



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

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

CONSENT ORDER

WHEREAS, Petitioner, the Insurance Division of the Tennessee Department of Commerce and Insurance (“Division”) and Express Scripts Administrators, LLC (“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 compromise and avoiding litigation and further administrative action with respect to this cause, despite Respondent’s continued disagreement with some of the noted violations. 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 # 12) 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. The Division conducted an audit of Respondent, as of December 31, 2023, to determine the Respondent's compliance with Tenn. Code Ann. Title 56, Chapter 7, Par.: 31 and 32; Tenn. Comp. R. & Regs. 0780-01-95; and Tenn. Code Ann. Title 56, Chapter 8, Part i.

9. On February 17, 2025, the auditor-in-charge filed a verified, written report on the audit with the Division (the "February Report").

10. On March 14, 2025, the Division received a response regarding the February report from the Respondent.

11. On March 14, 2025, the Division modified the February Report and issued an amended report on the audit (the "Final Report").

12. In the Final Report, the auditor-in-charge identified twelve distinct violations of Tennessee law committed by Respondent based on the auditor's investigation of Respondent's business activities. *See* Report on Audit of Express Scripts Administrators, LLC, pp. 4-11. The Final Report is attached as Exhibit A and incorporated into this Order by reference.

13. The Final Report regarding the affairs of the Respondent was adopted with modifications by the Commissioner on April 10, 2025, via an Order Adopting Report on Audit (the "Audit Order"). The Audit Order contained the following eleven¹ directives:

a. The Company failed to pay an enhanced professional dispensing fee required by Tenn. Code Ann. § 56-7-3206(f) to qualifying low-volume pharmacies in a timely manner. The Company is **DIRECTED** to promptly pay enhanced professional dispensing fees and to adopt and implement reasonable standards for the settlement of enhanced professional dispensing fee claims as required by Tenn. Code Ann. §§ 56-7-3206(f) and 56-8-105.

b. The Company reimbursed non-affiliate pharmacies in the state of Tennessee less than the amount the Company reimbursed its affiliate pharmacies for the same drug or

¹ See Audit Order, p. 3, for an explanation as to why the twelfth finding did not result in a directive and is therefore not addressed in this Order.

dispensed product or service. The Company is **DIRECTED** to ensure that the reimbursements to non-affiliate pharmacies are equal to affiliate pharmacies and comply with the provisions of Tenn. Code Ann. § 56-7-3118(d).

c. The Company failed to reimburse Tennessee pharmacies the actual cost of a prescription drug or device after resolution of initial appeals. The Company is **DIRECTED** to reimburse Tennessee pharmacies the actual cost of a prescription drug or device and comply with the provisions of Tenn. Code Ann. § 56-7-3206 (c)(2)(A).

d. The Company failed to provide certain pharmaceutical wholesaler information in connection with a pharmacy who lost or was denied an appeal. Specifically, the Company failed to provide the name of the national or regional pharmaceutical wholesaler operating in the state of Tennessee that had the particular drug currently in stock at a price that was less than the amount of the challenged rate of reimbursement and failed to include the national drug code. The Company is **DIRECTED** to comply with the provisions in Tenn. Code Ann. § 56-7-3206(c)(4).

e. The Company failed to include the appropriate phone number or website address for the Department upon pharmacies' initial appeals being resolved against the appealing pharmacy as required pursuant to Tenn. Comp. R & Regs. 0780-01-95.04(6)(e)1. The Company is **DIRECTED** to comply with the provisions of Tenn. Comp. R & Regs. 0780-01-95.04(6)(e)1.

f. The Company failed to include the required statement on denied appeals pursuant to Tenn. Comp. R & Regs. 0780-01-95-.04(6)(e)2. The Company is **DIRECTED** to comply with the provisions of Tenn. Comp. R & Regs. 0780-01-95.04(6)(e)2. by including the required statement on denied initial appeals to pharmacies.

g. The Company failed to retain communications between pharmacies and Company regarding initial appeals. The Company is **DIRECTED** to retain documents related to initial appeals from pharmacies and comply with the provisions of Tenn. Comp. R. & Regs. 0780-01-95-.04(8) and Tenn. Comp. R. & Regs. 0780-01-95-.14.

h. The Company failed to provide the Division proof of proper reimbursement payment to a pharmacy within seven (7) business days after the resolution of an external appeal in favor of the appealing pharmacy. The Company is **DIRECTED** to notify the Division of proof of reimbursement, including a statement of the additional amount paid to the pharmacy, within seven (7) business days of issuing payment to the pharmacy and comply with the provisions of Tenn. Comp. R. & Regs. 0780-01-95-.06(9).

i. The Company conducted pharmacy audits within the first seven (7) calendar days of the month. The Company is **DIRECTED** to conduct audits in compliance with Tenn. Code Ann. § 56-7-3103(a)(9).

j. The Company failed to deliver preliminary pharmacy audit reports to pharmacies within one hundred twenty (120) days after the conclusion of the audits. The Company is **DIRECTED** to deliver preliminary and final audit reports to pharmacies in compliance with Tenn. Code Ann. § 56-7-3103.

k. The Company engaged in recoupments based on improper grounds and without proof of fraud or intentional misrepresentation. The Company is **DIRECTED** to base recoupments on proper grounds in compliance with Tenn. Code Ann. § 56-7-3103(a)(3).

CONCLUSIONS OF LAW

14. 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;

15. At all times relevant hereto, Tenn. Code Ann. § 56-8-102(a) has provided:

(a) For the purposes of this part:

...

(3)(A) “Claim” means:

(i) An oral, written, or electronic submission for payment that is filed by an insured, on behalf of an insured, or by a third party where the insurer accepts such claims, in accordance with the insurer's reasonable submission standards; and

(ii) Is sufficient to reasonably establish contractual liability for payment on the part of an insurer;

...

(9) “Insurer” means any person, reciprocal exchange, interinsurer, Lloyd’s insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance. “Insurer” shall also mean medical service plans, hospital service plans, health maintenance organizations, prepaid limited health care service plans, hospital medical service corporations, dental, optometric and other similar health service plans. For purposes of this part, these entities shall be deemed to be engaged in the business of insurance;

(10) “Person” means a natural or artificial entity, including, but not limited to, individuals, partnerships, associations, trusts, corporations, insurance producers, adjusters, any employer to the extent that the employer self-insures its workers’ compensation liabilities pursuant to [Tenn. Code Ann.] § 50-6-405(b) or a group of employers qualifying as self-insurers pursuant to [Tenn. Code Ann.] § 50-6-405(c), or third party administrators;

...

(13) “Third party administrator” means any person that collects charges or premiums from, or who adjusts or settles claims on, residents of this state on behalf of an insurer, and shall include any person currently defined as an administrator by [Tenn. Code Ann.] § 56-6-401, any person currently defined as an administrator by Tenn. Comp. R. & Regs. 0780-1-54, or any person currently defined as a third-party administrator by Tenn. Comp. R. & Regs. 0780-1-81.

16. At all times relevant hereto, Tenn. Code Ann. § 56-8-105 has provided:

Any of the following acts by an insurer or person constitutes an unfair claims practice:

...

(2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

(3) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;

(4) Except when the prompt and good faith payment of claims is governed by more specific standards, not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear; [...]

17. At all times relevant hereto, Tenn code Ann. § 56-2-305(a) 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). 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

...

18. At all times relevant hereto, Tenn. Code Ann. § 56-7-3118(d) has provided:

(d) A covered entity or pharmacy benefits manager shall not engage in a pattern or practice of reimbursing pharmacies or pharmacists in this state less than the amount that the pharmacy benefits manager reimburses a pharmacy benefits manager affiliate for providing the same drug or dispensed product or service.

19. At all times relevant hereto, Tenn. Code Ann. § 56-7-3206(f) has provided:

(f) A pharmacy benefits manager shall pay a professional dispensing fee at a rate that is not less than the amount paid by the TennCare program to a pharmacy, if:

(1) The pharmacy dispenses a prescription drug or device pursuant to an agreement with the pharmacy benefits manager or a covered entity; and

(2) The pharmacy's annual prescription volume is at a level that, if the pharmacy were a TennCare-participating ambulatory pharmacy, would qualify the pharmacy for the enhanced amount of professional dispensing fee for a low-volume pharmacy under the operative version of the Division of TennCare Pharmacy Provider Manual, or a successor manual.

20. At all times relevant hereto, Tenn. Code Ann. § 56-7-3206(c)(4) has provided:

(4) If a pharmacy or agent acting on behalf of a pharmacy loses or is denied an appeal provided for in this section, then:

(A) If the product associated with the national drug code number or unique device identifier is available at a cost that is less than the challenged rate of reimbursement from a pharmaceutical wholesaler in this state, then within seven (7) business days after notice of the appeal is received by the pharmacy benefits manager or covered entity, the pharmacy benefits manager or covered entity shall provide the appealing pharmacy or agent with:

(i) The name of the national or regional pharmaceutical wholesalers operating in this state that have the particular drug or medical product or device currently in stock at a price that is less than the amount of the challenged rate of reimbursement; and

(ii) (a) If the product involved in the appeal is a drug, then the national drug code number for the drug; or

(b) If the product involved is a medical device, then the unique device identifier for the device; and

(B) If the product associated with the national drug code number or unique device identifier is not available at a cost that is less than the challenged rate of reimbursement from the pharmaceutical wholesaler from whom the pharmacy purchases the majority of prescription pharmaceutical products for resale, then the pharmacy benefits manager shall adjust the challenged rate of reimbursement to an amount equal to or greater than the appealing pharmacy's actual cost and permit the pharmacy to reverse and rebill each claim affected by the inability to procure the pharmaceutical product at a cost that is equal to or less than the previously challenged rate of reimbursement. The pharmacy benefits manager shall pay or waive the cost of any transaction fee required to reverse and rebill the claim.

21. At all times relevant hereto, Tenn. Comp. R. & Regs. 0780-01-95-.04(6)(d) has provided:

(6) If a pharmacy's initial appeal is resolved against the appealing pharmacy, the PBM shall provide the pharmacy the following in writing:

...

(d) Instructions on how to make an external appeal of the PBM's decision to the Commissioner by:

1. Explaining how to submit an appeal, including the appropriate phone number or website address for the Department where appeals are accepted. Each PBM shall be responsible for ensuring the information provided to pharmacies pursuant to this part 1. is accurate; and

2. Including the following statement:

Pursuant to T.C.A. § 56-7-3206(g)(2), you have the right to appeal this decision to the Commissioner of the Tennessee Department of Commerce and Insurance.

22. At all times relevant hereto, Tenn. Comp. R. & Regs. 0780-01-95-.04(8) has provided:

(8) A PBM shall retain all records related to an initial appeal for the greater of five years or until the PBM is audited by the Department. A PBM shall provide the Department access to all records upon request and comply with requests for information regardless of whether the request is part of a departmental audit.

23. At all times relevant hereto, Tenn. Comp. R. & Regs. 0780-01-95-.06(9) has provided:

(9) If a PBM is required to pay a pharmacy any additional money upon resolution of an appeal pursuant to this rule, the PBM shall make such payment within seven business days of receipt of the Commissioner's written notice issued pursuant to paragraph (8) of this rule. The PBM shall also provide the Department with proof the PBM has reimbursed the pharmacy at least its actual cost for the prescription drug or medical product or device at issue, including a statement of the additional amount paid to the pharmacy, within seven business days of issuing the payment to the pharmacy.

24. At all times relevant hereto, Tenn. Code Ann. § 56-7-3103(a) has provided:

(a) When an audit of records of a pharmacist or pharmacy is conducted by a covered entity, a pharmacy benefits manager, the state or its political subdivisions, or any other entity representing the same, it shall be conducted in the following manner:

...

(3) Any clerical or recordkeeping error identified during an audit, such as a typographical error, scrivener's error, omission, or computer error, does not, in and of itself, constitute fraud or intentional misrepresentation and must not be the basis of a recoupment unless the error results in an actual overpayment to the pharmacy or the wrong medication being dispensed to the patient. Notwithstanding any other law to the contrary, no such claim is subject to criminal penalties without proof of intent to commit fraud;

...

(9) An audit shall not be initiated or scheduled during the first seven (7) calendar days of any month due to the high volume of prescriptions filled during that time, unless otherwise consented to by the pharmacist or pharmacy;

(10) The preliminary audit report must be delivered to the pharmacist or pharmacy within one hundred twenty (120) days after conclusion of the audit. A final audit report shall be delivered to the pharmacist or pharmacy within six (6) months after receipt of the preliminary audit report or final appeal, whichever is late;

...

25. Beginning on June 26, 2024, Tenn. Comp. R. & Regs. 0780-01-95-.11(5) has provided:

(5) The Commissioner shall make a full and true report of the audit, which shall comprise only facts ascertained from the books, papers, records, securities, or documents of the PBM, or other evidence obtained by investigation of the Commissioner, or ascertained from the testimony of officers or agents or other persons examined under oath concerning the business, affairs, assets, and obligations of the PBM. The report of the audit shall be verified by the oath of the auditor in charge of the audit and shall be prima facie evidence in any action or proceeding in the name of the state against the PBM, its officers or agents upon the facts stated in the report.

26. Beginning on June 26, 2024, Tenn. Comp. R. & Regs. 0780-01-95-.11(9) has provided:

(9) If the audit reveals that the PBM is operating in violation of any law, rule, or prior order of the Commissioner, the Commissioner may, by order issued pursuant to the Uniform Administrative Procedures Act compiled in T.C.A. Title 4, Chapter 5, require the PBM to take any action the Commissioner considers necessary or appropriate to cure the violation, including but not limited to the payment of civil penalties. No PBM shall violate any order issued under this paragraph.

27. Respondent's failure to timely pay an enhanced professional dispensing fee to qualifying low-volume pharmacies and failure to effectuate prompt, fair, and equitable settlement of claims submitted in which liability had become reasonably clear constitute violations of Tenn. Code. Ann. § 56-8-105.

28. Respondent's failure to reimburse non-affiliate pharmacies in an amount at least equal to the amount Respondent reimbursed its affiliate pharmacies for the same drug or dispensed product or service constitutes violations of Tenn. Code Ann. § 56-7-3118(d).

29. Respondent's failure to reimburse Tennessee pharmacies the actual cost of a prescription drug or device after resolution of initial appeals constitutes violations of Tenn. Code Ann. § 56-7-3206(c)(2)(A).

30. Respondent's failure to provide the name of the national or regional pharmaceutical wholesaler operating in the state of Tennessee that had the particular drug at issue in stock at the time the initial appeal was resolved at a price that was less than the amount of the challenged rate of reimbursement and failure to include the national drug code for the drug at issue constitute violations of Tenn. Code Ann. § 56-7-3206(c)(4).

31. Respondent's failure to include instructions on how to make an external appeal by including the appropriate phone number or website address for the Department upon initial appeals being resolved against the appealing pharmacy constitutes violations of Tenn. Comp. R. & Regs. 0780-01-95-.04(6)(e)1.

32. Respondent's failure to include the required statement on denied initial appeals constitutes violations of Tenn. Comp. R. & Regs. 0780-01-95-.04(6)(e)2.

33. Respondent's failure to retain all communications between pharmacies and Respondent regarding initial appeals constitutes violations of Tenn. Comp. R. & Regs. 0780-01-95-.04(8).

34. Respondent's failure to provide the Division with proof Respondent had reimbursed pharmacies within seven (7) business days after the resolution of an external appeal in favor of the appealing pharmacy constitutes violations of Tenn. Comp. R. & Regs. 0780-01-95-.06(9).

35. Respondent conducted pharmacy audits within the first seven (7) calendar days of a month in violation of Tenn. Code Ann. § 56-7-3103(a)(9).

36. Respondent's failure to deliver preliminary pharmacy audit reports to pharmacies within one hundred twenty (120) days after the conclusion of an audit constitutes violations of Tenn. Code Ann. § 56-7-3103.

37. Respondent recouped payments to pharmacies based on improper grounds and without proof of fraud or intentional misrepresentation in violation of Tenn. Code Ann. § 56-7-3103(a)(3).

ORDER

IT IS THEREFORE ORDERED, pursuant to Tenn. Code Ann. § 56-2-305, that Respondent pay a **CIVIL PENALTY** in the amount of two hundred fifty thousand dollars (\$250,000) for Respondent's violations of Tennessee law as outlined above.

IT IS FURTHER ORDERED that, in addition to the payment of the civil penalty assessed above, Respondent shall **CEASE AND DESIST** any activity that is a violation of any of the eleven directives identified by the Audit Order and restated in Paragraph 13 of this Order.

IT IS FURTHER ORDERED that this Order represents a full settlement and release of all violations by Respondent outlined in paragraphs 27 through 37 above that were identified during the Division's audit of Respondent and that occurred during the relevant audit period. The Division shall not seek additional sanctions for violations of the aforementioned laws and rules stemming from conduct that occurred during the relevant audit period and that was identified in the Division's Final Report and Audit Order. However, this settlement and release does not apply to violations that occurred during the relevant audit period that would have been discovered during

the audit if Respondent had provided the Division with information that Respondent was legally required to disclose to the Division during the audit but failed to do so.

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 September 12, 2025.

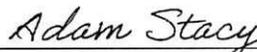

Carter Lawrence (Sep 12, 2025 09:44:31 CDT)

Carter Lawrence, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY AND EXECUTION:


Bill Huddleston (Sep 12, 2025 08:16:19 CDT)

Bill Huddleston
Deputy Commissioner
Tennessee Department of Commerce and
Insurance



Express Scripts Administrators, LLC

Name: Adam Stacy

Title: SVP Network Strategy & Contracting

RESPECTFULLY SUBMITTED:



(BPR # 038472)

~~William B. Kerby III (BPR# 033384)~~

~~Chief Counsel for Insurance and TennCare Oversight~~

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