



BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE

TENNESSEE INSURANCE DIVISION,
Petitioner,

vs.

HUMANA PHARMACY SOLUTIONS, INC.
Respondent.

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TID No.: 16-037

CONSENT ORDER

WHEREAS, Petitioner, the Tennessee Insurance Division, (“Division”) and the Respondent, Humana Pharmacy Solutions, Inc. (“Respondent”), hereby stipulate and agree, subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”) as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner’s acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings. Similarly, if the Commissioner does

not accept this Consent Order, it is agreed that nothing in the Consent Order may be used or admitted in any proceeding against the Respondent.

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

4. Respondent fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for violations of the statutes, rules, or regulations addressed specifically in the Findings of Fact and Conclusions of Law in this Consent Order, or which may arise as a result of the execution of this Consent Order by the Respondent.

5. 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 Consent Order and the consideration and entry of said Consent Order by the Commissioner.

AUTHORITY AND JURISDICTION

6. The Commissioner has jurisdiction over this matter pursuant to Tennessee insurance law, Title 56 of the Tennessee Code Annotated (“Tenn. Code Ann.”), specifically, Tenn. Code Ann. §§ 56-1-101 *et seq.*, §§ 56-1-401 *et seq.*, §§ 56-2-102 to 103, § 56-2-115, § 56-2-305, §§ 56-6-401 through 56-6-412, § 56-7-110, and §§ 56-7-3101 through 56-7-3112 (the “Law”). The Law places the responsibility of the administration of its provisions on the Commissioner.

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. Respondent is a third party administrator (“TPA”) licensed by the Commissioner to act as an administrator in the State of Tennessee. Respondent’s principal place of business on file with the Division is: 321 West Main Street, WFP-7E, Louisville, Kentucky 40202.

FINDINGS OF FACT

9. Respondent is a pharmacy benefits manager (“PBM”) and TPA company domiciled in the State of Kentucky.

10. Respondent has received a license to act as a TPA in the State of Tennessee, thereby subjecting Respondent to regulation pursuant to the Law, specifically Tenn. Code Ann. §§ 56-1-101 *et seq.*

11. Respondent further operates as a PBM in the State of Tennessee, thereby subjecting Respondent to regulation pursuant to the Law, specifically Tenn. Code Ann. §§ 56-7-3101 *et seq.* (also the “Pharmacy Benefits Managers provisions”).

12. On or about July 17, 2015, the Division received a complaint from Pharmacy Providers of Oklahoma (“PPOK”) alleging Respondent violated various provisions of the Pharmacy Benefits Managers provisions on multiple occasions.

13. On or about July 28, 2015, Respondent responded to the Division’s inquiry about PPOK’s July 17, 2015, complaint, indicating Respondent could not respond to allegations of non-compliance without the opportunity to review specific details of such alleged non-compliance. Respondent also provided a copy of its pharmacy dispute resolution process.

14. On or about November 17, 2015, the Division received another complaint from PPOK, specifically alleging Respondent: (1) upheld the Maximum Allowable Cost (“MAC”) appeal and increased the MAC, but failed to reimburse the appealing pharmacy at the increased MAC rate or allow the appealing pharmacy to rebill at the higher MAC rate on seventy-six (76) separate occasions; (2) failed to provide a final determination within the seven (7) day timeframe on a MAC appeal on five hundred fifty-one (551) separate occasions; (3) failed to provide a final determination within the seven (7) day timeframe on a MAC appeal as well as failed to provide the required National Drug Cost (“NDC”) that can be purchased at or below the MAC price on five hundred ninety-two (592) separate occasions; and (4) failed to provide the required NDC of an alternative drug that can be purchased at or below the MAC price after denial of a MAC appeal on two thousand, six hundred sixty-eight (2,668) separate occasions for a total of three thousand, eight hundred eighty-seven (3,887) alleged violations.

15. On or about February 18, 2016, Respondent responded to the allegations in the November 17, 2015, complaint, indicating that of the three thousand, eight hundred eighty-seven (3,887) violations alleged by PPOK, only three hundred seventy-four (374) alleged violations were related to claims not submitted in association with Medicare Part D claims.

16. On or about February 18, 2016, Respondent acknowledged the following allegations to which each specific Pharmacy Benefits Managers provisions apply (not unique claims), including those not received by the company.

Section of Law	Allegations
Tenn. Code Ann. § 56-7-3108(e)(1): PBM states that the MAC was increased recently, but the pharmacy was not paid at the increased MAC rate or allowed to rebill the claim at the newer, higher MAC rate.	3
Tenn. Code Ann. § 56-7-3108(c): The PBM has failed to make a final determination resolving the pharmacy's appeal within seven (7) business days of its receipt of the appeal.	51
Tenn. Code Ann. § 56-7-3108(c): The PBM has failed to make a final determination resolving the pharmacy's appeal within seven (7) business days of its receipt of the appeal; and Tenn. Code Ann. § 56-7-3108(d): The PBM denied the MAC appeal and failed to provide the NDC of an alternative drug that may be purchased at a price which is equal to or less than the MAC price.	60
Tenn. Code Ann. § 56-7-3108(d): The PBM denied the MAC appeal and failed to provide the NDC of an alternative drug that may be purchased at a price which is equal to or less than the MAC price.	260
Total	374

17. On or about February 18, 2016, Respondent advised that PPOK is a non-contracted third party with Respondent and as such not party to certain contractual details such as the NDC of an alternative drug as required for contracted pharmacies by Tenn. Code Ann. § 56-7-3108(d).

18. On or about February 18, 2016, Respondent acknowledged three (3) violations of Tenn. Code Ann. § 56-7-3108(e)(1) and seventy (70) violations of Tenn. Code Ann. § 56-7-3108(c) that were received by the Respondent. Respondent did not receive notice of forty-one (41) of the one hundred eleven (111) alleged violations of Tenn. Code Ann. § 56-7-3108(c).

CONCLUSIONS OF LAW

19. Pursuant to Tenn. Code Ann. § 56-7-3101, PBMs must comply with Tenn. Code Ann. §§ 56-7-3101 *et seq.*

20. Tenn. Code Ann. § 56-7-3108(c) requires a PBM to "...make a final determination resolving [a] pharmacy's appeal within seven (7) business days..." of the PBM's receipt of a MAC appeal.

21. Tenn. Code Ann. § 56-7-3108(d) requires a PBM, upon denial of a pharmacy's MAC appeal, to provide the NDC "...of an equivalent drug that is generally available for purchase by pharmacies in this state from national or regional wholesalers at a price which is equal to or less than the [MAC] for that drug."

22. Tenn. Code Ann. § 56-7-3110 provides that "[a] violation of this part may subject the [PBM] or covered entity to any of the sanctions described in [Tenn. Code Ann.] § 56-2-305."

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

- (a) If . . . 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:
 - (1) The insurer, person, or entity to cease and desist from engaging in the act or practice giving rise to the violation;
 - (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). This subdivision (a)(2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (a)(2),

each day of continued violation shall constitute a separate violation; and

- (3) The suspension or revocation of the insurer's, person's, or entity's license.
- (b) In determining the amount of penalty to assess under this section, or in determining whether the violation was a knowing violation for the purpose of subdivision (a)(2), the commissioner shall consider any evidence relative to the following criteria:
- (1) Whether the insurer, person or entity could reasonably have interpreted its actions to be in compliance with the obligations required by statute, rule or order;
 - (2) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (3) Whether the amount imposed would put the violator in a hazardous financial condition;
 - (4) The circumstances leading to the violation;
 - (5) The severity of the violation and risk of harm to the public;
 - (6) The economic benefits gained by the violator as a result of noncompliance;
 - (7) The interest of the public; and
 - (8) The insurer's, person's, or entity's efforts to cure the violation.

24. The Findings of Fact contained herein indicate Respondent violated Tenn. Code Ann. §§ 56-7-3101 *et seq.* on seventy-three (73) separate occasions, and, as such, Respondent is subject to sanctions pursuant to Tenn. Code Ann. § 56-2-305(a).

ORDER

NOW THEREFORE, on the basis of the foregoing and Respondent's waiver of the right to a hearing and appeal under the Law and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et seq.*, and Respondent's admission of jurisdiction of the

Commissioner, the Commissioner finds that Respondent, for the purpose of settling this matter, admits the Findings of Fact and Conclusions of Law, agrees to the entry of this Order and agrees that this Order is in the public interest, necessary for the protection of the citizens of the State of Tennessee and consistent with the purposes fairly intended by the policy and provisions of the Law.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 56-2-305(a) of the Tennessee Insurance Law, that:

1. Respondent shall pay **CIVIL PENALTIES** in the amount of twenty-five thousand dollars (\$25,000). The payment shall be made by check payable to the Tennessee Department of Commerce and Insurance. Page one (1) of this Order must accompany payment for reference. Payment shall be made within thirty (30) days from the date this agreement is executed by the Commissioner and payment shall be mailed to:

**State of Tennessee
Department of Commerce and Insurance
Legal Division; Attn: Patrick Merkel
Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243**

2. In addition, it is further **ORDERED** that all persons in any way assisting, aiding, or helping Respondent in any of the aforementioned violations of Tenn. Code Ann. §§ 56-7-3101 *et seq.*, shall **CEASE AND DESIST** from all such activities in violation of Tennessee Insurance Law.

IT IS ORDERED that this Consent Order represents the complete and final resolution of, and discharge with respect to all administrative and civil claims, demands, actions, and causes of action by the Commissioner against Respondent Humana Pharmacy Solutions for violations of

Tenn. Code Ann. §§ 56-7-3101 *et seq.* alleged by the Division to have occurred with respect to TID v. Humana Pharmacy Solutions, Inc.

the transactions involving the facts contained herein. Respondent does not waive any claims, defenses, or causes of action regarding the applicability Tenn. Code Ann. §§ 56-7-3101, *et seq.* for any transactions outside of those involving the facts contained herein.

This Consent Order is in the public interest and in the best interests of the parties. This Consent Order represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, Humana Pharmacy Solutions, Inc. affirmatively states that it has freely agreed to the entry of this Consent Order, that it has been advised that it may consult legal counsel in this matter and has had the opportunity to consult with legal counsel, that it waives its right to a hearing on the matters underlying this Consent 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 by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

Nothing in this Consent Order should be construed to limit the authority of the Insurance Division or the Commissioner to take further action against the Respondent should such action, in the opinion of the Insurance Division or the Commissioner, be necessary.

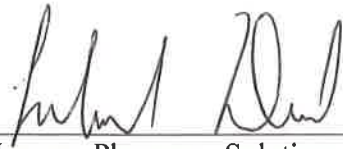
SO ORDERED.

ENTERED this the 23 day of January, 2019.



Julie Mix McPeak, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

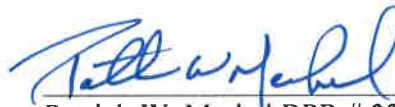


Humana Pharmacy Solutions, Inc.



Michael Humphreys
Assistant Commissioner for Insurance
Department of Commerce and Insurance

Respectfully Submitted,



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