

REPORT FROM AID CONCERNING  
EMERGENCY RULE 128 FAIR AND REASONABLE PHARMACY REIMBURSEMENTS

TO: Executive Committee & ALC (or now Joint Budget Committee)  
FROM: Booth Rand, General Counsel, Arkansas Insurance Department (“AID”)  
DATE: 1-14-2025  
RE: Status and Update Report on Implementation of Emergency Rule 128 & PBM Activities  
CC: Marty Garrity, Jill Thayer, Alan McClain, and Kevin Anderson

This is a monthly update or report as required by the ALC/Executive Committee which approved AID Emergency Rule 128: Fair and Reasonable Pharmacy Reimbursements (“Emergency Rule 128”). Pursuant to Motion in Executive Committee, AID is required to report its activities on Rule 128, “Fair and Reasonable Pharmacy Reimbursements, as well as report its enforcement and complaints activities related to PBM regulation.

The update on Rule 128: Fair and Reasonable Pharmacy Reimbursements, was approved by the legislature and ALC in December. AID is currently reviewing health insurer applications for reviews of dispensing costs pursuant to that Rule and Bulletin AID 18-2024 under those standards. We anticipate receiving several hundred or more applications for review supplying us with the required Bulletin 18-2024 data. The deadlines for filing the data is February 17, 2025.

ALC also required us in this report to report enforcement activities. We have a number of enforcement activities going on against PBMS.

Legal has three enforcement actions following issuance of formal notices of hearings: (1) CVS for multiple violations of below NADAC minimums. Fine settlement negotiations with counsel for CVS continue; (2) Magellan, multiple violations of below NADAC minimums. Fine settlement with Magellan continue with their local counsel; and (3) ESI or Prime, multiple violations for below NADAC minimums. Same

All of the above actions will precipitate in formal consent orders.

Secondly, Legal has initiated two audits or limited scope exams against Navitus and Magellan. The data requests have been made waiting on data. The audits pertain to complaints about paying affiliate PBMs higher than non affiliates in violation of the PBMLA.

Thirdly, AID is hiring an experienced PBM general counsel to help enforce infractions on a more daily or weekly basis. He has PBM class action experience and is already familiar with our laws and rules, and we are anxious to get this person started into PBM enforcement.

Four, AID is authorizing a PBM industry wide examination to check for affiliate pricing compliance. We last did this in 2020 which culminated in a report that was presented to Insurance & Commerce. This is in response to Senator Dismangs concern that it’s time to do one again in 2025. We would use the same outside firms we did in 2025.

As to complaints we have received or adjusted, I will use data from complaints we have received or adjusted from December of 2024, or last month.

**DECEMBER TOTALS:**

**BELOW NADAC CLAIMS FILED: 837**

**MAC ISSUES FILED: 73**

**OTHER ISSUES FILED: 81**

**NADAC INCREASE: 86**

**MAC INCREASE: 45**

**OTHER INCREASE: 5**

**PENDING CLAIMS FOR NOVEMBER: 5,188**

A single prescription is considered a “claim.”