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REPORT FROM AID CONCERNING RULE 128: FAIR AND REASONABLE PHARMACY REIMBURSEMENTS

FROM: Alan McClain, Commissioner, AID; Daniel Holland, PBM General Counsel, AID
TO: Executive Committee & ALC
DATE: May 22, 2025
RE: Status Report on Implementation of Rule 128 & PBM Enforcement

This is the May report, as required by ALC and the Executive Committee, which approved AID Rule 128: *Fair and Reasonable Pharmacy Reimbursements* (Rule 128). Pursuant to an oral motion in the Executive Committee, AID now offers this report on activities related to the implementation of Rule 128, including enforcement efforts and ongoing pharmacy benefit manager ("PBM") regulation.

Rule 128: Fair and Reasonable Reimbursement Rates

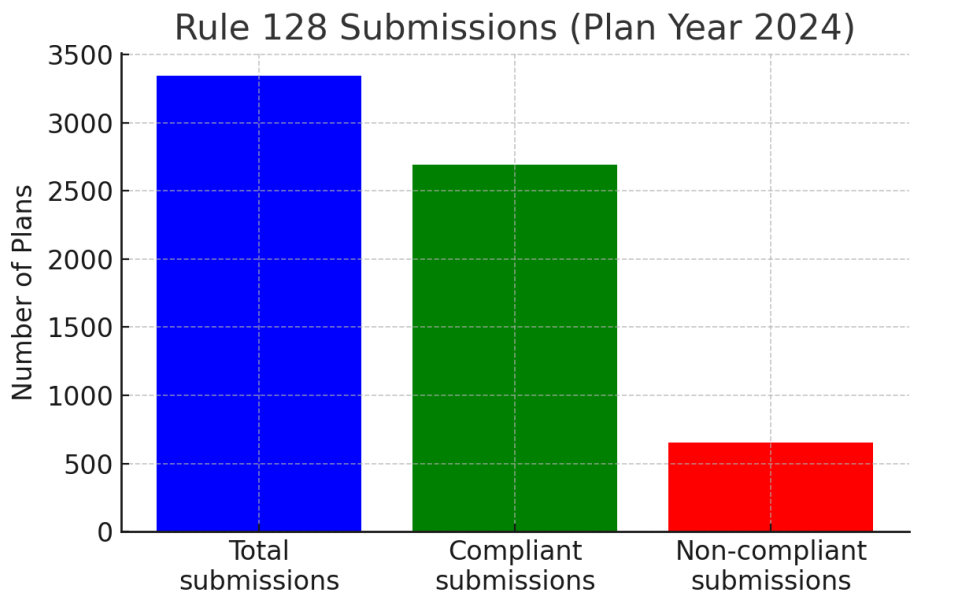
AID received a total of 3,347 data reports from health plans and PBMs pursuant to Rule 128 and Bulletin 18-2024. Approximately 654 (19%) of those plans self-reported an average annual reimbursement to pharmacies below the national average drug acquisition cost ("NADAC") (See Figure 1). These 654 plans that consistently reimburse pharmacies below NADAC, in violation of Ark. Code Ann. § 23-92-509(b)(5)(A), cover approximately 340,000 Arkansas lives.

The Rule 128 data submitted to AID further shows 2,372 plans (71%) cover fewer than 25 Arkansas lives, and almost 50% of the plans cover fewer than 10 Arkansas lives. (See Figure 2). On the other end of this spectrum, only 26 plans cover more than 5,000 Arkansas lives. Of those 26 plans with more than 5,000 covered lives, 11 are within the non-compliant category and reimburse, on average, less than NADAC. Of the plans with less than 25 covered lives, 407 are within the non-compliant category and reimburse, on average, less than NADAC.

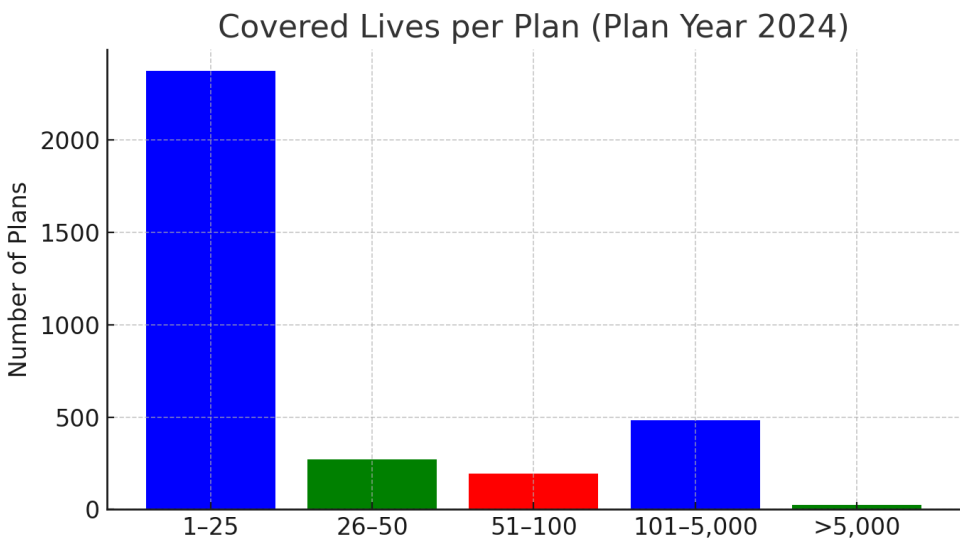
Using this data, AID is in the process of finalizing an implementation plan for a cost to dispense mandate to these 654 non-compliant plans because they represent the plans who consistently reimburse below NADAC, in violation of Arkansas law. To first address these 654 plans, AID has received input from pharmacies, health plans, and PBMs regarding the impact of a fair and reasonable cost to dispense

pursuant to Rule 128. AID’s own actuarial analysis shows potential for a premium increase on Arkansas residents of approximately 2% if Arkansas implements a cost to dispense to all plans in a similar range as other states.

Due to this, AID first seeks to implement the cost to dispense to these non-compliant plans and focus specifically on low-cost generics, which represent most prescriptions filled throughout the state. AID is in the process of preparing a narrow, data-driven remedy that applies first to the plans paying, on average, below NADAC. By directing the cost-to-dispense to these non-compliant plans, AID can raise pharmacy reimbursements to a fair level without introducing a broad, market-wide fee that could increase premiums for Arkansas families.



(Figure 1)



(Figure 2)

PBM Enforcement Actions

The PBM Division currently has eleven (11) ongoing enforcement actions against PBMs who allegedly violated various Arkansas statutes. Below is a general summary of those ongoing enforcement actions:

- Express Scripts, Inc.: a public hearing is scheduled for June 12th regarding several prescription reimbursements from July of 2024 that were paid below NADAC, in violation of Ark. Code Ann. § 23-92-506(c)(5)(A).
- Express Scripts, Inc.: a public hearing is scheduled for May 27, 2025, regarding a direct contract offered to Arkansas' pharmacies that allegedly does not comply with Ark. Code Ann. § 23-92-506(b)(5)(A), which requires reimbursements to be paid at or above NADAC.
- Express Scripts, Inc.: an enforcement action has been initiated against ESI for below NADAC reimbursements in April of 2025. ESI must pay the penalty or request a public hearing by May 27, 2025.
- Magellan: a public hearing is scheduled for May 28, 2025, regarding several prescription reimbursements from July of 2024 that were allegedly paid below NADAC, in violation of Ark. Code Ann. § 23-92-506(c)(5)(A). Settlement negotiations are ongoing, but the hearing date has not moved.
- Caremark CVS: a public hearing was scheduled for May 8, 2025, but is being rescheduled due to attorney conflicts.
- Pharmapix International, L.L.C.: an enforcement action was initiated against Pharmapix, who elected to pay a penalty of \$5,000 for below NADAC reimbursements and signed a Consent Order.
- Prime Therapeutics, L.L.C.: an enforcement action was initiated against Prime Therapeutics for below NADAC reimbursements in early 2025. Prime has initiated settlement negotiations for this violation that are ongoing.
- SaveRx: an enforcement action was initiated against SaveRx for below NADAC reimbursements. SaveRx's must pay the penalty or request a public hearing by May 29, 2025.
- OptumRx: an enforcement action was initiated against OptumRx for below NADAC reimbursements. OptumRx's must pay the penalty or request a public hearing by May 22, 2025.

- Magellan: an enforcement action has been initiated against Magellan for below NADAC reimbursements. Magellan must pay the penalty or request a public hearing by May 28, 2025.
- Navitus Health Solutions, L.L.C.: an enforcement action was initiated against Navitus for below NADAC reimbursements. Navitus must pay the penalty or request a public hearing by June 5, 2025.

Rule 128 Bulletins

In addition to AID Bulletin 18-2024, which outlines that data report requirements for Rule 128, AID issued Bulletin 2-2025 which expanded the review period for AID from twenty (20) days to sixty (60) days. This was issued after AID received most submissions and realized the need for an expanded review period.

AID will release another Rule 128 bulletin at the beginning of June which will amend the data reporting period for plan year 2025. This bulletin will also include specific guidance for both compliant and non-compliant plans related to the Rule 128 cost to dispense.