

or resolution of these proceedings.

3. The Respondent fully understands that this Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Order or for facts or omissions that do not arise from the facts or transactions herein addressed.

4. The Respondent fully understands that this Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for violations of the law addressed specifically in this Order against the Respondent for violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the execution of this Order by the Respondent.

5. The Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Order, the stipulations and imposition of discipline contained herein, and the consideration and entry and execution of said Order by the Commissioner.

AUTHORITY AND JURISDICTION

6. The Commissioner has jurisdiction over this matter pursuant to Title 56 of the Tennessee Code Annotated ("Tenn. Code Ann."), specifically Tenn. Code Ann. §§ 56-2-305 and 56-7-3206, and Tenn. Comp. R. & Regs. 0780-01-95 (the "Law"). The Law places on the Commissioner the responsibility of the administration of its provisions.

PARTIES

7. The Division is the lawful agent through which the Commissioner administers the Law and is authorized to bring this action for the protection of the public.

8. The Respondent is a pharmacy benefits manager (“PBM”) doing business in the State of Tennessee. The Respondent (License # 55) has the authority to administer the medication or device portion of pharmacy benefits coverage provided by a covered entity or otherwise act as a pharmacy benefits manager in the State of Tennessee pursuant to Tenn. Code Ann. § 56-7-3113.

FINDINGS OF FACT

9. The Division filed Tenn. Comp. R. & Regs. 0780-01-95 (“Emergency Rules”) regarding PBMs on December 29, 2022.

10. The Emergency Rules became effective immediately upon filing with the Secretary of State pursuant to Tenn. Code Ann. § 4-5-208.

11. The Emergency Rules prohibited a PBM from utilizing an initial appeal process that has not been approved by the Commissioner prior to use.

12. The Emergency Rules also established a procedure whereby a PBM could utilize a temporary appeal process until the PBM’s initial appeal process was approved by the Commissioner by filing the temporary appeal process with the Commissioner on or before January 31, 2023.

13. Respondent received notice of the Emergency Rules from the Division on January 27, 2023. After its request for an extension of the January 31, 2023, deadline was denied, on February 2, 2023, the Respondent initiated substantive communications with the Division to attain compliance with Tenn. Comp. R. & Regs. 0780-01-95-.03(9)(a). On February 22, 2023, the Respondent attempted to obtain compliance by starting the application process for a temporary appeal process with the Division.

14. As of March 2, 2023, Respondent had not filed a temporary appeal process with the Commissioner, nor had Respondent received permission under Tenn. Comp. R. & Regs. Chapter 0780-01-95 to utilize a temporary appeals process, for at least thirty (30) days after the effective date

of the Emergency Rules.

15. As of March 7, 2023, Respondent had filed a complete temporary appeal process with the Commissioner thirty-five (35) days after the due date.

16. The Department filed permanent rules, also known as rulemaking hearing rules, on March 29, 2023, after holding a public hearing and accepting comments pursuant to Tenn. Code Ann. § 4-5-202(a) (the “Permanent Rules”). The Permanent Rules became effective on June 27, 2023. With the exception of only minor differences that do not pertain to this matter, the Emergency Rules and the Permanent Rules are identical.

17. Respondent asserts that no patients or participants were harmed during the time Respondent was noncompliant.

18. The Division acknowledges Respondent’s good faith efforts to achieve compliance during the noncompliance period.

CONCLUSIONS OF LAW

19. “A pharmacy benefits manager shall establish a process for a pharmacy to appeal a reimbursement for failing to pay at least the actual cost to the pharmacy for the prescription drug or device.” Tenn. Code Ann. § 56-7-3206(c)(2)(A).

20. “A [pharmacy benefits manager’s] appeals process established pursuant to [Tenn. Code Ann. § 56-7-3206](c)(2)(A) must . . . be approved by the commissioner of commerce and insurance [and] comply with . . . such other requirements as the commissioner of commerce and insurance may establish by rule.” Tenn. Code Ann. § 56-7-3206(c)(2)(B)(i) and (ii).

21. The Emergency Rules, promulgated under the authority of Tenn. Code Ann. § 56-7-3206(g)(1), require all PBMs to submit certain information and the required fee prior to utilizing a temporary appeal process, but in no case later than January 31, 2023. Tenn. Comp. R. & Regs. 0780-

01-95.-03(9).

22. The Emergency Rules, promulgated under the authority of Tenn. Code Ann. § 56-7-3206(g)(1), specify that the fee for the review of an application for a temporary appeal process is \$1,000.00. Tenn. Comp. R. & Regs. 0780-01-95.-07(3).

23. “No PBM may utilize an initial appeal process until it has received approval from the Commissioner stating the PBM’s initial appeal process meets the requirements of T.C.A. § 56-7-3206(c)(2) and this chapter. A PBM shall utilize only one appeal process for all initial appeals filed with the PBM.” Tenn. Comp. R. & Regs. 0780-01-95.-03(1). Review of an application for approval of an initial appeal process has a fee of \$1,000 pursuant to Tenn. Comp. R. & Regs. 0780-01-95.-07(1).

24. Tenn. Code Ann. § 56-2-305 states:

(a) If, after providing notice consistent with the process established by § 4-5-320(c) and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, the commissioner finds that any insurer, person, or entity required to be licensed, permitted, or authorized by the division of insurance has violated any statute, rule or order, the commissioner may, at the commissioner’s discretion, order:

...

(2) Payment of a monetary penalty of not more than one thousand dollars (\$1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars (\$100,000), unless the insurer, person, or entity knowingly violates a statute, rule or order, in which case the penalty shall not be more than twenty-five thousand dollars (\$25,000) for each violation, not to exceed an aggregate penalty of

two hundred fifty thousand dollars (\$250,000). [...] For purposes of this subdivision (a)(2), each day of continued violation shall constitute a separate violation.

23. Respondent's failure to file a temporary appeal process with the Commissioner and pay the required fee, and continued failure to file and receive approval for an initial appeal process and pay the required fee, constitute ongoing violations of Tenn. Code Ann. § 56-7-3206(c)(2)(B) and Tenn. Comp. R. & Regs. 0780-01-95.-.03.

ORDER

IT IS THEREFORE ORDERED, pursuant to Tenn. Code Ann. § 56-2-305, that Respondent pay a **CIVIL PENALTY** in the amount of thirty thousand dollars (\$30,000) for the violations of Tennessee insurance law.

The first page of this Order must accompany payment of the civil penalty for reference. Payment of the civil penalty shall be made within thirty (30) days of the date this Order is executed by the Commissioner, and payment must be mailed to the following address.


**State of Tennessee
Department of Commerce and Insurance
Legal Division
Attn: Will Kerby
Davy Crockett Tower, 12th Floor
500 James Robertson Parkway
Nashville, TN 37243**

This Order may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The facsimile, email, or other electronically delivered signatures of the parties shall be deemed to constitute original signatures and facsimile or electronic copies shall be deemed to constitute duplicate originals.

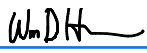
This Order is in the public interest and in the best interests of the parties, represents a compromise and settlement of the controversy between the parties, and is for settlement purposes only. By the signatures affixed below, the Respondent affirmatively states that it has freely agreed to

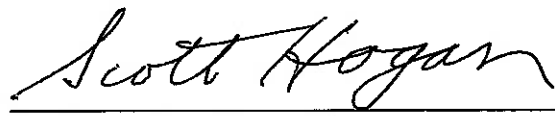
the entry and execution of this Order, that it waives the right to a hearing on the matters underlying this Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made to it by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing the Order, affirmatively state their agreement to be bound by the terms of this Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement as set forth in this Order, are binding upon them.

ENTERED AND EXECUTED on February 22, 2024.

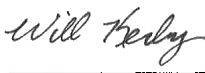

Carter Lawrence (Feb 22, 2024 12:43 CST)
Carter Lawrence, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY AND EXECUTION:


Bill Huddleston (Feb 21, 2024 14:12 CST)
Bill Huddleston
Assistant Commissioner for Insurance
Tennessee Department of Commerce and
Insurance


HealthSmartRx Solutions Inc.
Name: Scott Hogan
Title: Director

RESPECTFULLY SUBMITTED:


William B. Kerby III (BPR #033384)
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