Market Conduct Examination Final Report

Capital Rx, Inc.

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FLORIDA OFFICE OF
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Regulation

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Executive Summary

The Florida Office of Insurance Regulation ("OIR") performed a market conduct examination of Capital Rx, Inc. ("Capital Rx") 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. Capital Rx reported 143 pharmacy benefit plan or program contracts, and 56 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, Capital Rx's contractual arrangements with pharmacy benefits plans or programs and participating pharmacies 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) effective July 1, 2023 doing business in Florida. The Act 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 law requires the examination to be a systematic review for the purpose of determining the PBM's compliance with all provisions contained within SB 1550, 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 Capital Rx and a pharmacy benefits plan or program and participating pharmacies. The examination was performed by a contracted examination firm, Examination Resources LLC. and members of the OIR Market Regulation business unit. This is the first examination of Capital Rx. In reviewing materials for this report, the examiners and OIR relied on records provided by Capital Rx.

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

Capital Rx is a foreign third-party administrator licensed and authorized to conduct business in Florida on June 24, 2024. Capital Rx also received a letter of registration as a Pharmacy Benefit Manager in Florida on March 4, 2020.

Capital Rx serves as a PBM or a pharmacy benefits administrator ("PBA"), depending on services performed, to customers and provides retail pharmacy claims processing, network management, formulary management, and rebate aggregation to plan sponsors and their members.

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. 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 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 referred to OIR for review pertaining to Capital Rx.

Examination Findings and Observations

The following is compiled from the examiners' and OIR's review Capital Rx'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.

Capital Rx identified a universe of 143 pharmacy benefit plan or program contracts which were executed, amended, adjusted, or renewed on or after July 1, 2023, applying to contractual agreements effective from January 1, 2024, through December 31, 2024, and subject to the examination scope period. A random sample of 84 contracts was selected and reviewed by the examiners.

Fair Pricing Models and Proper Payment Distribution

This portion of the examination evaluated Capital Rx'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.

No exceptions were noted.

Network Adequacy and Fair Access

This portion of the examination evaluated Capital Rx'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.

Finding 1 The examiners determined that in 16 instances out of 84 contracts reviewed, an error rate of 19.0%, Capital Rx did not include, in substantial form, terms that include network adequacy requirements, as required by Section 626.8825(2)(e), F.S.

Company Response: Capital Rx disagreed with all of the instances contained in the finding stating language or similar language in the contract states, "Members will have access to the network of Retail Pharmacies established and maintained by Capital Rx to deliver Covered Pharmaceuticals to Members. Capital Rx will maintain or develop a network in Sponsor's service area(s) that meets reasonable access standards."

Capital Rx also indicated that the network adequacy requirements were not applicable to the 16 instances raised. None of the 16 customers at issue are based in the state of Florida. The customers include several municipalities and school districts in states outside of Florida (e.g. Indiana), a few ERISA plans, and a New Mexico insurer that issues individual insurance policies in New Mexico, Medicare Advantage plans and New Mexico Medicaid plans. For each of these customers, the Florida requirements are either preempted by federal law or otherwise inapplicable because the state law in which the plan is sitused applies. Additionally, two of the contracts identified are discount card program agreements; network adequacy requirements are functionally inapplicable to this type of product which does not involve fulsome pharmacy benefits or a traditional pharmacy network.

The Finding is contained in the report because the pharmacy benefits plan or program contracts reimburse, cover the cost of, or provide access to discounts on pharmacist services provided by one or more pharmacies to covered persons who reside in, are employed by, or receive pharmacist services from this state. Additionally, discount card agreements are applicable pursuant to section 626.8825(1)(u)1, F.S. and are not exempt from the requirement.

Continuity of Care

This portion of the examination evaluated Capital Rx'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 2: The examiners determined that in two instances out of 84 contracts reviewed, an error rate of 2.3%, Capital Rx did not include, in substantial form terms 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, as provided in Section 626.8825(2)(h)1.a.-(h)1.c., F.S.

Company Response: Capital Rx disagreed with both instances contained in the finding and stated it is their standard practice to provide impacted members with at least 60 days advance notice of a negative formulary change.

Additionally, Capital Rx indicated that the continuity of care requirements were not applicable to the instances raised. The two agreements are with a Michigan municipality and Tennessee municipality. As such, these agreements are subject to the laws of Michigan and Tennessee related to continuity of care requirements.

The Finding is contained in the report as the pharmacy benefits plan or program contracts reimburse, cover the cost of, or provide access to discounts on pharmacist services provided by one or more pharmacies to covered persons who reside in, are employed by, or receive pharmacist services from this state.

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

Capital Rx identified a universe of 56 participating pharmacy contracts which were executed, amended, adjusted, or renewed on or after July 1, 2023, applying to contractual agreements effective from January 1, 2024, through December 31, 2024, and subject to the examination scope period.

Remittances

This portion of the examination evaluated Capital Rx'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.

Finding 3: The examiners determined that in 50 instances out of 56 contracts reviewed, an error rate of 89.3%, Capital Rx did not include, in substantial form, terms that include a remittance be provided to the pharmacy at the required times for electronic and nonelectronic claims, as required by Section 626.8825(3)(a), F.S.

Company Response: Capital Rx disagreed with the finding stating language from (3)(a) appears in the Provider Manual v. 6 Effective July 1, 2024, Florida Exhibit beginning on page [specific page number]. In accordance with the requirements of the agreement, providers were notified at the time the Provider Manual was updated to include the Florida Exhibit.

Additionally, the prior version of the Provider Manual effective December 1, 2023 (v. 5) contained language on p. 39 indicating that Capital Rx provides an electronic remittance advice with payment.

The detailed requirements of the Prescription Drug Reform Act (SB 1550) took time to operationalize for existing pharmacy agreements, and Capital Rx acknowledges that the exact statutory language did not appear in the Provider Manual until July 1, 2024. Capital Rx is not aware of any instances in the period of time between January and July of 2024 in which a remittance failed to be provided in accordance with the terms of 626.8825(3)(a).

The Finding is contained in the report because none of the prior versions included, in substantial form, the terms required by the statute. Version 6 did not become effective until July 1, 2024.

Reconciliation for Effective Rate Guarantee

This portion of the examination evaluated Capital Rx'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.

Finding 4: The examiners determined that in 50 instances out of 56 contracts reviewed, an error rate of 89.3%, Capital Rx did not include, in substantial form, terms that ensure conformation with the required communication standards and that the basis of reimbursement information meets the required standards, as required by Section 626.8825(3)(b), F.S.

Company Response: Capital Rx disagreed with the finding stating language from (3)(b) appears in the Provider Manual v. 6 Effective July 1, 2024, Florida Exhibit beginning on page [specific page number]. In accordance with the requirements of the agreement, providers were notified at the time the Provider Manual was updated to include the Florida Exhibit.

Additionally, the prior version of the Provider Manual effective December 1, 2023 (v. 5) contained a description of the basis for reimbursement on p. 38. The detailed requirements of the Prescription Drug Reform Act (SB 1550) took time to operationalize for existing pharmacy agreements, and Capital Rx acknowledges that the exact statutory language did not appear in the Provider Manual until July 1, 2024. Capital Rx is not aware of any instances in the period of time between January and July of 2024 in which reimbursement information was not communicated to a pharmacy in accordance with the requirements of 626.8825(3)(b).

The Finding is contained in the report because none of the prior versions included, in substantial form, the terms required by the statute. Version 6 did not become effective until July 1, 2024.

Recoupment

This portion of the examination evaluated Capital Rx'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.

Finding 5: The examiners determined that in 50 instances out of 56 contracts reviewed, an error rate of 89.3%, Capital Rx did not include, in substantial form, terms that ensure the PBM is not participating in prohibited recoupment activities., as required by Section 626.8825(3)(c), F.S.

Company Response: Capital Rx disagreed with the finding stating language from (3)(c) appears in the Provider Manual v. 6 Effective July 1, 2024, Florida Exhibit beginning on page [specific page

number]. In accordance with the requirements of the agreement, providers were notified at the time the Provider Manual was updated to include the Florida Exhibit.

The detailed requirements of the Prescription Drug Reform Act (SB 1550) took time to operationalize for existing pharmacy agreements, and Capital Rx acknowledges that the exact statutory language did not appear in the Provider Manual until July 1, 2024. Capital Rx is not aware of any prohibited recoupment activities in the period of time between January and July of 2024.

The Finding is contained in the report because none of the prior versions included, in substantial form, the terms required by the statute. Version 6 did not become effective until July 1, 2024.

Unilateral Changes to Contracts Prohibited

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

Finding 6: The examiners determined that in 50 instances out of 56 contracts reviewed, an error rate of 89.3%, Capital Rx did not include, in substantial form, terms that ensure no unilateral changes will be made to the contract's terms, as required by Section 626.8825(3)(d), F.S.

Company Response: Capital Rx disagreed with the finding stating language from (3)(d) appears in the Provider Manual v. 6 Effective July 1, 2024, Florida Exhibit beginning on page [specific page number]. In accordance with the requirements of the agreement, providers were notified at the time the Provider Manual was updated to include the Florida Exhibit.

Seven of the provider agreements identified contain language requiring the mutual written consent of both parties to make any amendments. These include the agreements with CVS Pharmacy, Haris Teeter, Omnicare, Sam's Club, Kroger, Walgreens, and Walmart.

The detailed requirements of the Prescription Drug Reform Act (SB 1550) took time to operationalize for existing pharmacy agreements, and Capital Rx acknowledges that the exact statutory language did not appear in the Provider Manual until July 1, 2024. Capital Rx did not unilaterally amend any of the identified agreements between January and July of 2024.

The Finding is contained in the report because none of the prior versions included, in substantial form, the terms required by the statute. Version 6 did not become effective until July 1, 2024.

Pharmacy Delivery Services

This portion of the examination evaluated Capital Rx's compliance with Section 626.8825(3)(e), F.S. to ensure participating pharmacy contracts do not prohibit pharmacy delivery services.

No exceptions were noted.

PBM Network Information

This portion of the examination evaluated Capital Rx'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.

Finding 7: The examiners determined that in 50 instances out of 56 contract reviewed, an error rate of 89.3%, Capital Rx did not include, in substantial form, terms that 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, as required by Section 626.8825(3)(f), F.S.

Company Response: Capital Rx disagreed with the finding stating language from (3)(f) appears in the Provider Manual v. 6 Effective July 1, 2024, Florida Exhibit beginning on page [specific page number]. In accordance with the requirements of the agreement, providers were notified at the time the Provider Manual was updated to include the Florida Exhibit.

The detailed requirements of the Prescription Drug Reform Act (SB 1550) took time to operationalize for existing pharmacy agreements, and Capital Rx acknowledges that the exact statutory language did not appear in the Provider Manual until July 1, 2024.

The Finding is contained in the report because none of the prior versions included, in substantial form, the terms required by the statute. Version 6 did not become effective until July 1, 2024.

Electronic Remittance Advice

This portion of the examination evaluated Capital Rx's compliance with Section 626.8825(3)(g), F.S. to ensure participating pharmacy contracts require PBMs to provide electronic remittance advices that contain required information in the required format.

Finding 8: The examiners determined that in 50 instances out of 56 contracts reviewed, an error rate of 89.3%, Capital Rx did not include terms, in substantial form, that PBMs provide electronic remittance advices that contain required information in the required format, as required by Section 26.8825(3)(g), F.S.

Company Response: Capital Rx disagreed with the finding stating language from (3)(g) appears in the Provider Manual v. 6 Effective July 1, 2024, Florida Exhibit beginning on page [specific page number]. In accordance with the requirements of the agreement, providers were notified at the time the Provider Manual was updated to include the Florida Exhibit.

Additionally, the prior version of the Provider Manual effective December 1, 2023 (v. 5) contained language on p. 39 indicating that Capital Rx provides an electronic remittance advice with payment. The detailed requirements of the Prescription Drug Reform Act (SB 1550) took time to operationalize for existing pharmacy agreements, and Capital Rx acknowledges that the exact statutory language did not appear in the Provider Manual until July 1, 2024. Capital Rx is not aware of any instances in the period of time between January and July of 2024 in which a remittance failed to be provided in accordance with the terms of 626.8825(3)(g).

The Finding is contained in the report because none of the prior versions included, in substantial form, the terms required by the statute. Version 6 did not become effective until July 1, 2024..

Administrative Appeal Procedure

This portion of the examination evaluated Capital Rx'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.

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

This portion of the examination evaluated Capital Rx's compliance with Section 626.8825(3)(h), 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 Capital Rx's contracts to identify if any of the following prohibited practices were exhibited.

No exceptions were noted.

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

This portion of the examination evaluated Capital Rx'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 requirements Section 626.8825, F.S.

No exceptions were noted.

Conclusion

This targeted market conduct examination of Capital Rx, Inc. was designed to review and evaluate Capital Rx'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 Final Report Submission

OIR hereby issues this final report based upon information from the examiners' amended draft report, additional research conducted by OIR, and additional information provided by Capital Rx, Inc.



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