

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

In the Matter of:

MAXCARE RX

Administrative Proceeding No. 23-IC-155758

CONSENT ORDER

In lieu of proceeding with an administrative hearing in this matter, the parties hereto have reached a resolution of the matter regarding MaxCare Rx, (“MaxCare”) doing business in West Virginia as a Pharmacy Benefit Manager (“PBM”) without a license. MaxCare 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, MaxCare understands and agrees that by agreeing to the entry of this Consent Order it also 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

MaxCare is a PBM currently doing business 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 MaxCare 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 MaxCare was operating in West Virginia without the necessary PBM license in violation of W.Va. Code § 33-51-1, *et seq.* MaxCare acknowledges that it processed pharmacy benefit claims for individuals domiciled in West Virginia without a West Virginia PBM license after January, 2023. MaxCare further states that it was not aware the law had been enacted and understood the proposed law to only require a license if it were providing pharmacy benefits management for health plans located in the state of West Virginia. MaxCare does not serve any plan that is based in West Virginia and only manages pharmacy benefits for fifty-eight covered lives within West Virginia.

However, the West Virginia statute defines “pharmacy benefits management”, in part, as the “procurement of prescription drugs at a negotiated contracted rate for dispensation within the state of West Virginia” as well as “paying claims to a pharmacy for prescription drugs dispensed to covered individuals.” For these reasons, the Commissioner asserts the statute encompasses the described business activities of MaxCare in West Virginia.

Regardless, MaxCare is willing to enter into this Consent Order to resolve this matter without further proceedings. MaxCare is in the process of applying for a PBM license in West Virginia.

AGREED ACTION

By agreeing to and executing this Consent Order, MaxCare agrees to and requests the entry of this Consent Order to avoid the cost and risk of litigation, including the risk that the Commissioner could prevail at a hearing against MaxCare 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. By agreeing to and executing this Consent Order, MaxCare is not admitting any liability or alleged wrongdoing. MaxCare will obtain its West Virginia PBM license as soon as possible.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation in this matter, MaxCare consents and agrees to the imposition of and payment to the Commissioner of an administrative fine in the amount of Thirty Thousand Dollars (\$30,000.00), to be paid within 30 days of the entry of this Order. Failure of MaxCare to apply for and obtain its PBM license in West Virginia could result in additional fines in the future if MaxCare continues to provide pharmacy benefit management services for plans who have members domiciled in West Virginia.

FINAL DISPOSITION

This Consent Order constitutes 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-155758.

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 MaxCare's full payment of the agreed upon administrative fine, the Commissioner releases MaxCare from any further enforcement actions against MaxCare based on the facts as described in this Order. However, nothing herein shall be construed to prevent the Commissioner from taking any action for conduct not addressed in this Consent Order.

MaxCare 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 MaxCare violated W.Va. Code § 33-51-8(a) and MaxCare wants to conclude this matter without delay, uncertainty, inconvenience, and expense of protracted litigation, it is **ORDERED** that a civil penalty in the amount of Thirty Thousand Dollars (\$30,000.00) be, and the same is, hereby, assessed against MaxCare, and that such civil penalty shall be paid within 30 days of the entry of this Consent Order.

ENTERED on this 7th day of February 2024.



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

Prepared by:





Jeffrey C. Black (WVSB #8188)
Attorney Supervisor, Regulatory Compliance
Legal Division
West Virginia Offices of the Insurance Commissioner
Post Office Box 50540
Charleston, West Virginia 25305-0540

Reviewed and agreed to by:
MAXCARE RX :

By: J.J. Peek

Print Name

Title: Vice President

Signature:  

Date: 2/5/2024