

BEFORE THE DIVISION OF INSURANCE
DEPARTMENT OF LABOR AND REGULATION
STATE OF SOUTH DAKOTA

IN THE MATTER OF
OPTUMRX, INC.

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CONSENT ORDER

In resolution of the above matter and in lieu of issuance of a Notice of Hearing and a formal hearing, the undersigned parties do hereby agree to the following:

OPTUMRX, INC. (“OPTUM”), whose address of record is 11000 OPTUM CIRCLE, M101 - E013, Eden Prairie, MN 55344, is a Third-Party Administrator (“TPA”) in the State of South Dakota holding a TPA License with a Pharmacy Benefit Manager (“PBM”) Qualification;

OPTUM is aware that the South Dakota Division of Insurance (“Division”) has conducted an investigation of its insurance-related activities in South Dakota;

The Division has alleged the following:

- 1) OPTUM, as a PBM, enters into written agreements with health insurance companies and other third-party payors for pharmacy benefit manager (PBM) services such as pharmacy network administration and claim processing services;
- 2) OPTUM enters into a written agreements with Pharmacy Services Administrative Organizations (“PSAO”) which act as agents for and on behalf of member pharmacies for the provision of pharmacy services to covered individuals of health benefit plans that receive PBM services from OPTUM;
- 3) OPTUM’s contracts with PSAOs sometimes include Effective Rate arrangements, which are contractual agreements between OPTUM and a PSAO that set the overall rate of reimbursement of applicable claims to member pharmacies;
- 4) The Effective Rate arrangement requires an annual year-end financial reconciliation (“Reconciliation”) in which OPTUM calculates the PSAO performance to the effective rate based on individual member pharmacy’s submitted claims information, resulting in an aggregate overpayment or underpayment to the PSAO, which may result in the PSAO adjusting amounts already paid to pharmacies;
- 5) Due to the foregoing, OPTUM retroactively adjusted claims for reimbursement submitted by the South Dakota Pharmacy for a prescription drug, in violation of SDCL 58-29E-13;
- 6) The above-cited conduct may be grounds for the revocation or suspension of OPTUM’s TPA License with PBM Qualification pursuant to SDCL 58-29E-13, 58-29D-31, and 58-30-167(2);

OPTUM denies the above allegations, and specifically denies that the PSAO is an agent of OPTUM and further denies the Reconciliation with the PSAO and subsequent account balancing between the PSAO and pharmacy are violative of SDCL 58-29E-13.

By the execution of this Consent Order and the payment of a penalty, OPTUM neither admits to nor denies any violation of the laws of the State of South Dakota, waives its right to contest the existence of this Consent Order in any future actions or licensing procedures with the Division;

OPTUM is aware of and understands the nature of the charges and has been informed that it has the right to notice, hearing, and appeal, and that by agreeing to and signing this Consent Order waives these rights;

In return for OPTUM agreeing to the provisions of this Consent Order, the Division agrees not to proceed to hearing and agrees that this Consent Order will constitute an informal disposition of this licensing matter and all potential enforcement actions concerning the application of SDCL 58-29E-13 prior to the date of this Consent Order, pursuant to SDCL 1-26-20;

OPTUM agrees to a monetary penalty in the amount of \$145,000 pursuant to SDCL 58-4-28.1, in lieu of contesting this matter formally;

OPTUM further agrees that this Consent Order may be considered for the purpose of determining the appropriate sanction in any future actions with the Division for any violations of the laws or regulations of the State of South Dakota or for failing to abide by any order of the Director;

Wherefore, good cause appearing from the foregoing, it is hereby ORDERED that OPTUM pay a monetary penalty in the amount of \$145,000 payable to "South Dakota Division of Insurance" for deposit in the general fund of the State of South Dakota; and it is further

ORDERED that OPTUM abide the agreements made by it in this Consent Order; and it is further

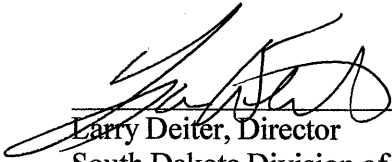
ORDERED that should OPTUM fail to comply with the provisions of this Order, the Division may seek the suspension or revocation of OPTUM's Third-Party Administrator's License at hearing pursuant to SDCL 58-29D-31, or seek other remedies available at law; and it is further

ORDERED that the use of this Consent Order for competitive purposes by an insurance agent or third-party administrator holding a license in the State of South Dakota, or by any company holding Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of said license or authority; and it is further

ORDERED that the provisions of this Consent Order shall be effective from the date the Director signs this Order.

[Signature page follows.]

Dated at Pierre, South Dakota this 18th day of February, 2025.



Larry Deiter, Director
South Dakota Division of Insurance

The undersigned, on behalf of OPTUM, represents it understands the terms of this Consent Order and the waiver of its due process rights and voluntarily enters into this Consent Order.

Dated this _____ day of _____, 2025.

Kate Mihalevich
Kate Mihalevich (01/27/2025 14:02 CST)

Signature of Authorized Representative
Kate Mihalevich

Printed Name
General Counsel, Optum Rx

Title

01/27/2025