Market Conduct Examination

ProAct Inc.

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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 ProAct Inc. ("ProAct") 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 in the statute. ProAct reported 133 pharmacy benefit plan or program contracts, and 1,877 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, ProAct'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 ProAct 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 ProAct. In reviewing materials for this report, the examiners and OIR relied on records provided by ProAct.

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

ProAct received a Certificate of Authority as a foreign third-party administrator licensed and authorized to conduct business in Florida on January 16, 2024. ProAct also received a Letter of Registration as a Pharmacy Benefit Manager in Florida on April 8, 2020.

ProAct is a full-service pharmacy benefit management company incorporated on May 10, 1999, under its parent company, KPH Healthcare Services, Inc. ProAct administers pharmacy benefit management services for self-insured employer-sponsored health plans. As a prescription benefit manager, its core services include processing claims through an adjudication system, maintaining access to a network of contract pharmacies, coordinating rebate aggregation, operating both mail-order and specialty pharmacies, providing and managing a customer service call center for questions from members,

providers, pharmacies, and others, and clinical services including formulary and utilization management.

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 sent to OIR for review pertaining to ProAct.

Examination Findings and Observations

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

ProAct identified a universe of 133 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. A random sample of all 84 pharmacy benefit plan or program contracts was selected and reviewed by the examiners.

Fair Pricing Models and Proper Payment Distribution

This portion of the examination evaluated ProAct'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 eight instances out of 84 contracts reviewed, an error rate of 9.5%, ProAct 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: ProAct disagreed with the findings and stated that statute does not apply to the contracts as the client is domiciled outside of Florida and provided legal reasoning for their position.

The Finding is contained in the report because ProAct confirmed that the pharmacy benefit plans or programs contracts pay for or reimburse pharmacist services provided by one or more pharmacies to covered persons who reside in, are employed by, or receive pharmacist services from Florida.

Finding #2: The examiners determined that in 10 instances out of 84 contracts reviewed, an error rate of 11.9%, ProAct's contracts did not include, in substantial form, terms that ensure compliance with Section (2)(d) requiring the pass through of all prescription drug manufacturer rebates by the pharmacy benefit manager as provided in the statute.

Company Response: ProAct disagreed with the findings and stated that statute does not apply to the contracts as the client is domiciled outside of Florida and provided legal reasoning for their position.

The Finding is contained in the report because ProAct confirmed that the pharmacy benefit plans or programs contracts pay for or reimburse pharmacist services provided by one or more pharmacies to covered persons who reside in, are employed by, or receive pharmacist services from Florida.

Network Adequacy and Fair Access

This portion of the examination evaluated ProAct'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.

Continuity of Care

This portion of the examination evaluated ProAct'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 #3: The examiners determined that in 11 instances out of 84 contracts reviewed, an error rate of 13.1%, ProAct 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: ProAct disagreed with the findings and stated that statute does not apply to the contracts as the client is domiciled outside of Florida and provided legal reasoning for their position.

The Finding is contained in the report because ProAct confirmed that the pharmacy benefit plans or programs contracts pay for or reimburse pharmacist services provided by one or more pharmacies to covered persons who reside in, are employed by, or receive pharmacist services from Florida.

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

ProAct identified a universe of 1,877 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 ProAct'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 ProAct'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 ProAct'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 #4: The examiners determined that in 85 instances out of 86 contracts reviewed, an error rate of 98.8%, ProAct did not include, in substantial form, terms that prohibit financial clawbacks, reconciliation offsets, or offsets to adjudicated claims, as required by Section 626.8825(3)(c), F.S.

Company Response: ProAct disagreed with the finding and stated that ProAct utilizes a subcontractor for pharmacy networks and contracting. ProAct provided the subcontractor's Florida-specific addendum to the pharmacy contract.

The Finding is contained in the report as the Florida addendum does not include an effective date.

ProAct has taken corrective action by submitting a Florida addendum issued by the subcontractor on their behalf.

Unilateral Changes to Contracts Prohibited

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

Finding #5: The examiners determined that in 85 instances out of 86 contracts reviewed, an error rate of 98.8%, ProAct's contracts did not include, in substantial form, terms that prohibit unilateral changes to the contracts terms, as required by Section 626.8825(3)(d), F.S.

Company Response: ProAct disagreed with the finding and stated that ProAct utilizes a subcontractor for pharmacy networks and contracting. ProAct provided the subcontractor's Florida-specific addendum to the pharmacy contract.

The Finding is contained in the report as the Florida addendum does not include an effective date.

ProAct has taken corrective action by submitting a Florida addendum issued by the subcontractor on their behalf.

PBM Network Information

This portion of the examination evaluated ProAct'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 #6: The examiners determined that in 85 instances out of 86 contracts reviewed, an error rate of 98.8%, ProAct's contracts did not include, in substantial form, terms that ensure compliance with 626.8825(3)(f). Specifically, the contract does not require the PBM to provide a pharmacy, upon its request, a list of pharmacy benefits plans or programs in which the pharmacy is a part of the network, state updates to the list must be communicated to the pharmacy within 7 days, include a prohibition stating the PBM may not restrict the pharmacy or pharmacist from disclosing this information to the public.

Company Response: ProAct disagreed with the finding and stated that ProAct utilizes a subcontractor for pharmacy networks and contracting. ProAct provided the subcontractor's Florida-specific addendum to the pharmacy contract.

The Finding is contained in the report as the Florida addendum does not include an effective date.

ProAct has taken corrective action by submitting a Florida addendum issued by their subcontractor on their behalf.

Electronic Remittance Advice

This portion of the examination evaluated ProAct'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.

No exceptions were noted.

Administrative Appeal Procedure

This portion of the examination evaluated ProAct'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 #7: The examiners determined that in 85 instances out of 86 contracts reviewed, an error rate of 98.8%, ProAct's contracts did not include terms or state, in substantial form, that the pharmacy benefit manager shall provide a reasonable administrative appeal procedure to allow a pharmacy or pharmacist to challenge the maximum allowable cost pricing information and the reimbursement made under the maximum allowable cost as defined in s. 627.64741 for a specific drug as being below the acquisition cost available to the challenging pharmacy or pharmacist as required in (3)(h)1.-5.

Company Response: ProAct disagreed with the finding and stated that ProAct utilizes a subcontractor for pharmacy networks and contracting. ProAct provided the subcontractor's Florida-specific addendum to the pharmacy contract.

The Finding is contained in the report as the Florida addendum does not include an effective date.

ProAct has taken corrective action by submitting a Florida addendum issued by the subcontractor on their behalf.

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

This portion of the examination evaluated ProAct'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.

The claims universe was divided into four categories: in-network claims closed with payment, in-network claims closed without payment, out-of-network claims closed with payment and out-of-network claims closed without payment. For the purposes of this examination, the selection of claims was reviewed for each of the categories. ProAct identified a universe consisting of 200,070 claims for in-network claims categories; there were no claims for out-of-network closed with payment universe;

there were no claims filed for out-of-network closed without payment. A random sample of 109 claims was selected and reviewed by the examiners for each of the two categories with a universe of claims.

Finding #8: The examiners determined that in three instances out of 109 claims reviewed, an error rate of 2.8%, ProAct did not pay the pharmacy claim within 30 days of receiving the claim, as required by Section 627.6131(16), Florida Statutes.

Company Response: ProAct agreed with the findings and stated that ProAct utilizes a subcontractor for pharmacy networks and contracting. The subcontractor confirmed a system error prevented the initial payments.

ProAct has taken corrective action by submitting documentation that the system error identified during the Market Conduct Exam that resulted in a delay of payment of certain claims has been corrected noting that no interest on payments was due.

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

This portion of the examination evaluated ProAct'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 ProAct'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 ProAct'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.

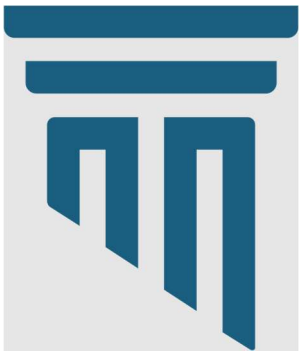
No exceptions were noted.

Conclusion

This targeted market conduct examination of ProAct Inc. was designed to review and evaluate ProAct Inc.'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 ProAct Inc. during the examination is acknowledged and appreciated.



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