



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

TENNESSEE INSURANCE DIVISION,)	
)	
Petitioner,)	
)	
vs.)	TID No.: 25-049
)	
EXPRESS SCRIPTS INC.,)	
)	
Respondent.)	

CONSENT ORDER

WHEREAS, Petitioner, the Insurance Division of the Tennessee Department of Commerce and Insurance (“Division”) and Express Scripts 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 (“Order”) is subject to the Commissioner’s acceptance and has no force and effect until such acceptance is evidenced by the entry and execution of the Commissioner.

2. This Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Order by the Commissioner shall not unfairly or illegally prejudice either the Commissioner or the Respondent from further participation 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 addressed in this Order or for facts or omissions that do not arise from the facts or transactions herein addressed.

4. 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 General Stipulations and imposition of discipline contained herein, and the consideration and entry and execution of said Order by the Commissioner.

AUTHORITY AND JURISDICTION

5. 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 56-7-3101, 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

6. 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.

7. The Respondent is a pharmacy benefits manager (“PBM”) doing business in the State of Tennessee. The Respondent (License # 73) has the authority to administer the medication or device portion of pharmacy benefits coverage provided by a covered entity or otherwise act as a PBM in the State of Tennessee pursuant to Tenn. Code Ann. § 56-7-3113.

FINDINGS OF FACT

8. All PBMs licensed to operate in the state of Tennessee are required to submit certain information to the Division in an annual report by April 1 of each year. The information in the report pertains to the PBM’s business activities in Tennessee for the prior calendar year.

9. On September 22, 2025, Respondent submitted its 2024 annual report resulting in a one hundred seventy-four (174) day filing delay.

CONCLUSIONS OF LAW

10. At all times relevant hereto, Tenn. Code Ann. § 56-7-3102(5) has provided:

“Pharmacy benefits manager” means a person, business or other entity and any wholly or partially owned subsidiary of the entity, that administers the medication and/or device portion of pharmacy benefits coverage provided by a covered entity. “Pharmacy benefits manager” includes, but is not limited to, a health insurance issuer, managed health insurance issuer as defined in [Tenn. Code Ann.] § 56-32-128(a), nonprofit hospital, medication service organization, insurer, health coverage plan, health maintenance organization licensed to practice pursuant to this title, a health program administered by the state or its political subdivisions, including the TennCare programs administered pursuant to the waivers approved by the United States department of health and human services, nonprofit insurance companies, prepaid plans, self-insured entities, plans governed by the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 et seq.), and all other corporations, entities or persons acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity and includes, but is not limited to, a mail order pharmacy;

11. At all times relevant hereto, Tenn. Comp. R. & Regs. 0780-01-95-.15 has provided:

(1) Beginning April 1, 2025, and annually on or before April 1 of each year thereafter, each PBM shall file with the Commissioner a written report that contains the following information for the preceding calendar year on a form and in the manner provided by the Commissioner, along with the review fee required under Rule 0780-01-95-.07(5):

(a) The total number of claims paid by the PBM for prescription drugs or devices;

(b) The total number of claims paid by the PBM to pharmacies physically located in Tennessee, or to mail order pharmacies or specialty pharmacies on behalf of Tennessee residents, for prescription drugs or devices;

(c) Descriptions of all fees assessed by the PBM to pharmacies physically located in Tennessee, mail order pharmacies that serve Tennessee residents, or specialty pharmacies that serve Tennessee residents;

(d) A schedule listing the unique identifier used by the PBM for internal distribution and identification of each MAC list used for pharmacy reimbursement at any point during the year for any pharmacy physically located in Tennessee, any

mail order pharmacy that served Tennessee residents, or any specialty pharmacy that served Tennessee residents. For each MAC list, the PBM must specify:

1. Each pharmacy network that utilizes the MAC list as a basis for reimbursement, with each network identified by the unique identifier provided in part (e)1.;
2. The policies, procedures, or criteria used to determine which prescription drugs or devices are placed on the MAC list; and
3. The policies, procedures, or criteria used when updating the MAC list;

(e) A schedule of all the PBM's pharmacy networks that contain pharmacies physically located in Tennessee, mail order pharmacies that serve Tennessee residents, or specialty pharmacies that serve Tennessee residents. For each network, the schedule must include the following information:

1. The unique identifier of the network used by the PBM for internal distribution and identification;
2. A description of the network's purpose;
3. A schedule of all pharmacies physically located in Tennessee, mail order pharmacies that serve Tennessee residents, and specialty pharmacies that serve Tennessee residents that were removed from the network, along with the following information for each pharmacy removed:
 - (i) Pharmacy name and national provider identifier; and
 - (ii) The name of the network from which the applicant was removed; and
4. A schedule of denied network applications received from pharmacies physically located in Tennessee, mail order pharmacies that would have served Tennessee residents, or specialty pharmacies that would have served Tennessee residents, along with the following information for each application:
 - (i) Pharmacy name and national provider identifier; and
 - (ii) The name of the network into which the applicant was seeking entry;

(f) A schedule of all pharmacies contracted with the PBM that are physically located in Tennessee, mail order pharmacies that served Tennessee residents, or specialty pharmacies that served Tennessee residents. For each pharmacy listed, provide the following information:

1. Name and national provider identifier;
2. Total dollar amount of claims paid by the PBM to the pharmacy;
3. Total number of claims paid by the PBM to the pharmacy;
4. The unique identifier of the PBM's network(s) in which the pharmacy participates;
5. The start and end date(s) of all contracts with the pharmacy, including all amendments, addendums, exhibits, provider manuals, and other documents that contain terms or conditions material to the contractual relationship between the PBM and the pharmacy;
6. Whether the pharmacy is an affiliate of or shares any common ownership through a parent entity with the PBM; and
7. Whether the pharmacy certified as a low-volume pharmacy with the PBM pursuant to Rule 0780-01-95-.10 for any portion of the calendar year;

(g) 1. A complete schedule of pharmacy audits completed during the previous calendar year for pharmacies physically located in Tennessee, mail order pharmacies that served Tennessee residents, or specialty pharmacies that served Tennessee residents, along with the following information on each completed audit:

- (i) The name of the pharmacy audited and the pharmacy's national provider identifier;
 - (ii) The start and completion date of the audit;
 - (iii) Total number of claims audited;
 - (iv) Preliminary recoupment amount(s), if any; and
 - (v) Final recoupment amount(s), if any.
2. For purposes of this subparagraph (g), a PBM's audit of a pharmacy includes, but is not limited to, activities by a PBM that may be

described as periodic audits; investigations; prescription validation requests; fraud, waste, and abuse reviews; desktop audits; or other similar processes or reviews intended to allow a PBM to inspect a pharmacy's internal records or processes;

- (h) The number of initial appeals filed with the PBM;
- (i) The number of initial appeals resolved in favor of pharmacies;
- (j) The number of initial appeals resolved against pharmacies;
- (k) The total amount of money paid to appealing pharmacies as a result of initial appeals resolved in favor of pharmacies;
- (l) The total amount of money paid to similarly situated pharmacies as a result of initial appeals resolved in favor of pharmacies;
- (m) The number of initial appeals that were appealed to the Commissioner of which the PBM received notice;
- (n) A written statement certifying the PBM meets the requirements of Rule 0780-01-95-.05(1)(c) along with timestamped screenshots of the PBM's website showing the required information is on the PBM's website and is readily accessible by pharmacies; and
- (o) Any other documentation or information requested by the Commissioner.

(2) PBMs may exclude information from the report required under paragraph (1) if the information pertains exclusively to plans in T.C.A. § 56-7-3102(1)(B).

(3) On or before August 1, 2024, each PBM shall file with the Commissioner a written report that contains the information required under subparagraphs (h) through (o) of paragraph (1) for calendar year 2023 on a form and in the manner provided by the Commissioner, along with the review fee required under Rule 0780-01-95-.07(5).

(4) The Commissioner may extend a PBM's deadline for filing its annual report for good cause shown.

(5) (a) A PBM may redact information from its annual report that is confidential or proprietary information or a trade secret as those terms, or substantially similar terms as determined by the Department, are defined in Tennessee or federal law. Upon request from the Commissioner, a PBM shall provide the specific authority and rationale on which it based its determination that redacted information is confidential or proprietary or a trade secret.

(b) A PBM shall not redact information from annual reports pursuant to subparagraph (a) as confidential or proprietary information or trade secrets if such information is confidential under Tennessee or federal law such that the Department determines it is not available for public inspection while in the Department's possession.

16. At all times relevant hereto, Tenn. Code Ann. § 56-2-305 has provided:

(a) If, after providing notice consistent with the process established by [Tenn. Code Ann.] § 4-5-320(c) and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, compiled in [Tenn. Code Ann.] 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:

(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). [...] For purposes of [Tenn. Code Ann. § 56-2-305(a)(2)], each day of continued violation shall constitute a separate violation[.]

17. At all times relevant hereto, Tenn. Code Ann. § 56-1-110(b) has provided:

(1) The commissioner may, against any person, agency, or company licensed, registered, or permitted by or operating under a certificate of authority issued by the commissioner, or acting in an unlawful capacity that brings such person, agency, or company under the jurisdiction of the commissioner, assess the actual and reasonable costs of the investigation, prosecution, and hearing of any disciplinary action held in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, in which sanctions of any kind are imposed on that person, agency, or company. These costs may include, but are not limited to, those incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative judges, and any other persons involved in the investigation, prosecution, and hearing of the action.

[. . .]

(3) [. . .]

(B) If the individual or entity disciplined fails to pay an assessment when it becomes final, the commissioner may apply to the chancery court of Davidson County, which shall have jurisdiction over recovery of the costs, for a judgment and seek execution of the judgment.

ORDER

IT IS THEREFORE ORDERED, pursuant to Tenn. Code Ann. § 56-2-305, that Respondent pay a **CIVIL PENALTY** in the amount of seventy-three thousand dollars (\$73,000) for Respondent's violations of Tennessee law as outlined above.

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: Elliott Webb
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 November 19, 2025.



Carter Lawrence, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY AND EXECUTION:



Bill Huddleston
Deputy Commissioner
Department of Commerce and Insurance



Express Scripts Inc.

Name: Bradley Phillips

Title: Vice President

RESPECTFULLY SUBMITTED:



Elliott G. Webb Jr (BPR# 038472)
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