

REPORT FROM AID CONCERNING

EMERGENCY RULE 128 FAIR AND REASONABLE PHARMACY REIMBURSEMENTS

TO: Executive Committee & ALC (or now Joint Budget Committee)

FROM: Amy Seale, PBM Director, Arkansas Insurance Division (“AID”), Daniel Holland, General Counsel, PBM Division, AID.

DATE: 2-17-2025

RE: Status and Update Report on Implementation of Emergency Rule 128 & PBM Activities

CC: Marty Garrity, Jill Thayer, Alan McClain, and Kevin Anderson

This is the January report, as required by the ALC/Executive Committee, which approved AID Rule 128: *Fair and Reasonable Pharmacy Reimbursements* (“Emergency Rule 128”). Pursuant to Motion in the Executive Committee, AID is required to report on its activities related to Emergency Rule 128, including enforcement efforts and complaints related to PBM regulation.

Update on Rule 128: The deadline for reporting under Rule 128 is February 17, 2025. AID has received 208 submissions as of February 14, 2025, and is currently reviewing those submissions for accuracy. AID still anticipates several hundreds of reports to be filed on the deadline of February 17, 2025.

Update on Enforcement: AID has the following enforcement actions, active investigations, and audits currently ongoing:

(1) CVS for multiple violations below NADAC minimums in 2024. Fine settlement negotiations with counsel for CVS continue;

(2) Magellan for multiple violations of below NADAC minimums in 2024. Fine settlement negotiations with counsel for Magellan continue;

(3) ESI or Prime Therapeutics for multiple violations of below NADAC minimums in 2024. Fine settlement with local counsel for Magellan continue;

(4) General Counsel for the PBM Division has initiated an investigation into below NADAC and MAC reimbursements from January 2025, against Prime Therapeutics (Magellan), CarelonRx, MedImpact, Navitus, ProCare Rx, OptumRx, Express Scripts, and CVS Caremark.

(5) General Counsel for the PBM Division has met with representatives from the Attorney General’s Office to coordinate future enforcement actions under Arkansas’ anti-steering statutes.

(6) The two limited scope exams against Navitus and Magellan have been initiated and AID is waiting on data. The audits pertain to complaints about paying affiliate PBMs higher reimbursement rates than non-affiliates, in violation of the PBMLA.

(7) AID has authorized an industry-wide PBM examination to review affiliate pricing compliance. This was previously conducted in 2020, culminating in a report presented to Insurance

& Commerce. This is in response to Senator Dismang’s concern regarding potentially outdated data. AID will use the same outside firms used in 2020.

Upcoming Bulletins: AID will issue two bulletins in February 2025. The first is to clarify the penalty structure for below NADAC and MAC reimbursements. This bulletin will also address electronic remittances and encourage PBMs to remit payments from successful reimbursement reversals electronically instead of through physical payment. The second is a clarification Bulletin on the Pharmacy Benefit Manager Licensure Act, requiring PBMs to disclose BIN and PCN numbers as part of their licensure application.

As to complaints we have received or adjusted, we will use data from complaints received or adjusted from January of 2025:

January Totals:

BELOW NADAC CLAIMS FILED: 815

MAC ISSUES FILED: 441

OTHER ISSUES FILED: 214

BELOW NADAC CLAIMS RESOLVED BY PBM: 64

BELOW MAC CLAIMS RESOLVED BY PBM: 4

OTHER ISSUES RESOLVED: 6

NADAC INCREASE: 37

MAC INCREASE: 3

OTHER INCREASE: 11

A single prescription is considered a “claim.”