

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

In the Matter of:

SMITH HEALTH, INC.
SMITH RX

Administrative Proceeding No. 23-IC-155569

CONSENT ORDER

In lieu of proceeding with an administrative complaint proceeding, the parties hereto have reached a resolution of the matter related to Smith Health, Inc./Smith Rx (“Smith”) allegedly operating in West Virginia as a Pharmacy Benefit Manager (“PBM”), within the meaning of W.Va. Code §§ 33-51-3 and 33-51-8, without a license. Smith understands and agrees that by agreeing to the entry of this Consent Order it waives all rights to an administrative hearing and to judicial review of this matter. Further, Smith understands and agrees that by agreeing to the entry of this Consent Order it also agrees to informal disposition of this matter as provided under W. Va. Code § 29A-5-1 and agrees to the administrative action as is reflected in the Consent Order. Finally, the Insurance Commissioner for the State of West Virginia (“Commissioner”) believes the entry of this Consent Order is appropriate and in the public interest.

JURISDICTION

Smith is a PBM currently operating as a PBM licensed in the State of West Virginia and the Commissioner/West Virginia Offices of the Insurance Commissioner (“WVOIC”) has jurisdiction over the subject matter of this action and over Smith pursuant to W.Va. Code §33-51-1, *et seq.*

W.Va. Code § 33-51-8(a) (2022) states, in part, “A person or organization may not establish or operate as a pharmacy benefits manager in the state of West Virginia without first obtaining a license from the Insurance Commissioner pursuant to this section....”

In addition, W.Va. Code R. § 114-99-8.3 states:

With respect to any person or entity operating in this state as a PBM without a license, the Commissioner may do one or both of the following: ...

8.3.2. After notice and hearing in accordance with W. Va. Code §33-2-13, assess restitution in an amount sufficient to reimburse any person adversely affected by the operation of the unlicensed PBM and, in addition to or in lieu of restitution, impose a fine in a sum not to exceed \$20,000 for each unauthorized act....

EFFECT ON THIRD PARTIES

This Consent Order does not vest standing in any third party with respect to the terms hereof, nor create for any person, other than the Commissioner, a right to enforce its terms.

ALLEGED FACTS

The Commissioner received information that Smith was operating as a PBM in West Virginia without the necessary PBM license in violation of W.Va. Code § 33-51-1, *et seq*, and alleges that Smith had been operating in West Virginia as a PBM, to include “paying claims to a pharmacy [located within West Virginia] for prescription drugs dispensed to covered individuals via retail or mail-order pharmacy,” W.V. Code § 33-51-3, without the required PBM license since January, 2023. Smith applied for a PBM license in West Virginia in June, 2023 and its application was approved, and a license was granted by the WVOIC.

AGREED ACTION

By agreeing to and executing this Consent Order, Smith agrees to and requests the entry of this Consent Order. Smith acknowledges that the Commissioner could prevail at a hearing against Smith resulting in a civil penalty not to exceed Twenty Thousand Dollars (\$20,000.00) for each unauthorized act it performed while it did not have a PBM license. The facts, as alleged above, demonstrate multiple violations of West Virginia law.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation in this matter, Smith consents and agrees to the imposition of and payment to the Commissioner of an administrative fine in the amount of Twenty-Five Thousand Dollars (\$25,000.00), to be paid within 30 days of the entry of this Order.

FINAL DISPOSITION

This Consent Order constitutes a settlement of the Commissioner's allegations and the final disposition and entire agreement between the parties relating to the matter herein, except for any enforcement actions with respect to the failure to pay the administrative fine under this Consent Order as may be necessary, of Administrative Proceeding No. 23-IC-155569.

MISCELLANEOUS PROVISIONS

Jurisdiction of this matter is retained by the Commissioner for enforcement of this Consent Order. Any party hereto may apply to the Commissioner for such further orders and directions as may be necessary or appropriate with respect to the construction and enforcement of this Consent Order. The remedies in this Consent Order are cumulative and in addition to any other remedies the Commissioner may have at law or equity. Subject to Smith's full payment of the agreed upon administrative fine, the Commissioner releases Smith from any further enforcement actions against Smith based on the Alleged Facts as described in this Order, for the period January 1, 2023 through the date the WVOIC granted and issued Smith's PBM license. However, nothing herein shall be construed to prevent the Commissioner from taking any action for conduct not addressed in this Consent Order.

Smith understands that this Consent Order will be reported to the database maintained by the National Association of Insurance Commissioners (NAIC) and otherwise be made public in accordance with law.

ORDER

Inasmuch as the Commissioner finds and concludes that Smith was not in compliance with W.Va. Code § 33-51-8(a) based upon the Alleged Facts and Smith is willing to settle with the Commissioner under the terms of this Consent Order in order to avoid the uncertainty, inconvenience, and expense of protracted litigation, it is **ORDERED** that a civil penalty in the amount of Twenty-Five Thousand Dollars (\$25,000.00) be, and the same is, hereby, assessed against Smith, and that such civil penalty shall be paid within 30 days of the entry of this Consent Order.

ENTERED on this 14th day of September 2023.



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

Prepared by:



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Reviewed and agreed to by:

Reviewed and agreed to by:
SMITH:

By: Jacob R Frenz

Print Name

Title: CEO

Signature: 

Date: 9/12/2023