Market Conduct Examination Report

EMPLOYEE HEALTH INSURANCE MANAGEMENT, INC.

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FLORIDA OFFICE OF
Insurance
Regulation

Table of Contents

Executive Summary 2
Purpose and Scope of the Examination 2
Company Profile 3
Examination Procedures 4
Complaint Analysis 4
Examination Findings and Observations 4
Pharmacy Benefit Plans or Programs Contracts 4
Participating Pharmacy Contracts 6
Prohibited Practices for Pharmacy Benefit Managers 9
Conclusion 9
Examination Report Submission 9

Executive Summary

The Florida Office of Insurance Regulation ("OIR") performed a market conduct examination of Employee Health Insurance Management, Inc. ("EHIM") 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 statute. EHIM reported 17 pharmacy benefit plan or program contracts, and 8,471 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, EHIM'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) 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 EHIM and a pharmacy benefits plan or program and participating pharmacies. The examination was performed by a contracted examination firm, INS Regulatory Insurance Services, Inc. and members of the OIR Market Regulation business unit. This is the first examination of EHIM. In reviewing materials for this report, the examiners and OIR relied on records provided by EHIM.

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

EHIM is a foreign third party administrator licensed and authorized to conduct business in Florida on June 18, 2024. EHIM also received a Letter of Registration as a Pharmacy Benefit Manager in Florida on June 24, 2024.

EHIM is licensed in 18 states and is committed to lowering pharmacy costs through creative formularies and hands-on member care.

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 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 referred to OIR for review pertaining to EHIM.

Examination Findings and Observations

The following findings are compiled from the review of EHIM'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.

EHIM identified a universe of 17 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 EHIM'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 17 instances out of 17 contracts reviewed, an error rate of 100%, EHIM did not include, in substantial form, terms requiring the use of a pass-through pricing model, as required by Section 626.8825(2)(a), F.S.

Company Response: EHIM agreed with the findings and provided evidence of a contract amendment that includes the required statutory language to be issued to all clients with members in Florida.

Finding # 2: The examiners determined that in 17 instances out of 17 contracts reviewed, an error rate of 100%, EHIM 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: EHIM agreed with the findings and provided evidence of a contract amendment that includes the required statutory language to be issued to all clients with members in Florida.

Network Adequacy and Fair Access

This portion of the examination evaluated EHIM'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 # 3: The examiners determined that in 17 instances out of 17 contracts reviewed, an error rate of 100%, EHIM did not include, in substantial form, terms providing network adequacy requirements, as required by Section 626.8825(2)(e), F.S.

Company Response: EHIM agreed with the findings and provided evidence of a contract amendment that includes the required statutory language to be issued to all clients with members in Florida.

Finding # 4: The examiners determined that in 17 instances out of 17 contracts reviewed, an error rate of 100%, EHIM did not include, in substantial form, terms prohibiting the ability of a PBM to condition participation in one pharmacy network on participation in any other network, etc., as required by Section 626.8825(2)(f), F.S.

Company Response: EHIM agreed with the findings and provided evidence of a contract amendment that includes the required statutory language to be issued to all clients with members in Florida.

Finding # 5: The examiners determined that in 11 instances out of 17 contracts reviewed, an error rate of 64.7%, EHIM did not include, in substantial form, terms prohibiting 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, as required by Section 626.8825(2)(g), F.S.

Company Response: EHIM agreed with the findings and provided evidence of a contract amendment that includes the required statutory language to be issued to all clients with members in Florida.

Continuity of Care

This portion of the examination evaluated EHIM'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 # 6: The examiners determined that in 17 instances out of 17 contracts reviewed, an error rate of 100%, EHIM did not include, in substantial form, terms to ensure 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. Except where the requirement does not apply if the covered prescription drug meets the requirements provided in (h)1.a.- (h)1.c.

Company Response: EHIM agreed with the findings and provided evidence of a contract amendment that includes the required statutory language to be issued to all clients with members in Florida.

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

EHIM identified a universe of 8,471 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.

Remittances

This portion of the examination evaluated EHIM'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 # 7: The examiners determined that in one instance out of 86 contracts reviewed, an error rate of 1.2%, EHIM 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: EHIM agreed with the finding and provided evidence of a contract amendment that includes the required statutory language to be issued to all participating pharmacies located in Florida.

Reconciliation for Effective Rate Guarantee

This portion of the examination evaluated EHIM'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 # 8: The examiners determined that in 72 instances out of 86 contracts reviewed, an error rate of 83.7%, EHIM 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: EHIM agreed with 59 of the 72 instances and provided evidence of a contract amendment that includes the required statutory language to be issued to all participating pharmacies located in Florida.

The Finding is contained in the report as the 13 contracts at issue were amended with an effective date of January 1, 2024, which is in the scope period of the examination.

Recoupment

This portion of the examination evaluated EHIM'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 # 9: The examiners determined that in 72 instances out of 86 contracts reviewed, an error rate of 83.7%, EHIM 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: EHIM agreed with 59 of the 72 instances and provided evidence of a contract amendment that includes the required statutory language to be issued to all participating pharmacies located in Florida.

The Finding is contained in the report as the 13 contracts at issue were amended with an effective date of January 1, 2024, which is in the scope period of the examination.

Unilateral Changes to Contracts Prohibited

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

Finding # 10: The examiners determined that in 69 instances out of 86 contracts reviewed, an error rate of 80.2%, EHIM did not include, in substantial form, terms that prohibit unilateral changes to the contract's terms, as required by Section 626.8825(3)(d), F.S.

Company Response: EHIM agreed with 55 of the 69 instances and provided evidence of a contract amendment that includes the required statutory language to be issued to all participating pharmacies located in Florida.

The Finding is contained in the report as the 14 contracts at issue were amended with an effective date of January 1, 2024, which is in the scope period of the examination.

PBM Network Information

This portion of the examination evaluated EHIM'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 # 11: The examiners determined that in 72 instances out of 86 contracts reviewed, an error rate of 83.7%, EHIM 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: EHIM agreed with 59 of the 72 instances and provided evidence of a contract amendment that includes the required statutory language to be issued to all participating pharmacies located in Florida.

The Finding is contained in the report as the 13 contracts at issue were amended with an effective date of January 1, 2024, which is in the scope period of the examination.

Electronic Remittance Advice

This portion of the examination evaluated EHIM'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 # 12: The examiners determined that in 29 instances out of 86 contracts reviewed, an error rate of 33.7%, EHIM 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: EHIM agreed with 29 of the 29 instances and provided evidence of a contract amendment that includes the required statutory language to be issued to all participating pharmacies located in Florida.

Administrative Appeal Procedure

This portion of the examination evaluated EHIM'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.

Finding # 13: The examiners determined that in 72 instances out of 86 contracts reviewed, an error rate of 83.7%, EHIM did not include terms, in substantial form, to ensure participating pharmacy contracts contain a reasonable administrative appeal procedure that includes certain requirements, as required by Section 26.8825(3)(h), F.S.

Company Response: EHIM agreed with 59 of the 72 instances and provided evidence of a contract amendment that includes the required statutory language to be issued to all participating pharmacies located in Florida.

The Finding is contained in the report as the 13 contracts at issue were amended with an effective date of January 1, 2024, which is in the scope period of the examination.

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

This portion of the examination evaluated EHIM'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 EHIM'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 EHIM'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 Employee Health Insurance Management, Inc. was designed to review and evaluate EHIM'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 Employee Health Insurance Management, Inc. during the examination is acknowledged and appreciated.



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