

LOUISIANA DEPARTMENT OF INSURANCE

REGULATORY CONSENT ORDER

BE IT KNOWN, on the date(s) herein below specified, came, and appeared:

LOUISIANA DEPARTMENT OF INSURANCE (hereinafter "LDI")
through the Commissioner of Insurance, James J. Donelon;

AND

EXPRESS SCRIPTS ADMINISTRATORS, LLC.

SUMMARY

This is a regulatory consent order with Express Scripts Administrators, LLC. (ESA). The LDI investigated ESA after receiving thousands of remittance advice entries from the Louisiana Independent Pharmacy Association (LIPA) to substantiate complaints from nineteen (19) independent pharmacies alleging multiple violations of the insurance code. LDI determined that there were mainly violations of Louisiana Revised Statute La. R.S 22:1854. Express Scripts cooperated with the investigation and admitted that (1.3 million electronically adjudicated claims processed on behalf of the client, a state benefit plan of Louisiana, Office of Group Benefits (OGB) were paid after the fifteen (15) days as required by Louisiana law. ESA has agreed to pay claims on behalf of its clients consistent with La. R.S. 22:1854 and to comply with the other terms contained in this Order.

FINDINGS OF FACT

1.

ESA is a pharmacy benefits manager licensed in Louisiana as a Third-Party Administrator since August 19, 2003. The license is currently active. On November 9, 2021, OGB signed a contract with ESA to handle pharmacy benefit claims from January 01, 2022 through December 31, 2022.

2.

LDI investigated ESA after receiving (19) nineteen complaints from independent pharmacies alleging violations of the insurance code.

3.

During the investigation, ESA admitted that 1,310,507 electronically adjudicated claims processed on behalf of OGB were paid after 15 days. As a result of the late payments, ESA paid \$1,554,201.43 in interest to the pharmacies that were impacted.

4.

LDI also determined the nineteen (19) complaints included: (1) OGB claims that ESA previously disclosed to LDI in July 2022 as being paid outside of the fifteen (15) days as required by law, (2) seventy eight (78) fully insured electronically adjudicated claims that were paid later than fifteen (15) days after submission to plans situated outside of Louisiana, and (3) approximately twenty (20) instances when the provider fee was not paid as required by La. R.S. 22:1860.1, for fully insured plans situated outside of Louisiana.

APPLICABLE LOUISIANA LAW

6.

The Louisiana Insurance Code, Title 22, R.S. §22:1 *et seq.* states as follows:

§2. Insurance regulated in the public interest

- A. (1) Insurance is an industry affected with the public interest and it is the purpose of this Code to regulate that industry in all its phases.... It shall be the duty of the commissioner of insurance to administer the provisions of this Code.

7.

La. R.S. 22:1854 maintains in pertinent part:

§ 1854. Electronic claim submission standards

- A. Any claim for payment for covered prescription drugs, other products and supplies, and pharmacist services submitted by a pharmacist or pharmacy to a health insurance issuer as an electronic claim that is electronically adjudicated shall be paid not later than the fifteenth day after the date on which the claim was electronically adjudicated. If the governor declares a state of emergency pursuant to R.S. 29:724, the time period prescribed in this Subsection shall be interrupted during the continuance of the state of emergency for any claims

office which is located in the territorial limits of the declared state of emergency.

8.

La. R.S. 22:1860.1 maintains in pertinent part:

1860.1. Reimbursement of pharmacy provider fee; sanctions; administrative hearings

- A. It is the obligation of a health insurance issuer or its agent to reimburse a pharmacist or his agent for fees remitted by a pharmacy or pharmacist or his agent in compliance with R.S. 46:2625.
- B. The failure to reimburse a pharmacy or pharmacist or his agent by a health insurance issuer or its agent for the fees authorized in R.S. 46:2625(A)(1) shall be an act for which the health insurance issuer or its agent may be sanctioned by the commissioner in accordance with R.S. 22:1860. Any person sanctioned pursuant to this Section may demand an administrative hearing in accordance with Chapter 12 of this Title, R.S. 22:2191 et seq.

9.

La. R.S. 22:1964(14) maintains in pertinent part:

Unfair claims settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following:

- b. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
- c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

10.

La. R.S. 22:1969 maintains in pertinent part:

§1969. Violations, penalties

A. If, after receiving the person's answer or response or if no answer or response is received within twenty days of receipt of mailing, faxing, or delivery of the notice, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings and an order requiring such person to cease and desist from engaging in such method of competition, act, or practice and order any one or more of the following:

(1) Payment of a monetary penalty of not more than one thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of one hundred thousand dollars unless the person knew or reasonably should have known he was in violation of this Part, in which case the penalty shall be not more than twenty-five thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of five hundred thousand dollars in any six-month period

(2) Suspension or revocation of the license of the person if he knew or reasonably should have known he was in violation of this Part.

B. An aggrieved party affected by the commissioner's decision, act, or order may demand a hearing in accordance with Chapter 12 of this Title, R.S. 22:2191 et seq.

CONCLUSIONS OF LAW

11.

LDI determined that ESA did not pay (1) electronically adjudicated OGB claims and certain fully insured claims for plans that were situated outside of Louisiana consistent with La. R.S. 22:1854 within 15 days and (2) the provider fee was not paid pursuant to La. R.S. 22:1860.1 when properly requested for fully insured claims for plans that were situs outside of Louisiana.

ORDER

NOW THEREFORE, to fully compromise and resolve this matter:

The LDI, appearing herein through Nathan Strebeck, Deputy Commissioner, Office of Insurance Fraud, and ESA, appearing through its authorized representative Adam Stacy, Senior Vice President, hereby stipulate and agree to the following:

1. This Regulatory Consent Order shall take effect on the last date it is signed by all parties, and all signatories below warrant that they have the authority and capacity to enter into this Regulatory Consent Order.
2. This Regulatory Consent Order may be executed in multiple copies, each of which shall be considered an original.
3. LDI agrees this Regulatory Consent Order will resolve the matter pending at the Division of Administrative Law under docket number, 2023-1042-INS, LDI v. ESA, and LDI will consent to a joint voluntary motion to dismiss.
4. ESA submits that an unintentional client set-up error between ESA and OGB resulted in the OGB claims being paid later than fifteen (15) days after submission. Additionally, ESA relied upon a reasonable interpretation of Louisiana law when (1) claims were paid later than fifteen (15) days for fully insured plans situated outside of Louisiana, and (2) provider fees were not paid, when properly requested, for fully insured plans situated outside of Louisiana. Therefore, any alleged violation by ESA set forth in this Consent Order was not the result of any intentional violation of law.

5. LDI agrees that the Regulatory Consent Order shall resolve the Notice of Proposed Regulatory Action issued to ESA on March 17, 2023.
6. LDI agrees that the Regulatory Consent Order will resolve all prompt pay and provider fee violations that previously occurred or might occur up until the agreed upon timeline for ESA to make changes to internal processes and procedures to comply with this order.
7. ESA, without admitting to any possible alleged violation of La. R.S. 22:1854, has agreed to pay claims for fully insured plans situated out of Louisiana within 15 days for Louisiana pharmacies. LDI agrees to a reasonable amount to time but no longer than thirty (30) days to make necessary changes to internal processes and procedures to comply with this order.
8. ESA, without admitting to any possible alleged violation of La. R.S. 22:1860.1, has agreed to remit the provider fee when properly requested for fully insured plans situated out of Louisiana for Louisiana pharmacies. LDI agrees to a reasonable amount to time but not later than March 31, 2024 to make necessary changes to internal processes and procedures to comply with this order.
9. ESA, the Louisiana Commissioner of Insurance and the Louisiana Department of Insurance, agree to fully compromise and resolve this matter accepting the amount of \$275,000.00, to be paid by ESA, considering its history of providing critical pharmacy benefit services to the citizens of Louisiana. Such payment should be made within fifteen (15) days of the execution of this Regulatory Consent Order and must be made payable to:

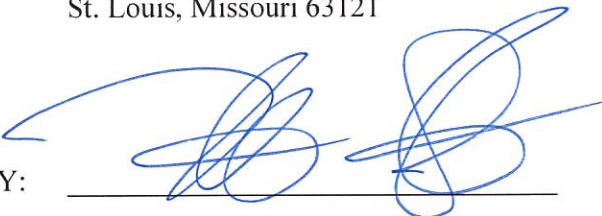
Louisiana Department of Insurance
Attention: Accounts Receivable
P.O. Box 94214
Baton Rouge, LA 70804-9214
10. ESA acknowledges that this Regulatory Consent Order constitutes an administrative action and that it will be reported to the National Insurance Producer Registry by the LDI.
11. ESA waives its appearance and any other rights it may have to an adjudicatory hearing regarding the administrative action established in and assessed by this Regulatory Consent Order.

12. The LDI may take any and all legal actions and seek any and all legal remedies if ESA fail to comply with this Order.
13. All of the LDI's rights under Louisiana Revised Statute Title 22 are reserved, and this Order and any action taken pursuant to this Order, including compliance with this Order, does not prevent the LDI from exercising its authority under the Insurance Code.

BY: 

DATE: 10/13/23

Adam Stacy, Senior Vice President
Express Scripts Administrators, LLC.
One Express Way
St. Louis, Missouri 63121

BY: 

DATE: 10/24/2023

Nathan Strebeck, Deputy Commissioner
Office of Insurance Fraud
Louisiana Department of Insurance
1702 N. Third Street
Baton Rouge, LA 70802