

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

TENNESSEE INSURANCE DIVISION,)	
)	
Petitioner,)	
)	
vs.)	
)	TID No.: 25-04
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 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 56-7-3206, 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

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 pharmacy benefits manager in the State of Tennessee pursuant to Tenn. Code Ann. § 56-7-3113.

FINDINGS OF FACT

8. On January 11, 2024, the Division received complaint #1182990496 (the “Complaint”) from Anderson Drugs (“Anderson”), National Council for Prescription Drug Program # 4406307, a Tennessee-licensed pharmacy located in Etowah, Tennessee.

9. In the Complaint, Anderson stated it filed an appeal with Respondent. Anderson

stated that it received a message from Respondent's online appeal application approving the appeal. The message stated that the claim¹ would "be submitted for manual adjustment [and that Anderson would] receive a manual remittance in the next few weeks."

10. The Division forwarded the Complaint to Respondent on January 19, 2024.

11. On February 2, 2024, Respondent informed the Division that (1) the appeal in question from the Complaint was filed by Anderson on January 6, 2024, (2) the appeal was approved for reimbursement on January 9, 2024, and (3) payment had been initiated on January 11, 2024.

12. On February 5, 2024, the Division emailed Respondent requesting additional information and informed Respondent that Anderson did not receive the opportunity to reverse and rebill the claim. The Division also requested a meeting to discuss the Complaint.

13. On February 5, 2024, by email, Respondent agreed to meet to discuss the matter further on February 8, 2024.

14. On February 21, 2024, in response to the February 8, 2024, discussion, Respondent provided the Division with a letter explaining the operational challenges it has experienced when pharmacies reverse and rebill claims after an initial appeal is resolved in favor of the appealing pharmacy, and why it switched to a manual payment process.

15. On February 23, 2024, the Division emailed Respondent requesting additional information to clarify Respondent's February 21, 2024, letter.

16. On March 8, 2024, in response to the Division's February 23, 2024, request, Respondent provided a letter and supporting information showing that, since March 2023, two hundred seventy-seven (277) claims which had been approved on initial appeal had been processed

¹ Claim refers to the transaction whereby a pharmacy submits a request to a PBM for reimbursement of the cost of a prescription drug or device dispensed by the pharmacy.

incorrectly when the provider reversed and rebilled.

17. On March 11, 2024, the Division emailed Respondent requesting clarification as to when Respondent would correct the system issues referenced in the Respondent's February 21, 2024, letter that were continuing to prevent pharmacies from timely receiving an updated rate through reverse and rebill on some claims after prevailing on an initial appeal.

18. On March 22, 2024, Respondent stated via email that it expected that a permanent system update would go live in the fourth quarter of 2024.

19. On April 18, 2024, the Division emailed Respondent seeking additional information regarding Respondent's March 22, 2024, email and the two hundred seventy-seven (277) claims that Respondent indicated were processed incorrectly upon reverse and rebill and therefore paid manually.

20. On April 30, 2024, Respondent emailed a Microsoft Excel file with the requested information to the Division. Upon review of the information, the Division identified multiple claims that had been submitted to Respondent as an initial appeal in 2023 where the initial appeal was resolved in favor of the appealing pharmacies, but the spreadsheet reflected that Respondent did not reimburse the prevailing pharmacies until April 30, 2024, which was more than seven (7) business days after resolution of the initial appeal in favor of the pharmacy.

21. Upon further review of the two hundred seventy-seven (277) claims identified in the above-referenced Excel spreadsheet, the Division has determined that only two hundred sixty-five (265) of the claims were reimbursed outside of the seven (7)-business-day timeframe required under Tennessee law which adversely impacted forty (40) Tennessee pharmacies.

22. Respondent asserts that, as of the date of execution of this Order, it has implemented updates and technical enhancements and has substantially reduced the number of errors on reversed and rebilled claims.

CONCLUSIONS OF LAW

23. Effective January 1, 2023, Tenn. Code Ann. § 56-7-3102(5) provides:

“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 § 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;

24. Effective January 1, 2023, Tenn. Code Ann. § 56-7-3206(c)(3)(A) provides:

If a pharmacy or agent acting on behalf of a pharmacy prevails in an appeal provided for in [Tenn. Code Ann. § 56-7-3206(c)], 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:

...

(iii) Permit the challenging pharmacy to reverse and rebill the claim upon which the appeal is based; [and]

...

(v) Reimburse the pharmacy at least the pharmacy’s actual cost for the prescription drug or device.”

25. Prior to June 26, 2024, Tenn. Comp. R. & Regs. 0780-01-95-.04(7) provided:

If a PBM is required to pay a pharmacy any additional money upon resolution of an initial appeal, including a payment to a similarly situated pharmacy under part (4)(a)2. of this rule, the PBM shall make such payment within seven business days after notice of the initial appeal is received by the PBM.

26. Beginning on June 26, 2024, Tenn. Comp. R. & Regs. 0780-01-95-.04(7)(a)

provided:

(a) If a PBM is required to pay a pharmacy any additional money upon resolution of an initial appeal, including a payment to a similarly situated pharmacy under part (4)(a)2. of this rule, the PBM shall adjust the rate of reimbursement and make such payment within seven business days after notice of the initial appeal is received by the PBM. However, subject to subparagraph (b), the timeline for making the payment(s) shall not begin until the appealing pharmacy has reversed and rebilled its claim showing the adjusted rate of reimbursement.

(b) If the appealing pharmacy fails to reverse and rebill its claim pursuant to subparagraph (a), the PBM shall adjust the rate of reimbursement and make the payment(s) no later than fifteen business days after the PBM receives notice of the initial appeal.

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

(1) A pharmacy that alleges it did not receive at least its actual cost for a prescription drug or device after resolution of an initial appeal filed with a PBM shall have the right to appeal the decision of the PBM to the Commissioner. [. . .]

(2) An appeal filed pursuant to paragraph (1) of this rule must:

(a) Be filed with the Commissioner, in such manner as the Commissioner may require, within 30 days of the pharmacy's receipt of the PBM's final determination resolving the pharmacy's initial appeal, unless a different timeframe is approved in writing pursuant to paragraph (3) of this rule;

28. 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; [and]

(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 § 50-6-405(b) or a group of employers qualifying as self-insurers pursuant to § 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 § 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.

29. 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; [...]

30. At all times relevant hereto, Tenn. Code Ann. § 56-7-3210 has provided:

A violation of this part may subject the pharmacy benefits manager or covered entity to any of the sanctions described in § 56-2-305.

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

(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:

(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[.]”

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

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.

33. At all times relevant hereto, Tenn. Code Ann. § 56-1-110(b)(3)(B), has provided:

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.

34. Respondent’s failure to reimburse certain pharmacy claims within seven (7) business days after notice of an initial appeal was received by Respondent, from January 1, 2023, until the date this Order is executed, constitutes continuing violations of Tenn. Code Ann. §§ 56-7-3206 and Tenn. Comp. R. & Regs. 0780-01-95-.04. The Commissioner also asserts that such conduct constitutes violations of Tenn. Code Ann. § 56-8-105.

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 failure to reimburse certain Tennessee pharmacy claims within seven (7) business days of receipt of notice of an initial appeal that is resolved in favor of the appealing pharmacy as required by Tennessee law.

IT IS FURTHER ORDERED that, in addition to the payment of the civil penalty assessed above, Respondent shall abide by the requirements and timeframes regarding reversing and rebilling pharmacy claims and reimbursing pharmacies pursuant to Tennessee law. Failure to do so may subject Respondent to additional disciplinary action as permitted by applicable law.

IT IS FURTHER ORDERED that this Order represents a full settlement and release of all violations by Respondent of Tenn. Code Ann. §§ 56-7-3206(c)(3)(A) and 56-8-105 and Tenn. Comp. R. & Regs. 0780-01-95-.04(7) regarding late payments to pharmacies as of the date of execution of this Order. The Department shall not seek additional sanctions for violations of the aforementioned laws and rules stemming from late payments to pharmacies that occurred on or before the date of execution of this Order, including but not limited to violations discovered during the audit of Respondent currently being conducted by the Department but that occurred on or before the date of execution of this Order.

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 Feb/28, 2025.


Carter Lawrence (Feb 28, 2025 09:29 CST)

Carter Lawrence, Commissioner
Department of Commerce and Insurance

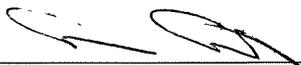
ADDITIONAL SIGNATURES ON THE FOLLOWING PAGE

APPROVED FOR ENTRY AND EXECUTION:



Bill Huddleston (Feb 27, 2025 15:25 CST)

Bill Huddleston
Assistant Commissioner for Insurance
Tennessee Department of Commerce and Insurance



Express Scripts Administrators LLC

Name: Stephen Smith

Title: SI Director Mac & Geo Analytics

RESPECTFULLY SUBMITTED:



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