

**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:

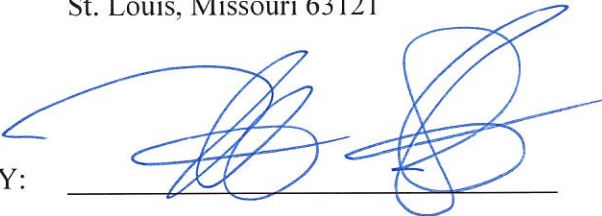
Louisiana Department of Insurance  
Attention: Accounts Receivable  
P.O. Box 94214  
Baton Rouge, LA 70804-9214
10. ESA acknowledges that this Regulatory Consent Order constitutes an administrative action and that it will be reported to the National Insurance Producer Registry by the LDI.
11. ESA waives 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

**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

**MEDIMPACT HEALTHCARE SYSTEMS, INC**

**SUMMARY**

This is a consent order with MedImpact Healthcare Systems, Inc. (MedImpact). The Market Conduct Division of LDI conducted a market conduct investigation of the pharmacy benefit managers that have contracted with the Louisiana Office of Group Benefits (OGB) after determining that OGB failed to ensure that electronically adjudicated claims were being paid within fifteen (15) days as required by Louisiana Revised Statute (La. R.S.) 22:1854.

During the investigation, MedImpact indicated that 664,770 claims were paid beyond 15 days during the period from January 1, 2020 through December 31, 2021, including during the time from March 11, 2020 through and after December 31, 2021, when a continuous state of emergency was declared in Louisiana, where OGB is located, and following the March 4, 2020 state of emergency was declared in California, where MedImpact is located.

The LDI determined that MedImpact should have made all payments to the providers within the 15 day period, even during the states of emergency declared in both Louisiana and California.

MedImpact believes that the states of emergency declared in Louisiana and California, with the latter recognized pursuant to the Full Faith and Credit Clause of the United States Constitution, prevented any possible violation of the 15 day period for 99.87% of the claims in question.

In order to resolve this matter, MedImpact has agreed to pay claims consistent with La. R.S. 22:1854 and to comply with the other terms contained in this Order.

## **LDI's FINDINGS OF FACT**

1.

MedImpact is a pharmacy benefits manager headquartered in California and licensed in Louisiana as a Third-Party Administrator since January 24, 2003. The license is currently active.

2.

From January 1, 2017 to December 31, 2021, MedImpact was contracted with OGB as the pharmacy benefits manager to handle pharmacy benefit claims.

3.

On February 16, 2023, LDI opened a Market Conduct investigation of MedImpact regarding its handling of OGB claims.

4.

LDI determined that for 2020 and 2021 there were a total of 664,770 claims paid by MedImpact beyond 15 days.

5.

MedImpact has issued the one (1%) percent interest payment to all of the affected pharmacies which amounted to approximately \$602,000.00 for the 664,770 claims through December 31, 2021 that were paid beyond 15 days.

## **MEDIMPACT'S RESPONSE TO LDI'S FINDINGS OF FACT**

6.

On March 11, 2020, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29-721 et seq., the Governor declared a Public Health Emergency in Proclamation No. 25 JBE 2020. The state of emergency applied to the entire state of Louisiana. OGB is located in Louisiana. The Proclamation created a continuous state of emergency in Louisiana from March 11, 2020, through and after December 31, 2021.

7.

On March 4, 2020, the Governor of California, where MedImpact is headquartered, declared a state of emergency for the state of California, based upon the outbreak of Covid beginning in



December 2019. On March 19, 2020, the Governor of California issued a stay-at-home order where all non-essential business were ordered to close and people were encouraged to stay at home and avoid going out.

**8.**

Between January 1, 2020 and the declaration of the state of emergency on March 11, 2020, there were only 858 claims (0.13% of the total 664,770 claims) paid by MedImpact beyond 15 days.

**9.**

MedImpact adjudicated a total of 8,596,051 claims from January 1, 2020 through December 31, 2021, of which 7,931,351 claims or 92.3% were paid within the 15 day period – during a time period when more than 21 of those 24 months were under the declared Public Health Emergency due to the pandemic.

**APPLICABLE LOUISIANA LAW**

**10.**

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.

**11.**

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.

**12.**

La. R.S. 22:1860 maintains in pertinent part:

**§1860. Violations; cease and desist orders; penalties**

A. Whenever the commissioner has reason to believe that any health insurance issuer is not in full compliance with the requirements of this Subpart, he shall notify such issuer in accordance with R.S. 49:977.3 and, after notice, the commissioner shall issue and cause to be served an order requiring the health insurance issuer to cease and desist from any violation 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, not to exceed an aggregate penalty of one hundred thousand dollars. However, if the health insurance issuer knew or reasonably should have known that it was in violation of this Subpart, 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 two hundred fifty thousand dollars in any six-month period.

(2) Suspension or revocation of the certificate of authority of the health insurance issuer to operate in this state if it knew or reasonably should have known it was in violation of this Subpart.

**LDI'S CONCLUSIONS OF LAW**

**13.**

LDI determined that MedImpact violated La. R.S. 22:1854 when MedImpact failed to pay 664,770 electronically adjudicated OGB claims within 15 days during the period from January 1, 2020 to December 31, 2021.

**MEDIMPACT'S RESPONSE TO LDI'S CONCLUSIONS OF LAW**

**14.**

MedImpact contends that, at most, it paid 858 of the claims (0.13% of the total claims) beyond the 15 day period before the Louisiana Public Health Emergency was declared on March 11, 2021 and that it did not violate the spirit of the law.

## ORDER

**NOW THEREFORE**, to fully compromise and resolve this matter:

The LDI, appearing herein through Nathan Strebeck, Deputy Commissioner, Office of Insurance Fraud, and MedImpact, appearing through its authorized representative, Gregory E. Bodin, Esq., 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. MedImpact, without admitting to any possible alleged violation of La. R.S. 22:1854 regarding its failure to pay 664,770 electronically adjudicated OGB claims within 15 days, will now pay all electronically claims consistent with La. R.S. 22:1854 as applicable.
4. MedImpact, without admitting to any possible alleged violation of La. R.S. 22:1854, has paid to all effected pharmacies the one percent interest payment as provided consistent with La. R.S. 22:1854(C) in an amount equal to \$602,000.00.
5. MedImpact, without admitting to any possible alleged violation of La. R.S. 22:1854, and the Louisiana Commissioner of Insurance and the Louisiana Department of Insurance have agreed to fully compromise and resolve this matter accepting the amount of \$250,000.00, to be paid by MedImpact, considering its history of providing critical pharmacy benefit services to the citizens of Louisiana.
6. Such payment should be made within 30 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
7. MedImpact 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.

8. MedImpact waives its appearance and any other rights it may have to an adjudicatory hearing regarding the administrative fine action established in and assessed by this Regulatory Consent Order.
9. The LDI reserves all rights and may take any and all legal actions and seek any and all legal remedies under Louisiana Revised Statute Title 22 if MedImpact fails to comply with this Order.

BY:  DATE: 10/26/23

MEDIMPACT HEALTHCARE SYSTEMS, INC.  
by its authorized representative,  
Gregory E. Bodin, Esq.  
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.  
450 Laurel Street, 21<sup>st</sup> Floor  
Baton Rouge, LA 70801

BY:  DATE: 10/26/2023

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