

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 specifically addressed in this Order or for facts or omissions that do not arise from the facts or transactions herein addressed.

4. The Respondent fully understands that this Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for violations of the law addressed specifically in this Order against the Respondent for violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the execution of this Order by the Respondent.

5. 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 stipulations and imposition of discipline contained herein, and the consideration and entry and execution of said Order by the Commissioner.

AUTHORITY AND JURISDICTION

6. 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

7. 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.

8. The Respondent is a pharmacy benefits manager (“PBM”) doing business in the State of Tennessee. The Respondent (License # 20) 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

9. The Division filed Tenn. Comp. R. & Regs. 0780-01-95 (“Emergency Rules”) regarding Pharmacy Benefit Managers on December 29, 2022.

10. The Emergency Rules became effective immediately upon filing with the Secretary of State pursuant to Tenn. Code Ann. § 4-5-208.

11. The Emergency Rules required all PBMs to file a temporary appeal process with the Commissioner on or before January 31, 2023.

12. Respondent’s temporary appeal process was filed with the Commissioner on February 1, 2023, making it one (1) day late.

CONCLUSIONS OF LAW

13. “A pharmacy benefits manager shall establish a process for a pharmacy to appeal a reimbursement for failing to pay at least the actual cost to the pharmacy for the prescription drug or device.” Tenn. Code Ann. § 56-7-3206(c)(2)(A).

14. “A [pharmacy benefits manager’s] appeals process established pursuant to [Tenn. Code Ann. § 56-7-3206](c)(2)(A) must . . . be approved by the commissioner of commerce and insurance [and] comply with . . . such other requirements as the commissioner of commerce and insurance may establish by rule.” Tenn. Code Ann. § 56-7-3206(c)(2)(B)(i) and (ii).

15. The Emergency Rules, promulgated under the authority of Tenn. Code Ann. § 56-7-3206(g)(1), require all PBMs to submit certain information and the required fee prior to utilizing a temporary appeal process, but in no case later than January 31, 2023. Tenn. Comp. R. & Regs. 0780-01-95.-03(9).

16. Tenn. Code Ann. § 56-2-305 states:

(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:

...

(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 this subdivision (a)(2), each day of continued violation shall constitute a separate violation.

17. Respondent's failure to have its temporary appeal process filed with and approved by the Commissioner until February 1, 2023, constituted continuing violations of Tenn. Code Ann. § 56-7-3206(c)(2)(B) and Tenn. Comp. R. & Regs. 0780-01-95-.03(9) for that period.

ORDER

IT IS THEREFORE ORDERED, pursuant to Tenn. Code Ann. § 56-2-305, that the Respondent pay a **CIVIL PENALTY** in the amount of one thousand dollars (\$1,000) for the violations of Tennessee insurance law. The first page of this Order must accompany payment for reference. Payment 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 April 3, 2023.

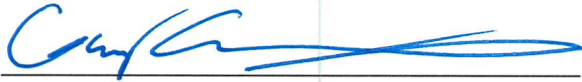

Carter Lawrence (Apr 3, 2023 15:27 CDT)
Carter Lawrence, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY AND EXECUTION:



Bill Huddleston (Mar 31, 2023 07:43 CDT)

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

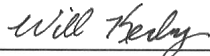


Costco Health Solutions Inc.

Name: Gary Swearingen

Title: Corporate Counsel

RESPECTFULLY SUBMITTED:



William B. Kerby III (BPR #033384)
Chief Counsel for Insurance and TennCare Oversight
500 James Robertson Parkway
Davy Crockett Tower, 12th Floor
Nashville, TN 37243
(615) 360-4358
william.kerby@tn.gov