BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

In the Matter of:

EXPRESS SCRIPTS ADMINISTRATORS, LLC

Administrative Proceeding No. 26-IC-186452

AGREED ORDER ADOPTING REPORT OF MARKET CONDUCT EXAMINATION, DIRECTING CORRECTIVE ACTION AND ASSESSING PENALTY

NOW COMES, Allan L. McVey, Insurance Commissioner of the State of West Virginia (hereinafter, "Commissioner"), and Express Scripts Administrators, LLC (hereinafter, "Express Scripts") who, after consideration of the *Report of Market Conduct Examination* (hereinafter, the "*Examination Report*") of Express Scripts have agreed to the entry of this Order.

FINDINGS OF FACT

1. The market conduct examination was conducted pursuant to W.Va. Code §§ 33-2-9, 33-51-8, 33-51-10, and W.Va. Code R. § 114-99-7. The examination focused on Express Scripts' compliance with West Virginia statutes and rules related to the company's operation as a pharmacy benefits manager ("PBM") in West Virginia. The examination was conducted by examiners appointed by the Commissioner and covered the period of January 1, 2023 through June 1, 2024.

2. On or about September 10, 2025, the examiner filed with the Commissioner, pursuant to W. Va. Code § 33-2-9, the *Examination Report*.

3. A true copy of the *Examination Report* was provided to Express Scripts and Express Scripts was notified, pursuant to W.Va. Code § 33-2-9(j)(2), that it had twenty (10) days after receipt of the *Examination Report* to file a submission or rebuttals with the Commissioner. Express

Scripts requested an additional 6 days to respond which was granted by the Commissioner. Express Scripts filed a submission/rebuttal to the *Examination Report*.

4. As set forth in the *Examination Report*, the examination focused on the methods used by Express Scripts to manage its operations for each of the areas examined, including whether and how Express Scripts complies with federal and state law regarding its operation as a PBM.

5. The examination focused on the following: PBM pricing, pharmacy audits, complaint handling, and rebates.

6. The Commissioner reviewed the *Examination Report* and considered Express Scripts' submissions/rebuttals which included objections to certain aspects of the *Examination Report*. Express Scripts does not agree with many of the findings in the *Examination* Report, but to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation in this matter and without making an admission of liability, Express Scripts agrees to the entry of this Order and waives notice of administrative hearing, any and all rights to an administrative hearing, and to judicial review of this matter.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the subject matter and the parties to this proceeding.

2. This proceeding is conducted pursuant to and in accordance with W. Va. Code §§ 33-2-9, 33-51-8 and W.Va. Code R. § 114-99-7.

3. The Commissioner is charged with the responsibility of verifying Express Scripts' continued compliance with West Virginia law.

4. The *Examination Report* found multiple violations of West Virginia law; however, Express Scripts disagrees with certain findings in said *Examination Report*.

5. A summary of the violations found in the attached *Examination Report* is set forth below.

- Pharmacy Audits: Express Scripts did not comply with W.Va. Code §§ 33-51-4(a)(11), 33-51-4(a)(13), 33-51-4(a)(14)(A) and (B), and 33-51-4(b)(6). Express Scripts recouped funds from pharmacy claims in excess of the actual financial harm associated with the dispensed product. Express Scripts also limited a pharmacy provider's use of any valid prescription and verifiable statements when an audit was performed and recouped payments immediately.
- PBM Pricing: Express Scripts did not comply with W.Va. Code § 33-51-9(e) when it failed to reimburse West Virginia pharmacies NADAC plus a dispensing fee of $10.49. The company also did not comply with W.Va. Code § 33-51-9(f) when it reimbursed its affiliated pharmacy more than non-affiliated pharmacies for the same drug.
- Rebate procedures: Express Scripts did not comply with W.Va. Code § 33-51-9(k) when it failed to pass through 100% of all rebates it received, directly or indirectly, in connection with the dispensing or administration of prescription drugs at the point of sale.
- Pharmacy Provider Relations & Claims: Express Scripts did not comply with W.Va. Code §§ 33-51-9(i), 33-51-11(a)(3), 33-51-9(c), and 33-59-1(e). Express Scripts required independent pharmacies to pay credentialing fees, assessed transaction fees to pharmacies, and derived revenue from pharmacies for performing PBM services. Express Scripts placed requirements on submitting 340B drugs that do not align with the West Virginia Code. Furthermore, in 191 claims, Express Scripts assessed a cost share amount greater than $35.00 for a 30-day supply of insulin in violation of West Virginia law.

- Network Adequacy: Express Scripts did not comply with W.Va. Code §§ 33-51-11(b), 33-55-4(a)(2)(A), and 33-55-4(a)(2)(B) and W.Va. Code R. §§ 114-100-7.3, 114-100-7.4, and 114-100-7.5. The company failed to notify in writing all pharmacies within the geographical coverage area of the health benefit plan and offer pharmacies the opportunity to participate as required by West Virginia Code. Further, the company failed to provide evidence that its online provider directories were updated as required or that periodic audits of the directories were performed.
- Company Operations and Management and Complaints: The company failed to comply with W.Va. Code §§ 33-2-9(i) and 33-51-8(e) by not providing a timely response to initial finding number 11 (Transactions fees) and failing to produce the GPO agreement in its unredacted form and not producing readily accessible and efficient rebate invoicing in its entirety. Further, the company was uncooperative and failed to provide timely responses to the Commissioner's examiners. These failures resulted in substantial delays to the examination. The company did not comply with W.Va. Code R. § 114-14-5.2 when it failed to respond to administrative complaints.
- Formulary: The company did not comply with W.Va. Code § 33-51-11(a)(7) by unreasonably designating certain drugs as specialty.

6. The Commissioner has determined that Express Scripts should be assessed a monetary penalty for violating the law as summarized above and set forth in detail in the *Examination Report.*

ORDER

Pursuant to W.Va. Code §§ 33-2-9(j)(3)(A), following the review of the *Examination Report*, the examination work papers, and Express Scripts' response thereto, the Commissioner and Express Scripts, without making an admission of liability, have agreed to enter into an Agreed Order adopting the *Examination Report* and the imposition of an administrative penalty as set forth below. It is accordingly **AGREED** and **ORDERED** as follows:

1. The referenced and attached *Examination Report* is hereby **ADOPTED** and **APPROVED, with the following modification**: Findings 18, 19, 20, and 21 are not adopted and shall not be found to be violations against Express Scripts, but rather, are findings that are applicable to the relevant insurer or insurers with whom Express Scripts contracted to provide PBM services, and with this modification, the *Examination Report* is incorporated herein and made a part hereof.

2. Express Scripts shall endeavor to comply with the recommendations contained in the *Examination Report.*

3. Express Scripts shall continue to monitor its compliance with applicable West Virginia law.

4. Express Scripts shall specifically cure the violations and deficiencies identified in the *Examination Report* so as to bring itself into compliance and conformity with West Virginia law, to the extent such has not already been completed and/or accomplished.

Express Scripts shall review all of the identified claims (covering the period of the *Examination Report*) paid to West Virginia pharmacies below NADAC plus a professional dispensing fee of $10.49 and pay the identified underpayments to the respective pharmacies or

pharmacists, including payment for the amount of any consumer cost share adjustments that occurred when applying the requirements of W.Va. Code § 33-51-9(e) (2022), plus interest within thirty (30) days of the date this Agreed Order is entered. Pursuant to W.Va. Code R. § 114-99-8.5.10, Express Scripts shall pay interest, at a rate of the U.S. Prime Rate per annum, as calculated from the date the payment to the pharmacy was initially due or should have been made;

Within 30 days of reimbursing all pharmacies or pharmacists, Express Scripts shall file a report with the Commissioner's PBM Unit setting forth the amount of reimbursement to each pharmacy and verifying that each pharmacy or pharmacist has been properly paid.

5. Express Scripts will file a Corrective Action Plan (CAP), subject to the approval of the Commissioner, which said CAP shall detail Express Scripts' changes to its procedures and/or internal policies to ensure compliance with West Virginia law and shall further incorporate all recommendations of the Commissioner's examiners and address all violations specifically cited in the *Examination Report.*

6. The CAP shall be submitted to the Commissioner for his approval within 30 days of the date this order is entered.

7. Express Scripts shall make reasonable changes to the CAP if and as directed by the Commissioner within 30 days of its receipt of the Commissioner's changes to, or disapproval of, the CAP.

8. Express Scripts shall, within 90 days of its receipt of notice from the Commissioner of his final approval thereof, implement the CAP.

9. Express Scripts shall pay an administrative penalty in the amount of One Million Five Hundred Thousand Dollars ($1,500,000.00) for the findings as set forth hereinabove and detailed

in the *Examination Report*, the assessment of which penalty is in lieu of any other regulatory penalty and shall be remitted within 30 calendar days of the date this order is entered.

10. It is AGREED and ORDERED that all such statutory notices, administrative hearings and appellate rights are herein waived by Express Scripts concerning this Report of Market Conduct Examination and Agreed Order.

Entered this 2nd day of March, 2026.

Allan L. McVey
CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner

REVIEWED AND AGREED TO BY:

On behalf of the Insurance Commissioner:

Jeffrey C. Black, Attorney Supervisor
Regulatory Compliance and Enforcement

On behalf of Express Scripts Administrators, LLC:

By: Adam Stacy
Print Name

Title: SVP Enterprise Network Strategy & Solutions

Signature: _____

Date: March 2nd, 2026

WEST VIRGINIA OFFICES OF THE INSURANCE COMMISSIONER

REPORT OF MARKET CONDUCT EXAMINATION

OF

EXPRESS SCRIPTS ADMINISTRATORS, L.L.C.

AS OF AUGUST 4, 2025

MARKET CONDUCT EXAMINATION REPORT

DATE OF EXAMINATION:	May 1, 2024, through August 4, 2025
EXAMINATION OF:	Express Scripts Administrators, L.L.C.
LOCATION:	One Express Way St. Louis, MO 63121
PERIOD COVERED:	January 1, 2023, to June 1, 2024
EXAMINERS:	Jacqueline Cooper George Lentini Toni Bean June Coleman Maureen Hicks Tony Taylor Steven Gloc Nicholas Kalargyros Jennifer Hopper Tyler Young Trevor Strenchock Matthew Sankey Lisa Crump, Co-Examiner-in-Charge Amanda Brandis, Examiner-in-Charge Shelly Schuman, Supervisory Insurance Examiner

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SALUTATION

September 10, 2025

The Honorable Allan L. McVey, CPCU, ARM, AAI, AAM, AIS
West Virginia Insurance Commissioner
900 Pennsylvania Ave.
Charleston, West Virginia 25302

Pursuant to the authority vested in the West Virginia Offices of the Insurance Commissioner, through W. Va. Code §33-2-9 and §33-24-4, a market conduct examination has been made of:

Express Scripts Administrators, L.L.C.

One Express Way
St. Louis, MO 63121

The following examination report is respectfully submitted.

I. IMPACTS

A. FAILURE TO FACILITATE/LACK OF COOPERATION

1. Vertical integration has allowed the large healthcare companies to control many steps of the pharmaceutical supply chain. The pharmacy benefits manager has ownership or affiliation through its parent company with health care payors, rebate aggregators/group purchasing organizations ("GPO"), mail order pharmacies, specialty pharmacies, and wellness programs. The complexity of these models has created a challenge for regulatory authorities attempting to understand and employ regulatory oversight. Express Scripts Administrators, L.L.C. ("PBM" or "Express Scripts") obstructed access to books and records and utilized delays, redactions, mandatory disclosure of materials in an onsite setting, refusal to provide books and records in an electronic form and other evasive measures (i.e. vague and partial responses) throughout the examination.

2. The PBM failed to provide a complete response to a finding in a timely manner despite two extensions. This resulted in delays and inefficiencies in the examination.

3. The PBM failed to produce the GPO participation agreement in its unredacted form and failed to produce a readily accessible and efficient rebate invoicing in its entirety during an onsite visit which resulted in substantial delays and added inefficiencies to the examination.

B. CONSUMER RELATED IMPACTS

1. The PBM assessed cost sharing amounts greater than $35.00 for one or more insulin drugs per 30-day supply. A total of 79 members were assessed cost sharing amounts greater than $35.00 for a single product of insulin which totaled overpayments by members of $10,105.69. Additionally, members were reconciled for the overpayments, on average, 226 days after the date of service of the dispensed prescription. When reconciled, the PBM failed to explain the error and communicate the reason for the check payment to members.

2. The PBM limited a beneficiary's access to medications by unreasonably designating the covered prescription drug as a specialty drug. By designating a total of 80 prescription drugs to members enrolled in health benefits provided by a health care payor and 43 prescription drugs to members enrolled in health benefits provided by another health care payor, members were restricted from accessing those medications at retail pharmacies. Additionally, the inappropriate tiering of these medications resulted in higher copays and coinsurance. These medications did not meet the definition of specialty drug provided in the W. Va. code.

3. The PBM imposed quantity limitations and other prospective utilization requirements on substance use medications that would limit a member's access to medically necessary treatment. Members requiring treatment with brand name medications, Suboxone and Lucemyra, were required to navigate a non-formulary exception request which is prohibited by the W. Va. code. Additionally, members requiring treatment of higher dosages of buprenorphine or buprenorphine/naloxone for substance use disorder had to

obtain a prior authorization/quantity limit exception in order to obtain the medically necessary dosage. The prospective utilization requirements lead to barriers and delays in medically necessary treatment and care.

4. The PBM reimbursed itself more for prescription drugs than other pharmacies in the state of W. Va. Because of this, on some prescription drug claims, consumers had higher copays and/or costs when utilizing a PBM owned mail order or specialty pharmacy over a W. Va. pharmacy to fill prescription drugs.

5. The PBM excluded a point-of-sale rebate to beneficiaries that chose a 340B pharmacy to dispense their medication, even though it was not a 340B claim. Depending on the manufacturer of the medication, the rebate agreements outlined claims that were ineligible for point-of-sale rebates and one of the exclusions listed was 340B pharmacies. The patient is negatively impacted by the rebate agreement when his or her pharmacy of choice is a 340B pharmacy and the patient is unable to benefit from a point-of-sale rebate that would be eligible at a non-340B pharmacy.

6. The PBM failed to pass through all rebates including fees and discounts received, directly or indirectly, in connection with the dispensing or administration of a prescription drug. Failure to comply with the W. Va. code leads to higher overall health care costs for beneficiaries.

7. The PBM failed to prove that it updates its electronic provider directories at least monthly as required by W. Va. code. Consumers need accurate, up-to-date information to choose in-network pharmacy providers.

8. The PBM did not provide evidence that it conducts periodic audits of its provider directories as required by W. Va. code. Because of this, consumers could potentially view inaccurate information when seeking in-network pharmacy providers on the PBM's online "Find a Pharmacy" tool.

9. The PBM did not respond to West Virginia Offices of the Insurance Commissioner ("WVOIC") complaints affecting consumers within the required 15 working days. Consumers' ability to obtain required medication is impacted by the PBM's late responses to these complaints.

10. Appeals conducted by the PBM failed to place titles and credentials of the person(s) participating in the first level review process of an appeal decision.

C. PHARMACY RELATED IMPACTS

1. The PBM failed to pay the pharmacies at the mandated pricing which led to the under reimbursement of prescription drugs. The total number of claims impacted by the lower reimbursement was more than 19,543 claims in 2023 and 9,990 claims in the first and second quarters of 2024.

2. The PBM required independent pharmacies to pay a pharmacy enrollment application fee in order to participate in a health benefit plan. The fee is assessed and non-refundable

regardless of denial or approval of the application. Furthermore, every three years the W. Va. independent pharmacy was required to pay additional fees based on the timeline to recredential. The application fee and recredentialing fee imposed on independent pharmacies is more stringent than legislative rules of the Board of Pharmacy and not in compliance with W. Va. Code §33-51-11(a)(3). Additionally, an individual chain pharmacy was not required to pay the application or recredentialing fee prior to joining the network.

3. The PBM implemented pharmacy audit procedures that are not in compliance with W. Va. Code §33-51-4. The W. Va. code outlines specific procedures that may not be more stringent when conducting a pharmacy audit. Below are key areas in which the PBM overstepped its authority during a pharmacy audit.
   a. The PBM did not allow specific documentation for prescription drug claims to be used during a pharmacy audit. The documentation criteria did not align with the W. Va. code and imposed restrictive guidelines on pharmacies during an audit.
   b. The PBM implemented a policy that assesses noncompliance fees within pharmacy audits and/or investigations. The fees are in addition to any discrepant claim recoupment amounts. The PBM may not maintain or administer a policy that communicates to pharmacy providers any noncompliance fees in addition to the actual financial harm associated with the dispensed product.
   c. The PBM implemented a policy within the provider manual that recouped payment amounts from pharmacy claims immediately if a pharmacy provider is deemed noncompliant amidst a pharmacy audit and/or investigation. The PBM may not collect any penalties resulting from pharmacy audits until the time to file an appeal of the final pharmacy audit report has passed or the appeals process has been exhausted.

4. The PBM recouped funds as a result of pharmacy audits that were in excess of the actual financial harm associated with the dispensed product. The PBM overstepped its authority when conducting pharmacy audits and recouped funds from pharmacies on high priced medications. Some of the prescription errors that resulted in recoupments had no financial harm to the consumer or the PBM and are not compliant with the W. Va. code.

5. The PBM included dispensing fees in the calculation of overpayments during pharmacy audits. A dispensing fee is an additional payment to pharmacies to cover the costs associated with preparing and dispensing the drug. These fees cover the pharmacist's professional services, overhead costs, and the expenses of maintaining the pharmacy. The PBM violated the W. Va. code by recouping dispensing fees from W. Va. pharmacies when prohibited.

6. The PBM required 340B W. Va. pharmacy providers to submit a National Council for Prescription Drug Programs ("NCPDP") values to identify claims using pharmaceutical inventory purchased under Section 340B pricing. There were complaints within the scope of the examination highlighting that the PBM has made outreaches to W. Va. pharmacies to reclassify 340B eligible claims. Unsuccessful outreaches would result in automatic reclassification of claims by the PBM. The policy was found in the Provider Manual. Pharmacy providers rely on the issued Provider Manual to ensure appropriate pharmacy practices and maintain status with the PBM network. Failure to abide by the contractually agreed upon services and terms in the Provider Agreement and policies and procedures

within the Provider Manual can lead to penalties, termination of the agreement, and removal from the network.

7. The PBM unreasonably designated covered prescription drugs as specialty drugs. By designating a total of 80 prescription drugs to members enrolled in health benefits provided by a health care payor and 43 prescription drugs to members enrolled in health benefits provided by another health care payor, retail pharmacies were restricted from dispensing the medications to members. These medications did not meet the definition of specialty drug provided in the W. Va. code.

8. The PBM assessed transaction fees to pharmacy providers for the use of the PBM's claims transmission system. It is prohibited to derive any revenue from a pharmacy in connection with performing PBM services. The PBM provided paid claims data that assessed transaction fees on 1,479 claims with a transaction fee as high as $2.25 per claim. Additionally, the provider manual stated, "Network Provider shall be solely responsible for expenses, costs, charges, and fees relating to transmitting claims." The transaction fee imposed on W. Va. pharmacies increased the cost of dispensing medications to members.

9. The PBM failed to prove that it updates its electronic provider directories at least monthly and failed to provide evidence that it periodically audits its online provider directories as required by W. Va. code. It stated that, "All network pharmacies contracted with Express Scripts have an ongoing obligation to provide current and accurate information in a timely manner," placing the responsibility of keeping the PBM's directory on the contracted network pharmacies, which increases the workload on pharmacies.

10. The PBM did not notify, in writing, all pharmacies of new health benefit plans entering a county in W. Va. and did not offer the opportunity to participate in the health benefit plan. As a result, pharmacies were unable to identify a need to participate in a plan entering the county.

D. HEALTH CARE PAYOR IMPACTS

1. The PBM reimbursed itself more for prescription drugs than other pharmacies in the state of W. Va. Because of this, on some prescription drug claims, health care payors had higher costs when a member utilized a PBM owned mail order or specialty pharmacy over a W. Va. pharmacy to fill prescription drugs.

2. The PBM did not pass through 100% of all rebates including, but not limited to, discounts and fees received, directly or indirectly, in connection with the dispensing or administration of a prescription drug to the health care payor. The failure to pass through rebates led to increased prescription drug costs for the health care payor.

3. Appeals conducted by the PBM failed to place titles and credentials of the person(s) participating in the first level review process of an appeal decision.

4. The PBM did not notify, in writing, all pharmacies of new health benefit plans entering a county in W. Va. and did not offer the opportunity to participate in the health benefit

plan. This could potentially decrease a health care payor's network adequacy requirements.

5. Health care payors are routinely audited through market conduct examinations and held responsible for findings associated with formulary design. The PBMs use their own Pharmacy and Therapeutics ("P & T") Committee and rebate negotiations to create a templated formulary design. Any changes made to the PBM's template formulary produced additional costs to the health care payor. The PBM's formulary design resulted in multiple violations of state rules and regulations. The non-compliant formulary designs cause the health care payor to incur most of the financial risk when violations present through market conduct examinations.

E. OTHER IMPACTS

1. The rebate aggregator/GPO, Ascent Health Services, administers rebate negotiation on behalf of the PBM. Pharmacy benefit management defined in the W. Va. code includes administering rebate contracts. The affiliated GPO operates as a PBM, but it is not licensed as a PBM in the state of W. Va.

II. SCOPE OF THE EXAMINATION

The WVOIC has the authority to conduct an examination pursuant to, but not limited to, W. Va. Code §33-2-9 and §33-24-4. This is a market conduct examination report ("Report") of the PBM. The examination was conducted at authorized onsite and offsite locations.

The purpose of the examination was to determine if the PBM complied with the W. Va. code and federal statutes, rules, and regulations, and to consider whether the PBM's operations are consistent with the public interest. The examination period covered by this review was January 1, 2023, to June 1, 2024, unless otherwise noted. Errors outside of this time discovered during the examination, however, may also be included in the Report.

The examiners cited errors made by the PBM. Statutory citations were as of the examination period. However, failure to criticize specific practices, procedures or files does not constitute approval thereof by the WVOIC.

The examination involved the lines of business of fully insured commercial group and individual health insurance in this examination.

The scope of this examination focused on a review including the following areas: company operations and management, network adequacy, provider/pharmacy relations, rebates, PBM pricing, pharmacy audits, consumer complaints, grievances, and appeals, pharmacy claims, drug utilization review, and formulary design and drug placement.

In performing this examination, the examiners reviewed a sample of the PBM's practices, procedures, products, and files. Therefore, some noncompliant events may not have been discovered. As such, this Report may not fully reflect all the practices and procedures of the PBM. As indicated previously, failure to identify or criticize improper or noncompliant business practices in this state or other jurisdictions does not constitute acceptance of such practices.

III. SUMMARY OF FINDINGS

The following table represents general findings with specific details in each section of the Report.

TABLE OF TOTAL VIOLATIONS				
Finding	Finding #	Statute/Rule	Description of Violation	Violations Quantified
Complaints, Grievances, and Appeals-WVOIC Complaints	2	W. Va. Code R. §114-14-5.2	Failed to respond to WVOIC complaints within fifteen (15) working days of the date appearing on the inquiry.	Ten of 32 (31%) WVOIC complaints reviewed
Pharmacy Audits-Noncompliance Fees	3	W. Va. Code §33-51-4(a)(13)	Implemented a policy that assesses noncompliance fees within pharmacy audits and/or investigations. The fees are in addition to any discrepant claim recoupment amounts.	N/A
Pharmacy Audits-Recoupments	4	W. Va. Code §33-51-4a(13)	Recouped funds from pharmacy claims in excess of the actual financial harm associated with the dispensed product or portion of the dispensed product.	19 of 50 (38%) audits reviewed
Pharmacy Audits-Audit Documentation	5	W. Va. Code §33-51-4a(14)(A)(B)	Implemented a policy which limits a pharmacy provider's use of any valid prescription and verifiable statements or records when a pharmacy audit is performed.	N/A
Pharmacy Audits-Audit Fee Recoupment Time	6	W. Va. Code §33-51-4b(6)	Implemented a policy that recoups payment amounts from pharmacy claims immediately if a pharmacy provider is deemed noncompliant amidst a pharmacy audit and/or investigation.	N/A
Network Adequacy-Online Directory Updates	7	W. Va. Code §33-55-4(a)(2)(A) and W. Va. Code R. §114-100-7.3	Failed to provide evidence that its online provider directories were updated on a monthly basis.	N/A
Network Adequacy-Online Directory Audits	8	W. Va. Code §33-55-4(a)(2)(B), W. Va. Code R. §§114-100-7. 4 and 7.5	Failed to provide evidence that it conducts periodic audits of its provider directories.	N/A
PBM Pricing-Pharmacy Reimbursement	9	W. Va. Code §33-51-9(e)	Failed to reimburse West Virginia pharmacies at NADAC + a professional dispensing fee of $10.49 or WAC + $10.49 dispensing fee, if NADAC pricing is not available at the time a drug is administered or dispensed.	29,533 paid claims

Pharmacy Provider Relations-Onboarding, Enrollment, and Credentialling Fees	10	W. Va. Code §§33-51-9(i)(2)(C) and 33-51-11(a)(3)	Required independent pharmacies to pay a $500.00 pharmacy initial credentialing fee in order to participate in a health benefit plan network and required the pharmacy to recredential every three years and pay a $150.00, $300.00, or $600.00 fee at the time of recredentialing, depending on the timeliness of the application submission from the date of solicitation. The PBM may not derive revenue from pharmacies in connection with performing PBM services.	N/A
Pharmacy Claims-Transaction Fees	11	W. Va. Code §33-51-9(i)(1)(2)	Assessed transaction fees to pharmacy providers for the use of the PBM's claims transmission system. The PBM may not derive any revenue from a pharmacy in connection with performing PBM services.	1,479 claims
Pharmacy Provider Relations-340B Claims	12	W Va. Code §33-51-9(c)	Required 340B pharmacy providers that bill claims using pharmaceutical inventory purchased under Section 340B pricing to identify the claims using NCPDP values. The Express Scripts Network Provider Manual outlines specific details related to general claims submission and the requirements to submit a 340B drug which do not align with the W. Va. code.	N/A
Network Adequacy-New Plans and Pharmacy Notification	13	W. Va. Code §33-51-11(b)	Failed to notify, in writing, all pharmacies within the geographical coverage area of the health benefit plan and offer to the pharmacies the opportunity to participate in the health benefit plan at least 60 days prior to the effective date of the plan.	N/A
Consumer Complaints, Grievances, and Appeals-Consumer Appeals	14	W. Va. Code R. §114-96-5.8.a	Failed to include in its issued appeal decisions the titles and qualifying credentials of the person (or persons) participating in the first level review process.	47 of 47 (100%) of appeals reviewed

Company Operations and Management-Delay of Response/Failure to Facilitate	15	W. Va. Code §§33-51-8(e) and 33-2-9(i)	Failed to provide a timely complete response to Initial Finding 011-Transaction Fees. The PBM's inability to provide a complete final response to the initial finding in a timely manner and despite two extensions has resulted in delays and inefficiencies in the examination.	N/A
Pharmacy Audits-Dispensing Fee Recoupments	16	W. Va. Code §33-51-4(a)(11)	Included dispensing fees in the calculation of overpayments during pharmacy audits.	Two of 50 (4%) audits reviewed
Formulary and Drug Placement Information-Specialty Medication Tiering	17	W. Va. Code §33-51-11(a)(7)	Limited access to prescription medications by unreasonably designating covered prescription medications as specialty medications on formularies administered.	Formulary #1 – 80 drugs Formulary #2 – 43 drugs
Formulary and Drug Placement Information-Pharmacy Formulary	18	W. Va. Code §§33-16-3cc(k) and 33-25A-8r(k)	Administered a formulary that required a member to obtain prior authorization/non-formulary coverage exception, a prospective utilization management requirement for Lucemyra, a substance use disorder medication, on all formularies utilized by a health care payor.	N/A
Formulary and Drug Placement Information-Pharmacy Formulary	19	W. Va. Code §§33-16-3cc(k) and 33-25A-8r(k)	Administered a formulary that required a member to obtain prior authorization/non-formulary coverage exception, a prospective utilization management requirement, for Suboxone, a substance use disorder treatment, when medically necessary on all formularies used by a health care payor.	N/A
Formulary and Drug Placement Information-Pharmacy Formulary	20	W. Va. Code §§33-16-3cc(k) and 33-25A-8r(k)	Administered a formulary that imposed quantity limitations, a prospective utilization management requirement, on buprenorphine tablets, which are indicated for the treatment of opioid dependence, in its benefit design utilized by a health care payor.	N/A

Formulary and Drug Placement Information-Pharmacy Formulary	21	W. Va. Code §§33-16-3cc(k) and 33-25A-8r(k)	Administered a formulary that imposed quantity limitations, a prospective utilization management requirement, on buprenorphine/naloxone products, which are indicated for treatment of opioid dependence, in its benefit design utilized by a health care payor.	N/A
Company Operations and Management-Failure to Facilitate-Onsite	23	W. Va. Code §§33-51-8(e) and 33-2-9(i)	Failed to produce the GPO participation agreement in its unredacted form and failed to produce readily accessible and efficient rebate invoicing in its entirety during an onsite visit which resulted in substantial delays and added inefficiencies to the examination.	N/A
Rebates-Pass Through	25	W. Va. Code §33-51-9(k)	Failed to pass inflation payments onto health care payors as part of the rebate and provide evidence that 100% of all rebates including, but not limited to, discounts and fees received, directly or indirectly, were passed through at point of sale in connection with the dispensing or administration of a prescription drug.	N/A (unable to quantify since the accuracy of the data received was unable to be verified onsite)
Rebates-340B Exclusions	26	W. Va. Code §§33-51-9(d), 33-51-9(k), and 33-51-11(a)(5)	Excluded a point-of-sale rebate to beneficiaries that chose a 340B pharmacy to dispense their medication, even when it was not a 340B claim.	N/A (unable to quantify since the accuracy of the data received was unable to be verified onsite)
Pharmacy Claims-Insulin Cost Share 2024	27	W. Va. Code §33-59-1(e)	Assessed cost sharing amounts greater than $35.00 for one or more insulin drugs, per 30-day supply.	191 claims affecting 79 members with overpayments equaling $10,105.69
Pharmacy Claims-Affiliate Reimbursement	28	W. Va. Code §33-51-9(f)	Reimbursed its affiliates more for the same prescription drug than non-affiliated pharmacies within the PBM network.	2023 Q1 – 553 Medications 2024 Q1– 381 Medications

Company Operations and Management-Failure to Facilitate-Delays and Communication	29	W. Va. Code §§33-51-8(e) and 33-2-9(i)	Failed to provide timely responses to the information requested in the coordinator handbook and follow-up information requests. From the beginning of the examination, the PBM exhibited patterns of behavior involving lack of communication and delays. The PBM was uncooperative in providing timely communication informing the examination team that its responses to IRs would be delayed. The PBM failed to respond to the team's attempts to schedule various meetings essential to determining compliance with state code. This resulted in substantial delays and inefficiencies in the examination.	50 total instances of late responses and/or acknowledgment of meeting requests

IV. COMPANY BACKGROUND

- 1986 – Express Scripts, Inc. was founded in St. Louis, Missouri.
- 1992 – Express Scripts, Inc. became a publicly traded entity incorporated in Delaware.
- 2012 – Express Scripts, Inc. acquired Medco Health Solutions, Inc. The merged entity, Express Scripts Holding Company (ESHC), became the publicly traded entity and Express Scripts, Inc. was no longer publicly traded.
- 2013 – Medco Health, LLC, a subsidiary of Medco Health Solutions, Inc. and now part of ESHC, was renamed Express Scripts Administrators, LLC (ESA). The Company made the decision to maintain ESA as the PBM, rather than Express Scripts, Inc.
- 2018 – ESHC was acquired by Cigna Corporation.
- 2020 – ESHC was renamed Evernorth Health, Inc.
- 2020 – Express Scripts Administrators, LLC was licensed as a PBM in West Virginia.
- 2023 – Cigna Corporation was renamed The Cigna Group.

V. METHODOLOGY

This market conduct examination placed emphasis on the PBM's systems, procedures, and contractual agreements used in operation with health care payors, pharmacies, members and other affiliated entities. The commercial group and individual health insurance lines of business were reviewed in this examination. Self-funded or Medicare/Medicaid plans were not reviewed.

The scope of the examination included, but was not limited to, the following market conduct areas:

- Operations and Management
- Network Adequacy
- Pharmacy Provider Relations
- Rebates
- PBM Pricing
- Pharmacy Audits
- Consumer Complaints, Grievances, and Appeals
- Pharmacy Claims
- Drug Utilization Review
- Formulary Design and Drug Placement Information

The review of these categories was accomplished through examination of material related to the business functions, as well as interviews with various PBM personnel and PBM responses to the coordinator's handbook ("CHB"), information requests ("IR"), observations, and findings. Each of the categories listed above was examined for compliance with W. Va. code and federal statutes, rules, and regulations.

Sample selection was completed in accordance with the NAIC market regulation handbook.

Operations and Management

A review was conducted of the PBM's privacy and antifraud policies and procedures, contracts with pharmacies, health care payors and third-party vendors, voluntary accreditation programs, internal audits, new plans, source data, and advertisements. Complete health care payor and pharmacy contracts were only provided onsite. These documents were reviewed for compliance with W. Va. codes, rules, and regulations. Exceptions and an observation are noted in the Report.

Network Adequacy

The PBM was requested to provide lists of all networks offered and of all pharmacies requesting access to any pharmacy network, identification of underserved areas, notification to pharmacies of new plans, and policies and procedures demonstrating pharmacy network adequacy and online directory updates. These documents and responses to IRs were received and reviewed for compliance with W. Va. codes, rules, and regulations. Exceptions are noted in the Report.

Pharmacy Provider Relations

The PBM was requested to provide policies and procedures or other documentation demonstrating its procedures for new pharmacy onboarding, credentialing and re-credentialing, provider relations projects/logs, a list of all pharmacies terminated during the examination period, all provider manuals and policies and procedures for provider manual development. These

documents, files, and responses to IRs were received and reviewed for compliance with the W. Va. codes, rules, and regulations. Exceptions are noted in the Report.

Rebates

The PBM was requested to provide policies and procedures related to rebate processing, rebate crediting at the point of sale, as well as a comprehensive list of the rebates paid in West Virginia. The PBM provided information related to rebate operations associated with the GPO, Ascent Health Services, as well as contracts, agreements, and invoices with pharmaceutical manufacturers. Most information was incomplete and/or only provided onsite with redactions. These documents, files, and responses to IRs were received and reviewed for compliance with the W. Va. codes, rules, and regulations. Exceptions are noted in the Report.

PBM Pricing

The PBM was requested to provide a list of all charges, fees, or other revenue collected from health care payors and pharmacy providers. The request also included specific details related to pharmacy claim reimbursement, rate guarantees and other pricing methodology as well as policies and procedures for pharmacy reimbursement appeals. These documents, files, and responses to IRs were received and reviewed for compliance with the W. Va. codes, rules, and regulations. An exception is noted in the Report.

Pharmacy Audits

The PBM was requested to provide policies and procedures utilized for conducting pharmacy audits, a list of all pharmacy onsite and desk audits with results, a list of pharmacy appeals to an audit, and, if a third-party entity conducted audits, a copy of the auditing entity registration. The PBM also provided work papers associated with pharmacy audits. These documents, files, and responses to IRs were received and reviewed for compliance with the W. Va. codes, rules, and regulations. Exceptions are noted in the Report.

Consumer Complaints, Grievances, and Appeals

The PBM was requested to provide all clients for which it maintains responsibility for responding to complaints, grievances, and appeals and policies and procedures related to complaints, grievances, appeals, expedited appeals, and appeals communication. The PBM was also requested to identify direct consumer complaints, WVOIC complaints, complaints from the health care payors, and consumer appeals. These documents, files, and responses to IRs were received and reviewed for compliance with the W. Va. codes, rules, and regulations. Exceptions and observations are noted in the Report.

Pharmacy Claims

The PBM was requested to provide policies and procedures related to pharmacy claims processing, mental health parity, cost sharing requirements for preventive services, and payments in excess of applicable cost-sharing amount or retail drug price. The PBM was also requested to provide a list of all paid and rejected claims and claims recoupment data. These documents, files, interviews with the PBM, and responses to IRs were received and reviewed for compliance with the W. Va. codes, rules, and regulations. Exceptions are noted in the Report.

Drug Utilization Review

The PBM was requested to provide policies and procedures demonstrating that it establishes and maintains a drug utilization review ("DUR") program, provides written notice of adverse

determination, monitors activities of third-party DUR organizations, and peer review requests. It was also asked to provide a list of medications for which blanket pre-authorizations are required, utilization management and/or drug utilization review committee meeting minutes, and other DUR data. These documents were received and reviewed for compliance with the W. Va. codes, rules, and regulations. No exceptions are noted in the Report.

Formulary Design and Drug Placement Information

The PBM was requested to provide all formularies used by the health care payors, P & T committee meeting minutes, a list of any other committees that make drug placement suggestions/ determinations, drug utilization management policies and procedures, details of mail order medications and of 90-day supply medications, financial incentives, and compliance reward programs. The data provided included policies and procedures utilized by the PBM when determining prior authorization, step therapy, and other prospective utilization management techniques. These documents, files, and responses to IRs were received and reviewed for compliance with the W. Va. codes, rules, and regulations. Exceptions are noted in the Report.

VI. FINDINGS

A. OPERATIONS AND MANAGEMENT

1. Delay of Response/Failure to Facilitate
   Finding #15 - The PBM did not comply with W. Va. Code §§33-51-8(e) and 33-2-9(i) when the PBM failed to provide a timely complete response to Initial Finding 011-Transaction Fees. The PBM's inability to provide a complete final response to the initial finding in a timely manner and despite two extensions has resulted in delays and inefficiencies in the examination.

2. PBM Licensing
   Oberservation #4 - The PBM did not comply with W. Va. Code §33-51-8(a) when it allowed entities to perform PBM related functions as defined on its behalf without proper license by W. Va. Code §33-51-3. The entities not properly licensed were:
   - Express Scripts, Inc. ("ESI"),
   - Ascent Health Services,
   - Econdisc Contracting Solutions, LLC,
   - Care Continuum, Inc.,
   - eviCore healthcare MSI, LLC (DBA eviCore healthcare), and
   - Express Scripts Utilization Management Co.

3. Onsite/Failure to Facilitate
   Finding #23 - The PBM did not comply with W. Va. Code §§33-51-8(e) and 33-2-9(i) when it failed to produce the GPO Participation Agreement in its unredacted form during an onsite visit by the examination team. The redaction and restrictions were not disclosed prior to the onsite visit. This resulted in substantial delays and added inefficiencies to the examination.

4. Delays and Communication/Failure to Facilitate
   Finding #29 - The PBM did not comply with W. Va. Code §§33-51-8(e) and 33-2-9(i) when the PBM failed to provide timely responses to the information requested in the CHB and follow-up IRs. From the beginning of the examination, the PBM exhibited patterns of behavior involving lack of communication and delays. The PBM was uncooperative in providing timely communication informing the examination team that its responses to IRs would be delayed. The PBM failed to respond to the team's attempts to schedule various meetings essential to determining compliance with state code. This resulted in substantial delays and inefficiencies in the examination.

5. Self-Reporting
   There were no findings regarding self-reporting. However, there was an observation noted.
   a. Observation #3- The PBM did not self-report non-compliance with W. Va. Code §33-59-1(e) when it discovered its coding logic needed updating to ensure compliance with the insulin cost share cap. The PBM was aware of the coding logic issue during this active examination but did not report it to the WVOIC or the examination team until the examination team requested a meeting to discuss insulin claims. The PBM

should follow good business practice when it discovers non-compliance issues and self-report them to regulators.

B. NETWORK ADEQUACY

1. Online Directory Updates
Finding #7 - The PBM did not comply with W. Va. Code §33-55-4(a)(2)(A) and W. Va. Code R. §114-100-7.3 when it failed to provide evidence that its online provider directories were updated on a monthly basis.

2. Online Directory Audits
Finding #8 - The PBM did not comply with W. Va. Code §33-55-4(a)(2)(B) and W. Va. Code R. §§114-100-7. 4 and 7.5 when it failed to provide evidence that it conducts periodic audits of its provider directories.

3. New Plans and Pharmacy Notification
Finding #13 - The PBM did not comply with W. Va. Code §33-51-11(b) when it failed to notify, in writing, all pharmacies within the geographical coverage area of the health benefit plan and offer to the pharmacies the opportunity to participate in the health benefit plan at least 60 days prior to the effective date of the plan.

C. PHARMACY PROVIDER RELATIONS

1. Onboarding, Enrollment, and Credentialling Fees
Finding #10 - The PBM did not comply with W. Va. Code §§33-51-9(i)(2)(C) and 33-51-11(a)(3) when requiring independent pharmacies to pay a pharmacy initial credentialing fee in order to participate in a health benefit plan network. Furthermore, the PBM required the pharmacy to recredential every three years and pay fees at the time of recredentialing, depending on the timeliness of the application submission from the date of solicitation. The PBM may not derive revenue from pharmacies in connection with performing PBM services.

As defined in W. Va. Code §33-51-3, "pharmacy benefit management" means performance of the administration of pharmacy benefits, including managing a retail pharmacy network.

2. 340B Claims
Finding #12 - The PBM did not comply with W. Va. Code §33-51-9(c) when requiring 340B pharmacy providers that bill claims using pharmaceutical inventory purchased under Section 340B pricing to identify the claims using National Council for Prescription Drug Programs ("NCPDP") values. The PBM may not require a claim for a drug to include a modifier or be processed or resubmitted to indicate that the drug is a 340B drug. The Express Scripts Network Provider Manual outlines specific details related to general claims submission and the requirements to submit a 340B drug which do not align with the W. Va. code.

D. REBATES

1. Pass-Through
   Finding #25 - The PBM did not comply with W. Va. Code §33-51-9(k) when it failed to pass inflation payments on to health care payors as part of the rebate and provide evidence that 100% of all rebates including, but not limited to, discounts and fees received, directly or indirectly, were passed through at point of sale in connection with the dispensing or administration of a prescription drug.

2. 340B Exclusions
   Finding #26 - The PBM did not comply with W. Va. Code §§33-51-9(d), 33-51-9(k), and 33-51-11(a)(5), when excluding a point-of-sale rebate to beneficiaries that chose a 340B pharmacy to dispense their medication, even when it was not a 340B claim. Depending on the manufacturer of the medication, the rebate agreements outlined claims that were ineligible for point-of-sale rebates and one of the exclusions listed was 340B pharmacies. This provision written into contract discriminates against and restricts a 340B pharmacy's business. The patient is negatively impacted by the rebate agreement when his or her pharmacy of choice is a 340B pharmacy and the patient is unable to benefit from a point-of-sale rebate that would be eligible at a non-340B pharmacy.

E. PBM PRICING

1. Pharmacy Reimbursement
   Finding #9 - The PBM failed to comply with W. Va. Code §33-51-9(e) by not reimbursing West Virginia pharmacies at the national average drug acquisition cost ("NADAC") plus ("+") a professional dispensing fee of $10.49 or the wholesale acquisition cost ("WAC") + $10.49 dispensing fee, if NADAC pricing is not available at the time a drug is administered or dispensed. The PBM failed to pay W. Va. pharmacies the state-mandated reimbursement for prescription drugs or pharmacy services, resulting in negative financial impacts for pharmacies during the plan year 2023 and part of 2024. The total number of claims impacted by the lower reimbursement was more than 19,543 claims in 2023 and 9,990 claims in the first and second quarters of 2024.

F. PHARMACY AUDITS

1. Noncompliance Fees
   Finding #3 - The PBM did not comply with W. Va. Code §33-51-4(a)(13) by implementing a policy that assesses noncompliance fees within pharmacy audits and/or investigations. The fees are in addition to any discrepant claim recoupment amounts. The PBM may not maintain or administer a policy that communicates to pharmacy providers any noncompliance fees in addition to the actual financial harm associated with the dispensed product, portion of dispensed product, or overpayment.

2. Recoupments
   Finding #4 - The PBM did not comply with W. Va. Code §33-51-4(a)(13) when recouping funds from pharmacy claims in excess of the actual financial harm associated with the dispensed product or portion of the dispensed product.

The PBM provided documentation of 50 pharmacy audits that resulted in recoupment of funds from pharmacy providers. Most discrepant claims were due to processing errors such as an inaccurate days' supply. The table below highlights the claims in which the amount recouped was more than the actual financial harm or overpayment from the dispensed products or portion of dispensed products. By recouping these excess amounts, the PBM is non-compliant with W. Va. Code §33-51-4(a)(13).

3. Audit Documentation
   Finding #5 – The PBM did not comply with W. Va. Code §33-51-4a(14)(A)(B) by implementing a policy which limits a pharmacy provider's use of any valid prescription and verifiable statements or records when a pharmacy audit is performed. The PBM may not utilize a pharmacy audit procedure that is more restrictive than the parameters outlined in the W. Va. code.

4. Audit Fee Recoupment Time
   Finding #6 - The PBM did not comply with W. Va. Code §33-51-4(b)(6) when implementing a policy that recoups payment amounts from pharmacy claims immediately if a pharmacy provider is deemed noncompliant amidst a pharmacy audit and/or investigation. The PBM may not collect any penalties resulting from pharmacy audits until the time to file an appeal of the final pharmacy audit report has passed or the appeals process has been exhausted.

5. Dispensing Fee Recoupments
   Finding #16 - The PBM did not comply with W. Va. Code §33-51-4(a)(11) when including dispensing fees in the calculation of overpayments during pharmacy audits. Dispensing fees can only be used in the calculation of overpayments when the claim is considered a "misfill". The PBM may not include dispensing fees in the calculation of overpayments from pharmacy claims when a prescription is not a "misfill".

G. CONSUMER COMPLAINTS, GRIEVANCES, AND APPEALS

1. Direct Consumer Complaints

   There were no findings in the review of direct consumer complaints.

2. Offices of Insurance Commissioner Complaints
   Finding #2 - The PBM did not comply with W. Va. Code R. §114-14-5.2 when it failed to respond to WVOIC complaints within fifteen working days of the date appearing on the inquiry.

3. Health Care Payor Complaints

   The PBM reported no health care payor complaints within the scope of the examination.

4. Consumer Appeals

a. Finding #14 - The PBM did not comply with W. Va. Code R. §114-96-5.8.a when it failed to include in its issued appeal decisions the titles and qualifying credentials of the person (or persons) participating in the first level review process.

b. Observation #1 - The PBM did not include the necessary statement regarding alternative dispute resolution options in its appeal adverse determination notifications.

   The PBM should follow W. Va. Code R. §114-96-5.8.i when issuing appeal adverse determination notifications and include the following statement: "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your state Insurance Commissioner."

c. Observation #2 - The PBM did not include the necessary statements regarding procedures for obtaining an independent external review nor did it include the necessary statements regarding a covered person's right to request an external review in its appeal adverse determination notifications. The PBM also did not include the required external review authorization form in its appeal adverse determination notifications.

   The PBM should follow W. Va. Code R. §§114-96-5.8.h.1., 114-97-3.1.b., and 114-97-3.1.d. when issuing appeal adverse determinations. It should include a statement indicating a description of the procedures for obtaining an independent external review of the final adverse determination pursuant to W.Va. Code of St. R. §114-97-1et seq.

   The PBM should also notify the covered person in writing of the covered person's right to request an external review. Such written notice from an issuer of an adverse determination upon completion of the issuer's utilization review process or of a final adverse determination shall include:

   > The following or substantially equivalent language: "We have denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed by health care professionals who have no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care or effectiveness of the health care service or treatment you requested by submitting a request for external review to the WV Offices of the Insurance Commissioner, P.O. Box 50540, Charleston, WV 25305."
   >
   > And a form approved by the Commissioner by which the covered person authorizes the issuer and the covered person's treating health care provider to disclose protected health information, including medical records, concerning the covered person that are pertinent to the external review.

H. PHARMACY CLAIMS

1. Transaction Fees

   Finding #11 - The PBM did not comply with W. Va. Code §33-51-9(i)(1)(2) when assessing transaction fees to pharmacy providers for the use of the PBM's claims transmission system. The PBM may not derive any revenue from a pharmacy in connection with performing PBM services. The PBM provided paid claims data that demonstrated a

transaction fee as high as $2.50 per claim. After reviewing all paid claims transmitted by W. Va. pharmacies, it was found that the PBM assessed over $226,000.00 in transaction fees during the examination period. Additionally, the Express Scripts Network Provider Manual language does not communicate operations to pharmacies that align with the W. Va code. By implementing claims processing procedures that assess transaction fees to pharmacy providers, the PBM is not in compliance with W. Va. Code §33-51-9(i)(1)(2).

2. Insulin Cost Share
   Finding #27 - The PBM did not comply with W. Va. Code §33-59-1(e) when assessing cost sharing amounts greater than $35.00 for one or more insulin drugs, per 30-day supply. Cost sharing for a 30-day supply of a covered prescription insulin drug may not exceed $35.00 in aggregate, including situations where the covered person is prescribed more than one insulin drug, per 30-day supply, regardless of the amount or type of insulin needed to fill such covered person's prescription.

   Claims data from Quarter 1 and Quarter 2 of plan year 2024 for a health care payor was reviewed. Based on the data, 191 claims impacting 79 individual members were assessed cost sharing amounts greater than $35.00 for single product insulin claims which totaled an overpayment by members of $10,105.69. Additionally, 29 members were impacted and were assessed cost sharing amounts greater than $35.00 for aggregate insulin product claims which totaled an overpayment by members of $7,765.01. By assessing cost sharing amounts for insulin drugs in excess of $35.00 per 30-day supply, the PBM is non-compliant with W. Va. Code §33-59-1(e).

3. Affiliate Reimbursement
   Finding #28 - The PBM did not comply with W. Va. Code §33-51-9(f) when reimbursing its affiliates more for the same prescription drug than non-affiliated pharmacies within the PBM network. When reviewing claims, the PBM used a separate source other than NADAC + $10.49 for reimbursement to its own affiliates, Express Scripts Mail Order Pharmacy and Accredo Specialty Pharmacy. Retail pharmacies in West Virginia were reimbursed in an amount less than the PBM reimbursed affiliates. Furthermore, the PBM's pharmacy reimbursement model for affiliated pharmacies resulted in higher health care payor buy amounts and/or higher consumer copays for prescription drugs than non-affiliated pharmacies.

I. DRUG UTILIZATION REVIEW

There were no findings in the review of drug utilization review.

J. FORMULARY DESIGN AND DRUG PLACEMENT INFORMATION

1. Specialty Medication Tiering
   a. Finding #17 - The PBM did not comply with W. Va. Code §33-51-11(a)(7) when limiting access to prescription medications by unreasonably designating covered prescription medications as specialty medications on formularies administered for use by health care payors. The W. Va. code defines a specialty medication as a drug used to treat chronic and complex, or rare medical conditions and requiring special handling or administration, provider care coordination, or patient education that cannot be

provided by a non-specialty pharmacy or pharmacist. The specialty drug lists within contracts between the PBM and healthcare payors contained medications that are not specialty medications as defined in the W. Va. code.

2. Pharmacy Formulary
   a. Finding #18 - The PBM did not comply with W. Va. Code §§33-16-3cc(k) and 33-25A-8r(k) by limiting access to treatment of substance use disorders when placing Lucemyra as non-formulary on formularies administered for use by health care payors. A member would be required to obtain a prior authorization/non-formulary coverage exception for approval of the medication. Lucemyra is indicated for the mitigation of opioid withdrawal symptoms to facilitate abrupt opioid discontinuation in adults. The American Society of Addiction Medicine discusses its role in treatment of managing opioid withdrawal in patients with substance use disorders. Lucemyra may be used for withdrawal management in an outpatient setting, where monitoring of blood pressure and management of hypotension is more difficult. By implementing a formulary design that would require prospective utilization management requirements on Lucemyra, the PBM is non-compliant with W. Va. Code §§33-16-3cc(k) and 33-25A-8r(k).
   b. Finding #19 – The PBM did not comply with W. Va. Code §33-16-3cc(k) and 33-25A-8r(k) by limiting access to treatment for substance use disorders when placing Suboxone as non-formulary on formularies administered for use by health care payors. A member would be required to obtain a prior authorization/non-formulary coverage exception for approval of the medication. Within its policy design, the PBM required additional steps for a patient with substance use disorder to obtain a medically necessary medication. The coverage restriction creates a barrier for consumers and providers in the overall treatment plan of a patient diagnosed with substance use disorder. By implementing a formulary design that would require prospective utilization management requirements on Suboxone, the PBM is non-compliant with W. Va. Code §§33-16-3cc(k) and 33-25A-8r(k).
   c. Finding #20 - The PBM did not comply with W. Va. Code §§33-16-3cc(k) and 33-25A-8r(k) when administering a formulary that imposed quantity limitations, a prospective utilization management requirement, on buprenorphine tablets in its benefit design utilized by a health care payor. Buprenorphine is indicated for treatment of opioid dependence. The quantity limitation creates a barrier to substance use disorder treatment when a member is prescribed above label dosing for fentanyl abuse or other high dose opioid abuse. Implementing prospective utilization management requirements for approval of buprenorphine tablets is prohibited in accordance with W. Va. Code §§33-16-3cc(k) and 33-25A-8r(k).
   d. Finding #21 - The PBM did not comply with W. Va. Code §§33-16-3cc(k) and 33-25A-8r(k) when administering a formulary that imposed quantity limitations, a prospective utilization management requirement, on buprenorphine/naloxone products in its benefit design utilized by a health care payor. Suboxone, Zubsolv, and buprenorphine/naloxone tablets/films had quantity limitations implemented. Buprenorphine/naloxone products are indicated for treatment of opioid dependence. The quantity limitations create a barrier to substance use disorder treatment when a member is prescribed above label dosing for fentanyl abuse or other high dose opioid abuse. Implementing prospective utilization management requirements for coverage

of buprenorphine/ naloxone products is prohibited in accordance with W. Va. Code §§33-16-3cc(k) and 33-25A-8r(k).

VII. SUMMARY OF EXAMINATION RECOMMENDATIONS

1. The PBM must respond to WVOIC complaints within 15 working days to ensure compliance with W. Va. Code R. §114-14-5.2.

2. The PBM is advised to include the titles and qualifying credentials of the person(s) participating in the first level review process in its issued appeal decision notifications to become compliant with W. Va. Code R. §114-96-5.8.a.

3. The PBM must change its policies regarding noncompliance fees associated with pharmacy audits and/or investigations. It may not maintain or administer a policy that communicates to pharmacy providers any noncompliance fees in addition to the actual financial harm associated with the dispensed product, portion of dispensed product, or overpayment to be in compliance with W. Va. Code §33-51-4(a)(13).

4. The PBM may only recoup funds that are limited to actual financial harm or overpayments from audited pharmacies to be in compliance with W. Va. Code §33-51-4(a)(13).

5. The PBM must update its policies to allow pharmacy providers to use prescriptions and documentation as outlined in W. Va. Code §33-51-4a(14)(A)(B) during pharmacy audits to ensure compliance.

6. The PBM may not charge-back, recoup, or collect penalties from a pharmacy until the time to file an appeal of a final pharmacy audit report has passed or the appeals process has been exhausted, whichever is later. The language in its policy must be changed to be compliant with W. Va. Code §33-51-4b(6).

7. The PBM must adhere to W. Va. Code §33-51-4(a)(11) when calculating overpayments of claims. It may not include dispensing fees in the calculation of overpayments from pharmacy claims when a prescription is not a "misfill".

8. The PBM must provide evidence that it updates online provider directories at least monthly to be in compliance with W. Va. Code §33-55-4(a)(2)(A) and W. Va. Code R. §114-100-7.3.

9. The PBM must be able to provide evidence that it conducts periodic audits for at least a reasonable sample size of its provider directories, and retain documentation of such audits to be made available to the commissioner upon request to be in compliance with W. Va. Code §33-55-4(a)(2)(B), W. Va. Code R. §§114-100-7. 4 and 7.5.

10. To be compliant with W. Va. Code §33-51-11(b), when a new health benefit plan enters a particular county of the state, the PBM must notify all pharmacies in the county of the plan in writing and offer the opportunity to participate in the plan at least 60 days prior to the effective date of the plan.

11. The PBM must reimburse pharmacies in compliance with W. Va. Code §33-51-9(e) when paying pharmacies for prescription drugs in the State of W. Va.

12. The PBM needs to review its credentialing and recredentialing processes for independent pharmacies in order to be compliant with W. Va. Code §§33-51-9(i)(2)(C) and 33-51-11(a)(3).

13. The PBM must review its provider manual claim submission requirements for 340B drug claims in order to be compliant with W. Va. Code §33-51-9(c).

14. The PBM needs to review and revise the excluded claims section in rebate agreements and contracts with drug manufacturers to allow point of sale rebates for the dispensing of prescription drugs for a non-340B claim dispensed by a 340B pharmacy to be in compliance with W. Va. Code §§33-51-9(d), 33-51-9(k), and 33-51-11(a)(5).

15. The PBM must remove fees to pharmacy providers for the use of the PBM's claims transmission system to be in compliance with W. Va. Code §33-51-9(i)(1)(2).

16. The PBM must ensure reimbursement of prescription drugs to pharmacies is in compliance with W. Va. Code §33-51-9(f).

17. The PBM must ensure reimbursement of insulin drugs to pharmacies is in compliance with W. Va. Code §33-59-1(e).

18. The PBM may not limit access to medications that do not meet West Virginia's definition of "specialty medication" to ensure compliance with W. Va. Code §33-51-11(a)(7).

19. The PBM needs to review the W. Va. definition of PBM and ensure all entities that it contracts with are properly licensed to ensure compliance with W. Va. Code §33-51-8(a).

20. The PBM needs to provide complete and timely responses to initial findings to facilitate examinations to be in compliance with W. Va. Code §§33-51-8(e) and 33-2-9(i).

21. During onsite visits, the PBM must provide previously requested and agreed upon documents in their unredacted form and in a manner that examiners can readily verify the PBM's compliance with West Virginia insurance code and rules.

22. The PBM needs to improve communication with examiners and provide requested items unredacted by the due dates and in a manner that examiners can readily verify the PBM's compliance with West Virginia insurance code and rules.

23. The PBM needs to include Lucemyra on formularies utilized by a health care payor to prevent the need for prior authorization/coverage exception for substance use disorder treatment to be in compliance with W. Va. Code §§33-16-3cc(k) and 33-25A-8r(k).

24. The PBM needs to provide coverage for brand name Suboxone when medically necessary without prospective utilization management requirements on its formularies utilized by a health care payor to be in compliance with W. Va. Code §§33-16-3cc(k) and 33-25A-8r(k).

25. The PBM needs to remove prospective utilization management requirements (quantity limitations) on all strengths of buprenorphine tablets in its benefit design utilized by a health care payor to be in compliance with W. Va. Code §§33-16-3cc(k) and 33-25A-8r(k).

26. The PBM needs to remove quantity limitations on all strengths of buprenorphine/naloxone products (Suboxone, Zubsolv, and buprenorphine/naloxone tablets/films) in the policies utilized by a health care payor to be in compliance with W. Va. Code §§33-16-3cc(k) and 33-25A-8r(k).

27. The PBM must pass through 100% of all rebates to be in compliance with W. Va. Code §33-51-9(k).

EXAMINATION REPORT SUBMISSION

The courtesy and cooperation of the officers and employees of the PBM during the examination are acknowledged and appreciated.

Jacqueline Cooper
George Lentini
Toni Bean
June Coleman
Maureen Hicks
Tony Taylor
Steven Gloc
Nicholas Kalargyros
Jennifer Hopper
Tyler Young
Trevor Strenchock
Matthew Sankey
Lisa Crump, Co-Examiner-in-Charge

Respectfully submitted,

Amanda Brandis

AMANDA BRANDIS
EXAMINER-IN-CHARGE

Shelly Schuman

SHELLY SCHUMAN
SUPERVISORY INSURANCE EXAMINER

EXAMINER'S AFFIDAVIT

State of Pennsylvania
County of Bucks

EXAMINER'S AFFIDAVIT AS TO STANDARDS AND PROCEDUERS USED IN AN EXAMINATION

I, Amanda Brandis, Market Regulation Senior Examiner, being duly sworn, states as follows:

1. I have the authority to represent West Virginia in the examination of Express Scripts Administrators, L.L.C.
2. I have reviewed the examination work papers and examination report, and the examination of Express Scripts Administrators, L.L.C. was performed in a manner consistent with the standards and procedures required by West Virginia.

The affiant says nothing further.

Amanda Brandis

Amanda Brandis, AIE, MCM, PAHM

Subscribed and sworn before me by Amanda Brandis on this 22nd day of August 2025.

Savannah Buckmann

Notary Public

Commonwealth of Pennsylvania - Notary Seal
SAVANNAH BUCKMANN - Notary Public
Bucks County
My Commission Expires January 5, 2027
Commission Number 1431496

My commission expires: 01/05/2027