

BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA

FILED

DEC 19 2023

STATE OF OKLAHOMA, ex rel.)
GLEN MULREADY, Insurance Commissioner,)
)
Petitioner,)
)
v.)
)
KROGER PRESCRIPTION PLANS, INC.)
)
Respondent.)

**INSURANCE COMMISSIONER
OKLAHOMA**

Case No. 23-0522-DIS

**CONDITIONAL ADMINISTRATIVE ORDER
AND NOTICE OF HEARING**

COMES NOW the State of Oklahoma, ex rel. Glen Mulready, Insurance Commissioner,
and alleges and states as follows:

JURISDICTION

1. The Insurance Commissioner of the State of Oklahoma, Glen Mulready, (herein referred to as “Commissioner”), is charged with the duty of administering and enforcing all provisions of the Oklahoma Insurance Code, 36 O.S. §§ 101 *et seq.*, the Patient’s Right to Pharmacy Choice Act, 36 O.S. §§ 6958-6968 and the Pharmacy Audit Integrity Act, 59 O.S. §§ 356-356.5, and 357–360.

2. Kroger Prescription Plans, Inc. (“Respondent”) holding SBS Company Number 506262709, is licensed by the State of Oklahoma as a pharmacy benefits manager (hereinafter referred to as “PBM”). Respondent’s address of record is 1014 Vine St., Cincinnati, OH 45242.

3. Pursuant to 59 O.S. § 358, a PBM shall be licensed in order to provide pharmacy benefits management or any services included under the definition of pharmacy benefits management found in Oklahoma statute and must comply with all the applicable laws, rules, and

regulations. Pursuant to 36 O.S. § 6966.1, following notice and opportunity for hearing, a **PBM may be subject of a fine of not less than One Hundred Dollars (\$100.00) and not greater than Ten Thousand Dollars (\$10,000.00) for each violation** of the Patient’s Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, or the provisions of 59 O.S. §§ 357 – 360 of the Oklahoma Statutes. Each day that a PBM conducts business in the State of Oklahoma without a license shall be deemed to be an instance of violation. 36. O.S. § 6966.1(D). Such penalties may be in addition to any other penalty provided by law. *See also*, 36 O.S. § 908, and 59 O.S. § 358(D).

4. Pursuant to OAC 365:25-29-15, the Insurance Commissioner shall have power and authority to examine and investigate the affairs of every PBM engaged in pharmacy benefits management in the state in order to determine whether it is in compliance with all applicable provisions of Title 36, and Title 59 of the Oklahoma Statutes and Title 365 of the Oklahoma Administrative Code and may take disciplinary action to enforce the same.

5. Pursuant to 59 O.S. § 358(D), the Department “may suspend, revoke or refuse to reissue or renew a license for noncompliance with any of the provisions hereby established or with the rules promulgated by the Department; for conduct likely to mislead, deceive or defraud the public or the Department; for unfair or deceptive business practices or for nonpayment of a renewal fee or fine. The Department may also levy administrative fines for each count of which a PBM has been convicted in a Department hearing.”

FINDINGS OF FACT

6. Respondent is domiciled in the State of Ohio and has been licensed in the State of Oklahoma since January 10, 2019.

7. In January of 2023, Respondent paid the requisite reinstatement fee, and applied for and filed, its renewal documentation, which was approved by OID.

8. Pursuant to 59 O.S. § 358(B):

“The Department shall establish by regulation, licensure procedures, required disclosures for pharmacy benefits managers (PBMs) and other rules as may be necessary for carrying out and enforcing the provisions of this act. The licensure procedures shall, at a minimum, include the completion of an application form that shall include the name and address of an agent for service of process, the payment of a requisite fee, and evidence of the procurement of a surety bond.

9. Pursuant to Okla. Admin. Code 365:25-29-8, “PBM to file certain financial statements with the Commissioner”:

“Before May 1 of each year, every PBM providing pharmacy benefits management shall submit to the Insurance Commissioner a report, which includes the most recently concluded fiscal year-end financial statements for the PBM and report of covered lives, signed by an Executive Officer of the PBM attesting to the accuracy of the information contained in the report form prescribed by the Commissioner. The report shall be audited by an independent certified public accountant (CPA) and prepared using generally accepted accounting principles (GAAP). The report may be supplemented by any additional information required by the Insurance Commissioner.”

OAC 365:25-29-8(a).

10. On or about January 23, 2023, the Oklahoma Insurance Department mailed to Respondent an Initial Notice of Annual Financial Statement, reminding Respondent of the upcoming deadline of May 1, 2023, to renew their audited financial statement as required by OAC 365:25-29-8(a).

11. On or about February 17, 2023, the Oklahoma Insurance Department mailed to Respondent a Second Notice of Annual Financial Statement, reminding Respondent again of the upcoming deadline to renew their audited financial statement as required by OAC 365:25-29-8(a).

12. On May 16, 2023, after the deadline to file their audited financial statements, Respondent requested, and was granted by the Department, an extension to file their Annual

Financial Statement pursuant to OAC 365:25-29-8(b). The agreed upon date for Respondent to file their Annual Financial Statement was extended to July 29, 2023.

13. As of the date of this filing, Respondent has failed to submit an audited Annual Financial Statement in violation of OAC 365:25-29-8(a).

CONCLUSIONS OF LAW

14. The Respondent has violated its responsibilities under OAC 365:25-29-8(a) and (b) by failing to file an audited Annual Financial Statement with the Insurance Commissioner on or before July 29 as mutually agreed upon under OAC 365:25-29-8(b).

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Insurance Commissioner that Kroger Prescription Plans, Inc. shall:

Pay a fine of \$10,000.00, pursuant to 59 O.S. § 358, and shall file their audited Annual Financial Statement within thirty (30) days of service of this Conditional Administrative Order; such fine shall be mitigated to \$5,000 if Respondent files its audited Annual Financial Statement in a form acceptable by the Insurance Commissioner within stated timeframe.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Order is a Conditional Order. Unless Kroger Prescription Plans, Inc. requests a hearing with respect to the findings set forth above within thirty (30) days of the date of mailing of this Order, this Order and the penalties set forth above shall become a Final Order on the thirty-first day following the date of mailing of this Order. Such request for a hearing, if desired, shall be made in writing, addressed to Tyler P. Trammell, Assistant General Counsel, Oklahoma Insurance Department, 400 N.E. 50th St., Oklahoma City, Oklahoma, 73105 and must be served on the Oklahoma Insurance Department within the thirty (30) days allotted. The proceedings on any such requested hearing will be

conducted in accordance with the Oklahoma Insurance Code and the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250 through 327. If the Company serves a timely request for hearing on the Oklahoma Insurance Department, this Conditional Order shall act as a notice of the matters to be reviewed at the hearing, and any proposed penalties imposed in this Conditional Order shall be considered withdrawn, pending final resolution at the hearing, at which the Insurance Commissioner will seek the full penalties available at law including suspension or revocation under 59 O.S. § 358(D). *See also*, 36 O.S. §§ 908, 6966.1.

WITNESS My Hand and Official Seal this December 19th, 2023.



Tyler P. Trammell
Tyler P. Trammell, OBA No. 32885
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CERTIFICATE OF MAILING

I, Tyler P. Trammell, hereby certify that a true and correct copy of the above and foregoing Conditional Administrative Order and Notice of Hearing was mailed postage prepaid with return receipt requested on this December 19th, 2023 to:

Emily Schubeler
1014 Vine St.
Cincinnati, OH 45242
Emily.Schubeler@krogerhealth.com

CERTIFIED MAIL
9589 0710 5270 0679 4483 60

And that a copy was delivered to the Oklahoma Insurance Department PBM Compliance and Enforcement Office.



Tyler P. Trammell
Assistant General Counsel