may also not be enforced because it has not received final approval by the Office of State Procurement. Defendant Dardenne's own office has declared that this contract cannot be enforced. Plaintiffs show that they are entitled to the injunctive relief sought for this additional reason.

23.

Plaintiffs' claim that injunctive relief is necessary to prevent Defendants from violating the law by proceeding with the proposed contract is not speculative. In addition to the statements made by Defendant Dardenne before the Joint Legislative Committee on the Budget the Office of Group Benefits has for several months been proceeding as though a lawful contract for PBM services between OGB and Caremark is in force and effect even though no such contract exists.

24.

In September of 2022 OGB sent its beneficiaries who were eligible the notice attached as Exhibit B "Announcing Our New Medicare Pharmacy Vendor" SilverScripts,

which the notice states “is affiliated with CVS Caremark, the Office of Group Benefits’ new pharmacy benefit manager.” Defendant OGB sent out this notice before the Joint Legislative Committee on the Budget had taken a single vote on the proposed contract, indicating that OGB had already decided that it would not respect JLCB’s statutory authority but instead would proceed with the proposed Caremark contract regardless of whether that contract received JLCB’s approval.

25.

On or about November 10, 2022 SilverScripts, which as noted above is affiliated with Caremark, sent the materials attached as Exhibit C directly to eligible OGB beneficiaries. The exhibit has been redacted to remove personal information. The second page of the exhibit is a copy of the ID card which the OGB beneficiary would present to the pharmacy to fill a prescription, and it states: “Prescription Drug Plan Administered by CVS Caremark Part D Services, LLC.” This exhibit indicates that like Defendant OGB, Caremark was proceeding as though the proposed contract was in effect even though no contract exists as a matter of law. And because the terms of OGB’s proposed contract with Caremark required Caremark to submit its communications to OGB beneficiaries to OGB for review and approval, OGB was aware of what Caremark was doing. Caremark sent out prescription ID cards before the Joint Legislative Committee on the Budget voted on November 18, 2022 on whether to approve the proposed contract. OGB allowed this because it planned to proceed regardless of whether JLCB gave its approval.

26.

Based upon the foregoing, Plaintiffs show that unless their request for a preliminary injunction is granted Defendants will continue to proceed as though the proposed contract was in effect. What will happen when Caremark requests payment and other State officials will not disburse public funds without authority because there is no valid contract?

27.

The Office of Group Benefits only has that authority to act which has been assigned to it by statute. OGB has no authority to obtain pharmacy benefit manager services from Caremark, to make the protected health information of its beneficiaries available to Caremark, or to make any payments to Caremark in the absence of a valid and lawful contract authorizing it to do so. Furthermore, Defendant Dardenne and all of

the personnel of the Office of Group Benefits are state employees, each of whom is obligated to comply with the laws of the State of Louisiana. Defendants are violating the law by proceeding with this proposed contract.

28.

In statements that he made to the Joint Legislative Committee on the Budget, Defendant Dardenne has suggested that he believes that La. R.S. 42:802(D)(1)'s requirement of obtaining JLCB's approval of the proposed contract may be unconstitutional, however upon information and belief Defendant Dardenne has taken no action to challenge the constitutionality of this statute in court. All statutes are presumed to be constitutional. In deciding whether injunctive relief should be granted the issue is whether the statute has already been declared unconstitutional by a court having jurisdiction to act – if no such declaration exists then Defendants must comply with the law, and they cannot properly use this summary proceeding for a preliminary injunction to litigate their claimed constitutional issue.

29.

Defendant Dardenne, an official in the executive branch, does not have the authority to declare a statute to be unconstitutional. "The determination whether a statute is unconstitutional is a purely judicial function." *State v. Board of Sup'rs of Elections*, 186 La. 949, 173 So. 726 (La. 1937). As a state employee Defendant Dardenne is required to comply with the law unless and until that law is declared to be unconstitutional by a court having jurisdiction to do so. Dardenne has not been granted some unique authority to declare state laws to be unconstitutional, nor has he been empowered to choose which laws he and the Division of Administration will violate and which ones will be followed as he and the Division carry out their official duties. If Defendant Dardenne truly believed that the statute was unconstitutional he should have filed an action in a proper court to obtain a declaratory judgment to that effect, but until such a judgment was rendered he would remain obliged to obey the law as he performed his official duties. However, as of the filing of this action neither Defendant Dardenne nor anyone else acting on his behalf has filed a proceeding seeking a judicial declaration that La. R.S. 42:802 is unconstitutional.

30.

Furthermore, despite Defendant Dardenne's suggestion that La. R.S. 42:802 may be unconstitutional the Defendants presented the proposed contract to the Joint

Legislative Committee on the Budget to request the committee's approval, and Defendant Dardenne appeared before the committee asking it to approve the proposed contract. The Defendants submitted to the statutory authority of the Joint Legislative Committee on the Budget, and they should not now be heard to challenge the committee's authority only after they did not receive the result that they wanted.

31.

Defendant Dardenne has also repeatedly stated that he intends to proceed with the contract between OGB and Caremark because the current emergency contract for PBM services between OGB and Express Scripts ends on December 31, 2022, and Dardenne has claimed that if the contract with Caremark is not activated the beneficiaries of OGB will be unable to fill prescriptions beginning on January 1, 2023. Dardenne is claiming the right to ignore the clear statutory law based upon his own belief that it is necessary to do so; in other words, that the ends justify the means.

32.

First, even if Defendant Dardenne is correct in his claim that OGB beneficiaries will not be able to receive pharmacy benefits after December 31st unless he proceeds with the proposed contract in direct violation of the law, this fact would not provide an exception to La. R.S. 42:802(D)(1)'s requirement that the contract be approved by the Joint Legislative Committee on the Budget. Nothing in the law allows OGB or Defendant Dardenne to ignore this requirement based upon their belief that avoiding an interruption of OGB's prescription benefits is a sufficient justification to do so. The Legislature, not an unelected Commissioner of Administration, has the constitutional authority to decide what the law will be and whether there should be exceptions to the requirement of JLCB's approval. Defendants have neither the right nor the power to obligate the State contractually under these circumstances, and Plaintiffs are entitled to injunctive relief preventing them from doing so.

33.

In addition, Defendant Dardenne's claim that unless he proceeds with the proposed contract for PBM services in violation of the law OGB beneficiaries will be unable to fill prescriptions after the current PBM contract with Express Scripts ends on December 31, 2022 is not accurate. Independent pharmacies will continue to fill prescriptions for their patients who are OGB beneficiaries after December 31st even if no PBM contract is in place. For example, Exhibit D attached to this petition is the

affidavit of Orlando Palmer, a pharmacist who owns and operates the Baton Rouge independent pharmacy Parker's Pharmacy. In his affidavit Mr. Palmer advises the Court that because he wants to be certain that his patients and customers continue to receive their prescribed medication "no OGB beneficiary who fills his or her prescriptions at my pharmacy will be cut off from their prescription medication if the court prevents OGB from proceeding with the PBM contract that was rejected by JLCB." Mr. Parker also states that he will assist his patients in submitting claims for their prescriptions directly to OGB as was done in the days before PBMs. Multiple additional pharmacists have submitted their affidavits to Plaintiffs' counsel, and Plaintiffs will submit these additional affidavits and evidence regarding this matter at the hearing on their request for a preliminary injunction. Defendant Dardenne's insistence that his violation of the law is necessary to prevent an interruption of OGB beneficiaries' prescriptions is factually inaccurate – apparently Mr. Dardenne did not take into account the professionalism of independent pharmacists and their commitment to their patients.

34.

To the extent that OGB's beneficiaries experience any interruption in their obtaining pharmacy benefits such would be due solely to the refusal of Defendant Dardenne and the Office of Group Benefits to take steps to obtain PBM services through other means because they were aware of the likelihood that the proposed contract with Caremark would not receive the approval of the Joint Legislative Committee on the Budget. According to a statement made by Defendant Dardenne before this committee on November 18, 2022 he has known for many months that there would be opposition to this contract:

You haven't been privy to the discussions I've had with my OGB staff since that decision was rendered, in June 2022, to figure out where are we going to be knowing that there would very likely be similar opposition today that we faced two years ago. And we have, believe me, looked to see what options were out there.

The June 2022 date mentioned by Defendant Dardenne refers to the date of the Court of Appeal decision regarding the administrative protest of the contract award. That decision did not change anything regarding the terms of the proposed contract or the basis for the opposition to that contract, so in fact Defendant Dardenne must have known even before this date that the proposed contract might well not be approved by the JLCB. Despite this, Defendant Dardenne made no attempt to negotiate another emergency contract to provide PBM services beginning on January 1, 2023, and

instead he now argues that it is too late to obtain those services. If a crisis exists it is because the Defendants created it, and then Defendants used that crisis as their principal argument for JLCB approval of the proposed contract. Regardless of this, the governing statute does not provide an exception for this manufactured crisis, and the Defendants cannot proceed with the proposed contract unless and until it is approved by the Joint Legislative Committee on the Budget.

35.

Because Defendants are proceeding in violation of the law, the Plaintiffs are not required to allege or prove irreparable harm to obtain a preliminary injunction in this matter. To obtain a preliminary injunction in this matter, Plaintiffs need only show that the Defendants are proceeding in violation of state law which is not in question.

36.

For the foregoing reasons, Plaintiffs seek and are entitled to the entry of a preliminary injunction enjoining the Defendants from taking any actions to proceed with the terms of a proposed contract for pharmacy benefit manager services between the Louisiana Office of Group Benefits Caremark, from engaging in any efforts to obtain pharmacy benefit manager services for the Office of Group Benefits from Caremark in the absence of a lawful contract, and from authorizing or making any payments to Caremark for pharmacy benefit manager services. After due proceedings are had, Plaintiffs seek and are entitled to the entry of a permanent injunction directed to the Defendants and containing the same directives.

37.

Pursuant to Louisiana Code of Civil Procedure article 3609 Plaintiffs request that their request for a preliminary injunction be heard by affidavits, reserving the parties right to present proof as in ordinary cases through live testimony if the parties deem it necessary.

WHEREFORE, PLAINTIFFS PRAY:

- a) That there be citation and service upon Defendants the State of Louisiana, Office of the Governor, Division of Administration, Office of Group Benefits, and Jay Dardenne in his capacity as the Louisiana Commissioner of Administration;
- b) After due proceedings are had, there be judgment herein in favor of Plaintiffs and against Defendants granting a preliminary injunction enjoining the Defendants from taking any actions to proceed with the terms of a proposed contract for

pharmacy benefit manager services between the Louisiana Office of Group Benefits and Caremark, from engaging in any efforts to obtain pharmacy benefit manager services for the Office of Group Benefits from Caremark in the absence of a lawful contract, and from authorizing or making any payments to Caremark for pharmacy benefit manager services;

- c) After further proceedings are had, there be judgment herein granting a permanent injunction against Defendants in the form and substance of the preliminary injunction;
- d) That there be judgment herein in favor of Plaintiffs and against Defendants for the costs of this proceeding; and
- e) For such other relief as may be appropriate in the premises.

BY ATTORNEY:

/s/ Karl J. Koch

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Office of State Procurement
State of Louisiana
Division of Administration

JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

September 2, 2022

TO: Col. David W. Couvillon, USMCR (Ret.)
Office of Group Benefits
Chief Executive Officer

FROM: Ms. Pamela Bartfay Rice, Esq., CPPO
Assistant Director, Professional Contracts 

RE: OSP Approval for JLCB
LaGov PO TBD/Contract
CaremarkPCS Health LLC - "CVS Caremark"

The above referenced contract has been reviewed by the Office of State Procurement. The document complies with the State Procurement Code and is ready for submission to the Joint Legislative Committee on the Budget. Upon approval of the proposed contract for the Office of Group Benefits in accordance with La. R.S. 42:802, please return the "Agency Memo to OSP After JLCB Approval," along with the stamped contract from the JLCB.

The contract will not receive final approval by OSP until it has been approved by JLCB and is submitted to OSP in LaGov, Proact, or LESA, as applicable.

If you should have any further questions/comments, please do not hesitate to contact Pam Rice.

SilverScript®

Announcing our NEW Medicare Pharmacy Vendor

SilverScript Employer PDP sponsored by the State of Louisiana Office of Group Benefits (SilverScript) will be the new prescription drug plan for retirees and their dependents who are eligible for Medicare and enrolled in the following plans:

Pelican HRA 1000 * Magnolia Local * Magnolia Local Plus * Magnolia Open Access

SilverScript is a Medicare Part D prescription drug plan with additional coverage provided by the Office of Group Benefits. The plan is provided by SilverScript Insurance Company® which is affiliated with CVS Caremark®, the Office of Group Benefits' new pharmacy benefit manager.

Over 1,000 network pharmacies in Louisiana

- Pharmacies other than CVS Pharmacy
- Over 600 independent Louisiana pharmacies
- Includes approximately 550 chain pharmacies such as Albertson's, Brookshire, Walgreens, Super 1 Pharmacy, Winn-Dixie and more!
- Over 65,000 pharmacies across the country

Online and mobile resources

- Check Drug Cost and Coverage
- Pharmacy Locator

No interruption in your prescription drug coverage.

- Covered by **Express Scripts Medicare** through December 31, 2022
- Covered by **SilverScript** starting January 1, 2023

New ID card from SilverScript by December 31, 2022.

No change in your prescription drug coverage.

- No deductible
- Same coinsurance with maximum copayments
- Same \$1,500 annual out-of-pocket cost threshold
- Same copayments after you reach OGB out-of-pocket threshold
- Same OGB combined medical and prescription drug annual out-of-pocket maximum



Questions?

SilverScript representatives will be at the annual enrollment meetings to answer your questions.

SilverScript Customer Care

After October 1, 2022

1-888-996-0104

Available 24 hours a day,

7 days a week

TTY users should call 711.

www.caremark.com

Exhibit B

SilverScript®

P.O. Box 30006, Pittsburgh, PA 15222-0330



██████████:

Medicare has approved your enrollment in SilverScript Employer PDP sponsored by State of Louisiana Office of Group Benefits (SilverScript) beginning January 1, 2023.

How will my coverage work?

As of January 1, 2023, you should begin using SilverScript network pharmacies to fill your prescriptions. If you go to an out-of-network pharmacy, you must submit a paper claim form to us. You can find network pharmacies in your area by looking in your pharmacy directory or by calling our Customer Care department at the number at the end of this letter.

How much is my premium?

Please contact your former employer group, union, or trust for more information about the premium for this plan.

What is Extra Help?

People with limited incomes may qualify for Extra Help to pay for their prescription drug costs. If you qualify, Medicare could pay for 75% or more of prescription drug costs including monthly prescription drug premiums, deductibles, and coinsurance. Additionally, those who qualify won't have a coverage gap or a late enrollment penalty. Many people qualify for these savings and don't even know it. For more information about this Extra Help, contact your local Social Security office, or call Social Security at 1-800-772-1213 between 8 AM to 7 PM, Monday through Friday. TTY users should call 1-800-325-0778. You can also apply for Extra Help online at www.socialsecurity.gov/prescriptionhelp.

If you think you qualify for Extra Help with your prescription drug costs, but you don't have or can't find proof, please contact SilverScript at the number provided at the end of this letter.

Will I pay a late enrollment penalty as part of my premium?

The late enrollment penalty is an amount added to your monthly Medicare Prescription Drug Plan (Part D) premium for as long as you have Medicare prescription drug coverage. This penalty is required by law and is designed to encourage people to enroll in a Medicare Prescription Drug Plan when they are first eligible or keep other prescription drug coverage that meets Medicare's minimum standards. You may owe a late enrollment penalty if you didn't join a Medicare Prescription Drug Plan when you were first eligible for Medicare Part A and/or Part B, and:

SilverScript



Prescription Drug Plan Administered by
CVS Caremark Part D Services, LLC

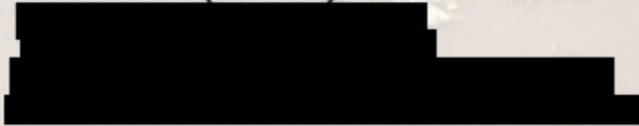
RXBIN: 004336

RXPCN: MEDDADV

RXGRP: RXCVSD

ISSUER: (80840): 9151014609

Medicare^{Rx}
Prescription Drug Coverage



S5601 813

STATE OF LOUISIANA
PARISH OF East Baton Rouge

AFFIDAVIT OF TRUTH AND FACTS

Before me, the undersigned Notary Public, duly commissioned and qualified in and for the County and State aforesaid, on this 30th day of November 2022, in the presence of the undersigned witnesses, personally came and appeared, Orlando Palmer, Carter at Parker's Pharmacy, located in Baton Rouge, Louisiana, who, after being duly sworn, declared and said:

I am the owner or authorized representative of an independent community pharmacy, which is a member of the Louisiana Independent Pharmacies Association ("LIPA").

I understand that the current Emergency Contract for Express Scripts ("ESI") to provide Pharmacy Benefit Manager ("PBM") services to the Louisiana Office of Group Benefits ("OGB") is scheduled to end on December 31, 2022, and that a new contract with CVS Caremark to provide PBM services to OGB beginning on January 1, 2023 did not receive the approval of the Joint Legislative Committee on the Budget ("JLCB") which was required by law for OGB to enter into this contract.

I also understand that Commissioner of Administration Jay Dardenne told JLCB that although he understood that the law required that committee's approval of the proposed contract between OGB and CVS Caremark, he intended to proceed with having CVS Caremark provide PBM services even if JLCB rejected the proposed contract. Mr. Dardenne claimed that unless OGB went forward with the rejected CVS Caremark contract for PBM services, OGB's beneficiaries would be unable to have their prescriptions filled after December 31, 2022 and would be cut off from their prescribed medication.

Contrary to what I understand Mr. Dardenne has said, no OGB beneficiary who fills his or her prescriptions at my pharmacy will be cut off from their prescription medication if the court prevents OGB from proceeding with the PBM contract that was rejected by JLCB. Because I want to make certain that my patients and customers continue to receive the medication which their doctors have prescribed to them, even if OGB has not entered into another contract for PBM services by December 31, 2022 my pharmacy will continue to fill prescriptions for OGB beneficiaries, and I will assist them in submitting claims for benefits for their prescriptions directly to OGB.

In the past OGB has entered into emergency contracts with PBMs when that has become necessary, and I encourage them to do so again now. OGB should have a contractor prepared to make payments, as promised to their beneficiaries so they can continue to have their prescriptions filled until an emergency contract is approved.

Thus, done and signed at Baton Rouge, Louisiana, on the day and date above written, in the presence of the undersigned, competent witnesses, and me, officer, after due reading of the whole.

Witnesses:

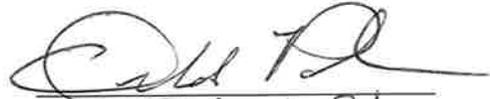


Name: Matthew Cross



Name: Grayson Walsh

Affiant:



Name: Orlando Palma

Sworn to and subscribed before me on this 30 day of November, 2022.


Notary Public
Name: Donelson T. Caffery III
Notary ID: 35067



**KIM AND STEWART WIXSON, MELANIE
AND CHARLIE JONES, AIMEE AND
TOMMY JOE WOODARD, JR., AND THE
LOUISIANA INDEPENDENT
PHARMACIES ASSOCIATION, INC.**

No.

DIVISION:

19TH JUDICIAL DISTRICT COURT

VERSUS

**THE STATE OF LOUISIANA THROUGH
THE OFFICE OF THE GOVERNOR,
DIVISION OF ADMINISTRATION, OFFICE
OF GROUP BENEFITS, AND JAY
DARDENNE, IN HIS OFFICIAL CAPACITY
AS LOUISIANA COMMISSIONER OF
ADMINISTRATION**

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ORDER

CONSIDERING THE ABOVE AND FOREGOING, it is ORDERED that defendants the State of Louisiana through the Office of the Governor, Division of Administration, Office of Group Benefits, and Jay Dardenne in his official capacity as the Louisiana Commissioner of Administration, appear and show cause at ___ o'clock __.m. on the ___ day of _____, 2022, if any they can, why a preliminary injunction should not be issued as requested by the Plaintiffs enjoining and prohibiting them from taking any actions to proceed with the terms of a proposed contract for pharmacy benefit manager services between the Louisiana Office of Group Benefits and CVS Caremark, from engaging in any efforts to obtain pharmacy benefit manager services for the Office of Group Benefits from CVS Caremark in the absence of a lawful contract, and from authorizing or making any payments to CVS Caremark for pharmacy benefit manager services.

It is further ORDERED that the Plaintiff's application for a preliminary injunction will be heard upon affidavits pursuant to Louisiana Code of Civil Procedure article 2609, reserving to all parties the ability to present evidence as in ordinary cases as well.

Baton Rouge, Louisiana this ___ day of December, 2022.

JUDGE
19TH JUDICIAL DISTRICT COURT

Service Information On Next Page

Please Serve Defendants:

- 1) Mr. Jay Dardenne
Louisiana Commissioner of Administration
1201 North Third Street, Suite 7-210
Baton Rouge, Louisiana 70802

- 2) State of Louisiana through the Office of the Governor,
Division of Administration, Office of Group Benefits
Through its Chief Executive Officer, Mr. David Couvillon
1201 North Third Street, Suite G-159
Baton Rouge, Louisiana 70802

- 3) The Hon. Jeff Landry
Louisiana Attorney General
1885 North Third Street
Baton Rouge, Louisiana 70802

EAST BATON ROUGE PARISH Clerk of Court
300 NORTH BLVD
BATON ROUGE, LA 70801
Telephone: (225) 389-3982 Fax: (225) 389-3392

MBatiste

Deposit Receipt
EFILING

Receipt Number: 753864
Receipt Date: 12/02/2022 04:07:15
Suit Number: C-726389

KIM WIXON, ET AL
VS

THE STATE OF LOUISIANA THROUGH THE OFFICE OF THE GOVERNOR, DIVISION OF
ADMINISTRATION, OFFICE OF GROUP BENEFITS, ET AL

Advance Deposit - Credit Card	\$744.00
Credit Card Fee (Non-Clerk Fee)	\$26.04
E-Filing Fee (Non-Clerk Fee)	\$5.00
Total Charged to Credit Card	\$775.04

Auth: 698646 / Ref: d3fd7bdb4dba47b69d440077b0934f27

Received From: KOCH, KARL J.

Attorney Info: 17010
KARL J. KOCH
ATTORNEY AT LAW
8702 JEFFERSON HWY., SUITE B
BATON ROUGE, LA 70809

225) 612 - 6412

EAST BATON ROUGE PARISH Clerk of Court
300 NORTH BLVD
BATON ROUGE, LA 70801
Telephone: (225) 389-3982 Fax: (225) 389-3392

MBatiste

Deposit Receipt

Receipt Number: 753867
Receipt Date: 12/02/2022 04:09:37
Suit Number: C-726389

KIM WIXON, ET AL
VS

THE STATE OF LOUISIANA THROUGH THE OFFICE OF THE GOVERNOR, DIVISION OF
ADMINISTRATION, OFFICE OF GROUP BENEFITS, ET AL

Advance Deposit - Credit Card	\$171.00
Credit Card Fee (Non-Clerk Fee)	\$5.99
Total Charged to Credit Card	\$176.99

Auth: 7533505 / Ref: 2212021608280C21D233F22120216082

Received From: KARL KOCH

Attorney Info: 17010
KARL J. KOCH
ATTORNEY AT LAW
8702 JEFFERSON HWY., SUITE B
BATON ROUGE, LA 70809