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To: All Pharmacy Services Administrative Organizations, Pharmacy Benefit Managers Doing Business in this State, and Other Interested Parties

From: Michael Wise
Director 

Subject: Recent Changes to South Carolina Law Affecting Pharmacy Benefit Managers and Pharmacy Services Administrative Organizations

Date: September 15, 2023

I. PURPOSE

The purpose of this bulletin is to outline changes made to Chapter 71, Title 38 of the S.C. Code of Laws relating to Pharmacy Benefits Managers (PBMs) and Pharmacy Services Administrative Organizations (PSAOs) during the 2023 legislative session of the South Carolina General Assembly. See [Act No. 30 of 2023](#).

These recent changes give the South Carolina Department of Insurance (SCDOI) the authority to license and regulate PSAOs. These organizations must be licensed through the SCDOI by January 1, 2024 in order to do business in this state. This bulletin outlines the procedure and timeline by which PSAOs may apply for licensure. The Department will be promulgating corresponding regulations outlining this procedure as well.

In addition to the licensure of PSAOs, there were several important changes to the laws governing PBMs in South Carolina. Those changes are summarized below.

II. 2023 LEGISLATIVE CHANGES

A. Pharmacy Audit Rights and External Review

Effective January 1, 2024, this legislation expands the rights of pharmacy providers during an audit conducted by an auditing entity. This includes changes in auditing timelines allowing a pharmacy 30 days to submit records in response to an audit request, with a possible 30-day extension. Additionally, pharmacists are entitled to have the audit limited to claims identified by prescription

number or range of prescription numbers if the audit is conducted for an identified problem. Audits for reasons other than an identified problem are limited to 100 selected prescriptions per pharmacy benefit manager. Pharmacists also have the right to an external review, requested through the SCDOI, following an audit or for any denied appeals of recoupments.

B. Pharmacy Benefits Managers

Other changes affecting Pharmacy Benefits Managers include the following:

- Article 21 now defines PSAOs and Specialized Delivery Drugs;
- Section 38-71-2230 has been amended to include additional prohibited acts by PBMs;
- The “Any Willing Pharmacist” law, Section 38-71-147, has been repealed and replaced with a modified version found in new Section 38-71-2245;
- The SCDOI must promulgate regulations to establish an external review process to facilitate the review of a pharmacy provider’s denied internal appeal or audit finding; and
- The SCDOI must conduct examinations for PBMs and PSAOs to ensure compliance with these laws at least once every five years.

C. Pharmacy Services Administrative Organizations

Act No. 30 adds a new Article 23 to Chapter 71 that gives the SCDOI authority to license and regulate PSAOs. Beginning January 1, 2024, any PSAO doing business in this state must be licensed through the SCDOI. Section 38-71-2330 lists a number of new requirements with which PSAOs must comply. It also imposes upon them a fiduciary duty and duty of good faith and fair dealing to their pharmacy clients. The Department will promulgate corresponding regulations establishing the licensing procedures for PSAOs outlined in Part III below, as well as PSAO reporting requirements.

III. APPLICATION TIMELINE FOR PSAO LICENSES UNDER ACT NO. 30

PSAOs operating in this state must be licensed through the SCDOI beginning January 1, 2024. The application window will begin on October 15, 2023, and the final deadline for all applications will be December 15, 2023. Any entity operating in this state and not properly licensed as a PSAO on or after January 1, 2024, will be subject to administrative action pursuant to S.C. Code § 38-2-10 through § 38-2-30.

Important Dates for License Applications by Pharmacy Services Administrative Organizations

**PSAO Initial Application Begins
October 15, 2023**

**PSAO Initial Application Deadline*
December 15, 2023**

***Applications received after December 15, 2023, may result in a delay in the review process and are not guaranteed to have a license issued by January 1, 2024.**

IV. FILING REQUIREMENTS FOR PSAO LICENSE

Electronic Application:

PSAOs must apply and pay the initial application fee of \$1000 online through the SCDOI website.

Please be advised that any application which is deemed incomplete or unresolved for more than 30 days will be subject to denial, administrative action, or both.

Pursuant to Section 38-71-2320, beginning in 2025, licenses shall be renewed annually no later than March 1st of each year by submitting a renewal application, a \$500 renewal license fee, and all requisite supporting documentation. The renewal application window will begin 90 days prior to license expiration on March 1st of each year. Renewal applications submitted after March 1st will be subject to an initial license fee and may be subject to administrative action for any period for which the PSAO license is not active.

V. QUESTIONS

All interested parties should regularly check the relevant SCDOI [webpage](#) for additional information relative to the application process and related information.

Questions regarding this bulletin, the application process or any PBM/PSAO-related matters should be submitted via email to PBMDep@doi.sc.gov and include complete contact information (individual and/or company name, phone number and email address for follow-up). You may also contact the Office of PBM Oversight via telephone at (803)734-0398.

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