Market Conduct Examination Report

PRIME THERAPEUTICS MANAGEMENT, LLC

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FLORIDA OFFICE OF
Insurance
Regulation

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Executive Summary

The Florida Office of Insurance Regulation ("OIR") performed a market conduct examination of Prime Therapeutics Management, LLC ("Prime Management") pursuant to section 626.8828, Florida Statutes ("F.S.")

The following is a summary of the examination findings contained within this report. A full description of the examination process along with the findings for each area reviewed is contained within the body of the report.

Sections 626.8825(2) and (3), F.S. require all contractual arrangements executed, amended, adjusted, or renewed on or after July 1, 2023, which apply to pharmacy benefits covered on or after January 1, 2024, between a pharmacy benefit manager and a pharmacy benefits plan or program and a participating pharmacy to include in substantial form, all of the requirements specified by the applicable subsections of the statute. Prime Management reported four pharmacy benefit plan or program contracts and 4,925 participating pharmacy contracts that were executed, amended, adjusted, or renewed on or after July 1, 2023, which applied to pharmacy benefits covered on or after January 1, 2024.

The examiners determined that, in certain circumstances, Prime Management's contractual arrangements with pharmacy benefits plans or programs did not contain all of the required statute language.

Purpose and Scope of the Examination

The Prescription Drug Reform Act (SB 1550) ("Act"), signed by Governor DeSantis on May 3, 2023, instituted new regulatory requirements for all Pharmacy Benefit Managers (PBMs) doing business in Florida. The Act became effective July 1, 2023, and included a requirement for OIR to examine the business and affairs of each PBM at least biennially. The first two-year cycle for conducting biennial reviews began on January 1, 2025. The Act requires the examination to be a systematic review for the purpose of determining the PBM's compliance with all provisions of Part VII of Chapter 626, and all other laws or rules applicable to PBMs.

The examination scope period was January 1, 2024, to December 31, 2024, for all contractual arrangements executed, amended, adjusted or renewed on or after July 1, 2023, which were applicable to pharmacy benefits covered on or after January 1, 2024, between Prime Management and a pharmacy benefits plan or program and participating pharmacies. The examination was performed by a contracted examination firm, Noble Consulting Services, Inc., and members of the OIR Market Regulation business unit. This is the first examination of Prime Management. In reviewing materials for this report, the examiners and OIR relied on records provided by Prime Management.

Section 626.88, F.S. defines a pharmacy benefit manager as a person or an entity doing business in this state which contracts to administer prescription drug benefits on behalf of a pharmacy benefits plan or program, as defined in section 626.8825, F.S. The term includes, but is not limited to, a person or an entity that performs one or more of the following services on behalf of such plan or program:

- Pharmacy claims processing;
- Administration or management of a pharmacy discount card program and performance of any other service listed in this subsection;
- Managing pharmacy networks or pharmacy reimbursement;
- Paying or managing claims for pharmacist services provided to covered persons;
- Developing or managing a clinical formulary, including utilization management or quality assurance programs;
- Pharmacy rebate administration;
- Managing patient compliance, therapeutic intervention, or generic substitution programs; or
- Administration or management of a mail-order pharmacy program.

Company Profile

Prime Management received a Certificate of Authority as a foreign third-party administrator licensed and authorized to conduct business in Florida on January 12, 2024. Prime Management also received a Letter of Registration as a Pharmacy Benefit Manager in Florida on February 13, 2019.

Prime Management serves health plans, employers, consultants, and government programs in conjunction with the following PBM services: Account management, national pharmacy network contracting and management, benefit plan design consulting, member services, clinical programs, consumer-driven health plan administration, drug utilization review and utilization management, ePrescribing, generic drug utilization programs, formulary management consulting, home delivery pharmacy contracting, manufacturer contracting, Medicare Part D administration services, predictive benefit modeling, rebate administration, reporting and analytics, specialty drug management services and programs, trend forecasting, and web-based services government.

Examination Procedures

The conduct of this examination and the procedures, statistical sampling, and examination processes used were consistent with and in accordance with those standards and procedures contained in the *Market Regulation Handbook* promulgated by the National Association of Insurance Commissioners ("NAIC"). The number of randomly selected items reviewed is consistent with the recommended sample size in the *Market Regulation Handbook's* Acceptance Samples Table. Examination results with a 95% confidence level permit those results to be extrapolated to the population or universe identified in each of the areas examined.

Complaint Analysis

Section 624.307(10)(a)6., F.S. requires the Florida Department of Financial Services ("DFS or division") to designate an employee of the division to act as the primary contact for consumers and pharmacies on issues relating to pharmacy benefit managers. The DFS is also required to refer any complaint that alleges conduct that may constitute a violation of part VII of chapter 626 to OIR. To ensure all prescription drug complaints are thoroughly reviewed by a licensed pharmacist and the OIR PBM complaint team, DFS refers all PBM or prescription drug related complaints to OIR for review even if allegations of misconduct are not identified by DFS.

During the examination scope period, no complaints were received by DFS or sent to OIR for review pertaining to Prime Management.

Examination Findings

The following findings are compiled from the review of Prime Management's compliance with sections 626.8825 and 626.8827, F.S., and all other laws or rules applicable to PBMs.

Pharmacy Benefit Plans or Programs Contracts
Section 626.8825(2), F.S.

Prime Management identified a universe of four pharmacy benefit plan or program contracts that were executed, amended, adjusted, or renewed on or after July 1, 2023, and subject to the examination scope period.

Fair Pricing Models and Proper Payment Distribution

This portion of the examination evaluated Prime Management's compliance with section 626.8825(2)(a) through (d), F.S. to ensure pharmacy benefit plan contracts require a pass-through pricing model; exclude terms that allow for the direct or indirect engagement in the practice of spread pricing; ensure that funds received in relation to providing services for a pharmacy benefits plan or program or a pharmacy are used or distributed only pursuant to the PBM's contract with the pharmacy benefits plan or program or with the pharmacy or as otherwise required by law; require the PBM to

pass 100% of all prescription drug manufacturer rebates, including nonresident prescription drug manufacturer rebates, received to the pharmacy benefits plan or program, etc.

Finding # 1: The examiners determined that in one instance out of four contracts reviewed, an error rate of 25.0%, Prime Management did not include, in substantial form, terms that ensure compliance with the requirement for the use of a pass-through pricing model, as required by Section 626.8825(2)(a), F.S.

Company Response: Prime Management disagreed with the finding and stated that the contract includes a pass-through arrangement. Additionally, Prime Management states that a Florida specific addendum was incorporated into the latest contract renewal, with the required language and effective as of January 1, 2024.

The Finding is contained in the report as a dated copy of the referenced addendum to the contract was not provided.

Finding #2 The examiners determined that in one instance out of four contracts reviewed, an error rate of 25.0%, Prime Management did not include, in substantial form, terms that ensure that funds received in relation to providing services for a pharmacy benefits plan or program or a pharmacy are used or distributed only pursuant to the pharmacy benefit manager's contract with the pharmacy benefits plan or program or with the pharmacy, as required by Section 626.8825(2)(c), F.S.

Company Response: Prime Management disagreed with the finding and stated that the funds received in relation to services are governed by the contract, and that the contract is a pass-through arrangement. Additionally, Prime Management states that a Florida specific addendum was incorporated into the latest contract renewal, with the required language and effective as of January 1, 2024.

The Finding is contained in the report as a dated copy of the referenced addendum to the contract was not provided.

Finding #3 The examiners determined that in one instance out of four contracts reviewed, an error rate of 25.0%, Prime Management did not include, in substantial form, terms requiring the pass through of all prescription drug manufacturer rebates by the pharmacy benefit manager, as required by Section 626.8825(2)(d), F.S.

Company Response: Prime Management disagreed with the finding and stated that a Florida specific addendum was incorporated into the latest contract renewal, with the required language and effective as of January 1, 2024.

The Finding is contained in the report as a dated copy of the referenced addendum to the contract was not provided.

Continuity of Care

This portion of the examination evaluated Prime Management's compliance with section 626.8825(2)(h)1., F.S. to ensure contracts contain language to ensure that any formulary changes include a provision for a minimum 60-day continuity of care period in which the covered prescription drug that is being revised from the formulary continues to be provided at the same cost to the patient.

Finding #4: The examiners determined that in one instance out of four contracts reviewed, an error rate of 25.0%, Prime Management did not include, in substantial form, terms that ensure that any formulary changes include a provision for a minimum 60-day continuity of care period, as required by Section 626.8825(2)(h),1., F.S.

Company Response: Prime Management disagreed with the finding and stated that a Florida specific addendum was incorporated into the latest contract renewal, with the required language and effective as of January 1, 2024.

The Finding is contained in the report as a dated copy of the referenced addendum to the contract was not provided.

Network Adequacy and Fair Access

This portion of the examination evaluated Prime Management's compliance with section 626.8825(2)(e) through (g), F.S. to ensure contracts meet or exceed the requirements set forth in 42.C.F.R. s. 423.120(a)(1); not limit a network to solely include affiliated pharmacies; ensure PBMs offer provider contracts under certain circumstances; not require covered persons to receive prescription drugs by United States mail, common carrier, etc. unless under certain circumstances; prohibit requiring a covered person to receive pharmacist services from an affiliated pharmacy or health care provider; prohibit offering or implementing pharmacy networks that require or provide a promotional item or incentive, etc.; prohibit the ability of a PBM to condition participation in one pharmacy network on participation in any other network, etc.; and prohibit a PBM from instituting a network that requires a pharmacy to meet accreditation standards inconsistent with or more stringent than applicable state and federal requirements.

No exceptions were noted.

Participating Pharmacy Contracts
Section 626.8825(3), F.S.

Prime Management identified a universe of 4,925 participating pharmacy contracts which were executed, amended, adjusted, or renewed on or after July 1, 2023, and subject to the examination scope period. A random sample of 86 contracts was selected and reviewed by the examiners.

Company Response: In response to the draft report, Prime Management disagreed with the number of Participating Pharmacy Contracts and with the corresponding sample size. Prime Management stated that, upon review of the 4,925 total pharmacy locations reported, there are 86 total associated contractual agreements. Prime Management also stated that it identified 28 associated contractual agreements for review.

The universe and corresponding sample size consider each unique pharmacy or chain pharmacies contracted under any Pharmacy Services Administrative Organization (PSAO) agreement as a unique participating pharmacy. Therefore, the number of unique pharmacies under any PSAO agreement must be counted toward the universe and corresponding sample size. Chain pharmacies under a PSAO are counted as one unique pharmacy.

Remittances

This portion of the examination evaluated Prime Management's compliance with section 626.8825(3)(a), F.S. to ensure participating pharmacy contracts require a remittance be provided to the pharmacy at the required times for electronic and nonelectronic claims, including such detailed information as is necessary for the pharmacy or pharmacist to identify the reimbursement schedule for the specific network, etc.

No exceptions were noted.

Reconciliation for Effective Rate Guarantee

This portion of the examination evaluated Prime Management's compliance with section 626.8825(3)(b), F.S. to ensure participating pharmacy contracts conform with the required communication standards and that the basis of reimbursement information meets the required standards.

No exceptions were noted.

Recoupment

This portion of the examination evaluated Prime Management's compliance with section 626.8825(3)(c), F.S. to ensure participating pharmacy contracts state that the PBM is not participating in prohibited recoupment activities.

No exceptions were noted.

Unilateral Changes to Contracts Prohibited

This portion of the examination evaluated Prime Management's compliance with section 626.8825(3)(d), F.S. to ensure participating pharmacy contracts prohibit unilateral changes to the contract's terms.

No exceptions were noted.

PBM Network Information

This portion of the examination evaluated Prime Management's compliance with section 626.8825(3)(f), F.S. to ensure participating pharmacy contracts require that PBMs provide a pharmacy, upon request, a list of pharmacy benefits plans or programs in which the pharmacy is a part of the network; and updates to the network information are communicated by the PBM to the pharmacy within 7 days.

No exceptions were noted.

Electronic Remittance Advice

This portion of the examination evaluated Prime Management's compliance with section 626.8825(3)(g), F.S. to ensure participating pharmacy contracts require PBMs to provide an Electronic Remittance Advice that contains the required information in the required format.

No exceptions were noted.

Administrative Appeal Procedure

This portion of the examination evaluated Prime Management's compliance with section 626.8825(3)(h), F.S. to ensure participating pharmacy contracts contain a reasonable administrative appeal procedure that includes certain requirements to allow a pharmacy to challenge the maximum allowable cost pricing information, etc.

No exceptions were noted.

Claims Handling Practices
Sections 627.3161(16 and (17), and 641.3155(14) and (15). F.S.

This portion of the examination evaluated Prime Management's compliance with sections 627.6131, and 641.3155, F.S., that require PBMs acting on behalf of health insurers to pay a pharmacy claim or notify the provider or designee if a claim is denied or contested within 30 days of receipt of electronic or nonelectric claims.

No exceptions were noted.

Administrative Appeals Reporting
Section 626.8825(3)(h)5., F.S.

This portion of the examination evaluated Prime Management's compliance with section 626.8825(3)(h)5., F.S. that requires PBMs to report the total number of appeals relating to Maximum Allowable Cost ("MAC") to OIR every 90 days.

No exceptions were noted.

Prohibited Practices for Pharmacy Benefit Managers
Section 626.8827, F.S.

The examiners evaluated Prime Management's contracts to identify if any of the practices prohibited by section 626.8827, F.S., were exhibited.

No exceptions were noted.

Annual Attestation of Compliance
Section 626.89(6), F.S.

This portion of the examination evaluated Prime Management's compliance with section 626.89(6), F.S., which requires PBMs to annually submit a statement to OIR attesting to its compliance with the network requirements of section 626.8825, F.S.

No exceptions were noted.

Conclusion

This targeted market conduct examination of Prime Therapeutics Management, LLC was designed to review and evaluate Prime Management's compliance with all provisions of Part VII of Chapter 626, and all other laws or rules applicable to PBMs. It does not document what regulatory or administrative action may be taken by OIR.

Examination Report Submission

The courtesy and cooperation of the officers and employees of Prime Therapeutics Management, LLC during the examination is acknowledged and appreciated.



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