

**BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS**

IN THE MATTER OF:

**EXPRESS SCRIPTS
ADMINISTRATORS, LLC**

)
)
)
)

A.I.D. NO. 2019 - 79

CONSENT ORDER

On this day, the matter of Express Scripts Administrators, LLC, d/b/a Express Scripts, (“Company”) came before Allen Kerr, Arkansas Insurance Commissioner (“Commissioner”). The Arkansas Insurance Department (“Department”) is represented by Melissa Grisham, Associate Counsel, in this matter. From the facts and law before him, the Commissioner finds as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner’s acceptance and has no force or effect until such acceptance is evidenced by the entry of the Commissioner.
2. By the signature affixed below, Company affirmatively states that the entry of this Consent Order has been freely entered, and that no threats or promises of any kind have been made by the Commissioner, the Department, or any agent or representative thereof.
3. The parties 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 have been made, other than the terms of settlement set forth herein.

FINDINGS OF FACT

1. Pursuant to Act One (1) and Act Three (3) of the Second Extraordinary Session of 2018 by the Ninety-First (91st) General Assembly, “An Act to Create The Arkansas Pharmacy Benefits Manager Licensure Act,” (“PBM Licensure Act”) authorizes the Arkansas Insurance Commissioner to license and regulate the activities of pharmacy benefit managers.

2. Pursuant to the PBM Licensure Act, effective July 24, 2019, the Company is barred from paying or reimbursing a pharmacy or pharmacist for an ingredient drug product component of pharmacist services less than the national average drug acquisition cost or, if the national average drug acquisition cost is unavailable, the wholesale acquisition cost.

3. Following the effective date of the PBM Licensure Act, the Company paid less than the national average drug acquisition cost for the ingredient drug product component of numerous claims for pharmacist services.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the parties and the subject matter pursuant to Ark. Code Ann. § 23-92-508.

2. Pursuant to Ark. Code Ann. § 23-92-506(b)(5)(A), “A pharmacy benefit manager or representative of a pharmacy benefit manager shall not: Pay or reimburse a pharmacy or pharmacist for the ingredient drug product component of pharmacist services less than the national average drug acquisition cost or, if the national average drug acquisition cost is unavailable, the wholesale acquisition cost.”

3. The Department alleges that the Company violated Ark. Code Ann. § 23-92-506(b)(5)(A) by paying below the national average drug acquisition cost for the ingredient drug product component of numerous claims for pharmacist services.

4. Pursuant to Ark. Code Ann. § 23-66-206(13) of the Trade Practices Act, the Company's alleged actions are considered unfair claims settlement practices. Potential monetary penalties under § 23-66-210(a)(1) of the Trade Practices Act are not more than one thousand dollars (\$1,000) for each violation, not to exceed an aggregate of ten thousand dollars (\$10,000), unless the Company knew or reasonably should have known of the violation. In that situation, the penalty is not more than five thousand dollars (\$5,000) for each violation, not to exceed an aggregate of fifty thousand dollars (\$50,000) in any six-month period.

5. The powers granted to the Insurance Commissioner under the Trade Practices Act are "additional to any other powers to order restitution or enforce any penalties, fines, or forfeitures authorized by law with respect to the methods, acts, and practices declared to be unfair or deceptive." Ark. Code Ann. § 23-66-204.

6. Ark. Code Ann. § 23-60-108 provides, "Unless a greater penalty is provided by another law of this state, a violation of a statute or regulation enforceable by the Insurance Commissioner is punishable by the refusal, suspension, revocation, or nonrenewal of a license or certificate of authority; and a fine no greater than one thousand dollars (\$1,000) per violation, not to exceed fifty thousand dollars (\$50,000) in any six-month period."

7. Based on the Department's findings, the Company is assessed and agrees to pay a monetary penalty in the amount of \$50,000.

IT IS HEREBY ORDERED AND JOINTLY AGREED that:

1. In consideration of the Commissioner's Findings of Fact and Conclusions of Law, the Company shall pay a monetary penalty in the amount of \$50,000.

2. The Company shall prepare a Corrective Action Plan detailing the steps taken to ensure future compliance with the PBM Licensure Act and provide to the Department no later than 30 days after filing of this Consent Order.

3. The Department shall complete future compliance checks to ensure the Company is in compliance with Ark. Code Ann. § 23-92-506(b)(5)(A).

4. If future noncompliance of the PBM Licensure Act is identified, the Department will take remedial action and additional penalties may be imposed. The Company does not waive any administrative or judicial rights/remedies with respect to potential future enforcement actions.

5. No other penalties will be imposed or enforcement actions taken based on any violations of Ark. Code Ann. § 23-92-506(b)(5)(A) between July 24, 2019, and the signing of this Consent Order, as long as the Company timely corrects its noncompliance with § 23-92-506(b)(5)(A) and provides the Department with the Company's Corrective Action Plan by the requested due date.

6. The monetary penalty is to be received by the Department no later than ten (10) days after filing of this Consent Order.

IT IS SO ORDERED THIS 25th day of November, 2019.


ALLEN KERR
INSURANCE COMMISSIONER
STATE OF ARKANSAS



ANNA KRISHTUL
CORPORATE SECRETARY
EXPRESS SCRIPTS ADMINISTRATORS, LLC