

LARRY HOGAN
Governor

BOYD K. RUTHERFORD
Lt. Governor



Maryland

INSURANCE ADMINISTRATION

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December 19, 2022

KATHLEEN A. BIRrane
Commissioner

TAMMY LONGAN
Acting Deputy Commissioner

MARY KWEI
Associate Commissioner
Market Regulation & Professional
Licensing

The Honorable Bill Ferguson
President of the Senate
State House, Room H-107
100 State Circle
Annapolis, Maryland 21401

The Honorable Adrienne A. Jones
Speaker of the House of Delegates
State House, H-101
100 State Circle
Annapolis, Maryland 21401

The Honorable Delores G. Kelley
Chair, Senate Finance Committee
Miller Senate Office Building, 3 East Wing
11 Bladen Street
Annapolis, Maryland 21401

The Honorable Joseline A. Pena-Melnyk
Chair, House Health and Government
Operations Committee
241 Taylor House Office Building
6 Bladen Street
Annapolis, Maryland 21401

Re: MSAR # 11920 – Market Conduct Examination Report of OptumRx, Inc.

Dear President Ferguson, Speaker Jones, Chair Kelly and Chair Pena-Melnyk:

Pursuant to Section 15-10B-20(e) (SB 112/Ch. 6, 2019) of the Insurance Article, and in accordance with Section 2-1257 of the State Government Article, I am enclosing the Report of the Market Conduct Examination conducted with respect to the operations of OptumRx, Inc. as a private review agent in the state of Maryland for the examination period of August 1, 2019 – July 31, 2021.

Five printed copies of this report have been mailed to the DLS library for its records.

Should you have any questions regarding this report, please do not hesitate to contact me or my Director of Government Relations, Andrew Tress, at Andrew.tress1@maryland.gov.

Sincerely,

Kathleen A. Birrane
Insurance Commissioner

cc: Sarah T. Albert, Department of Legislative Services (5 copies)

**MARKET CONDUCT EXAMINATION REPORT
OF THE
PRIVATE REVIEW AGENT**

**OPTUMRX, INC.
(CERTIFICATE #199)**

**2300 Main Street
Irvine, CA 92814**

Report No. MCLH-3-2021-E

Examination Period: August 1, 2019 – July 31, 2021



**STATE OF MARYLAND
MARYLAND INSURANCE ADMINISTRATION**

KATHLEEN A. BIRRANE, COMMISSIONER

NOVEMBER 18, 2022

LARRY HOGAN
Governor

BOYD K. RUTHERFORD
Lt. Governor



KATHLEEN A. BIRrane
Commissioner

GREGORY M. DERWART
Deputy Commissioner

MARY M. KWEI
Associate Commissioner
Market Regulation
& Professional Licensing

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November 18, 2022

The Honorable Kathleen A. Birrane
Commissioner of Insurance
State of Maryland
200 St. Paul Place, Suite 2700
Baltimore, Maryland 21202

Dear Commissioner Birrane:

Pursuant to your instructions and authorization, an Examination has been made of the market conduct affairs of:

OPTUMRX, INC.

whose home office is located at 2300 Main Street, Irvine, California 92814. The report of such Examination is being respectfully submitted.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary M. Kwei".

Mary M. Kwei
Associate Commissioner
Market Regulation & Professional Licensing

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I. EXECUTIVE SUMMARY

The Maryland Insurance Administration (hereinafter “Administration”) conducted a target Market Conduct Examination (“Examination”) of OptumRx, Inc. (“PRA”). The period covered was August 1, 2019 through July 31, 2021 (“Examination period”).

The purpose of the Examination was to assess the PRA’s compliance with applicable Maryland insurance laws and regulations with respect to the criteria and standards for operating as a registered Private Review Agent certified in the State of Maryland.

The Administration reviewed the files of a total of 134 randomly selected files. During that review, the Administration identified a total of 53 violations that had occurred during the Examination period. In connection therewith, the PRA has been directed to modify certain of its policies and procedures to demonstrate and ensure its future compliance with Maryland insurance laws and regulations, including those that were the subject of the Administration’s Findings.

The Examination identified non-compliant procedures, some of which may extend to other jurisdictions. When applicable, corrective action for other jurisdictions should be addressed.

II. SCOPE OF EXAMINATION

An Examination has been performed on the PRA and a Report thereon is submitted as follows:

The Examination was conducted pursuant to §§ 2-205, 2-207, 2-209, 15-10B-19, and 15-10B-20 of the Annotated Code of Maryland, Insurance Article¹ and 31.04.20 of the Code of Maryland Regulations (hereinafter “COMAR”). The Examination period was August 1, 2019 through July 31, 2021. The primary purpose of the targeted market conduct examination was to assess compliance with applicable Maryland laws relating to criteria and standards for operating as a registered Private Review Agent.

Some non-compliant practices may not have been discovered or noted in the Report. Failure to identify or criticize non-compliant business practices in Maryland or in other jurisdictions does not constitute acceptance of such practices. Examination findings and recommendations, if any, that do not reference specific insurance laws, regulations, or bulletins are presented to improve the PRA’s practices and ensure consumer protection.

The examination and testing methodologies followed standards established by the National Association of Insurance Commissioners and procedures developed by the Administration. All sample files were selected using a computer generated random sample program unless otherwise stated herein.

At the Administration’s request, the PRA provided the total population for each area listed in the chart below:

Type	Population	Sample Size
Maryland Adverse Decisions		
Pre-service	12,549	104
Concurrent	1,864	30
Total:	14,413	134

¹ Unless otherwise noted all statutory references are to the Annotated Code of Maryland, Insurance Article.

III. PRA PROFILE

OptumRx, Inc. is a pharmacy care services company, a subsidiary of UnitedHealth Group since 2011. OptumRx, Inc. provides pharmacy benefit management services including network claims processing.

OptumRx, Inc. serves employers, government agencies, health plans, third-party administrators, life science companies, managed care organizations, Medicare and Medicaid plan sponsors, care providers and individuals and families.

OptumRx, Inc. offers products in data analytics, pharmacy care services, health care operations, delivery and advisory services.

IV. ADVERSE DECISIONS

Issue 1 - Violation of Section 15-10A-02(f)(2)(v)(5)

The PRA failed to send an adverse decision notice to the member and provider which included the facsimile number of the Health Advocacy Unit.

Section 15-10A-02 provides in pertinent part:

(f) For nonemergency cases, when a carrier renders an adverse decision, the carrier shall:

(2) send, within 5 working days after the adverse decision has been made, a written notice to the member, the member's representative, and a health care provider acting on behalf of the member that:

(v) includes the following information:

5. the address, telephone number, facsimile number, and electronic mail address of the Health Advocacy Unit.

Section 15-10A-08(b) provides in pertinent part:

A private review agent's internal grievance process shall meet the same requirements established under §§ 15-10A-02 through 15-10A-05 of [the Insurance Article].

Section 15-10B-11 provides in pertinent part:

A private review agent may not:

(1) Violate any provision of this subtitle or any rule or regulation adopted under this subtitle.

FINDING 1

The PRA failed to send an adverse decision notice to the member and provider which included the facsimile number of the Health Advocacy Unit. The PRA is in violation of Section 15-10A-02(f)(2)(v)(5).

AREA EXAMINED	POPULATION	SAMPLE	VIOLATIONS	% ERROR	EXHIBIT
Pre-service	12,549	104	39	38	A
Concurrent	1,864	30	14	47	A

The PRA created a corrective action plan and updated its adverse determination letter on May 22, 2022.

V. CLOSING

A total of 134 randomly selected files were reviewed. Of the selected files, a total of 53 violations occurred during the Examination period.

The violations found by the Administration included failure to include in the facsimile number of the Health Advocacy Unit on Adverse Decision Notices.

VI. EXAMINATION REPORT SUBMISSION

The courtesy and cooperation extended by the officers and employees of the PRA during the course of the Examination are hereby acknowledged.



Theresa Morfe, AIE, MCM, FLMI
Chief Market Conduct Examiner, Life and Health
Market Regulation & Professional Licensing

In addition, the following individuals participated in this Examination and in the preparation of this Report.

Natalie Nelson, ALMI, MCM
Assistant Chief, L&H Market Conduct
Market Regulation & Professional Licensing

Mariel Kaufman, APIR, MCM
Senior Market Conduct Examiner
Market Regulation & Professional Licensing

EXHIBITS

October 15, 2022

Theresa Morfe, AIE, MCM, FLMI
Chief Examiner, Market Conduct L&H
Market Regulation & Professional Licensing
Maryland Insurance Administration
200 St. Paul Place, Ste 2700
Baltimore, MD 21202

Sent via email/FTP to: theresa.morfe@maryland.gov

RE: OptumRx, Inc Draft Report- MCLH-3-2021-E Response

Dear Ms. Morfe

Please see OptumRx, Inc's (the Company's) responses below:

FINDING 1

The PRA failed to provide oral communication of the adverse decision to the health care provider acting on behalf of the member. The PRA is in violation of Section 15-10A-02(f)(1).

RESPONSE

OptumRx continues to disagree with this finding. The statutory section the Administration cites to in relation to Finding 1 are under subtitle 10A-02 which is referred to as "internal grievance process." The files identified under Finding 1 are initial reviews and not "grievances" as defined by the Administration under §§ 15-10A-01(f) as "protest filed by a member, a member's representative, or a health care provider on behalf of a member with a carrier through the carrier's internal grievance process regarding an adverse decision concerning the member." Requirements for initial reviews are specified under a separate subtitle 10B related to Private Review Agents.

Therefore, the Company followed the appropriate statutory sections for handling these initial determinations.

FINDING 2

The PRA failed to send an adverse decision notice to the member and provider which included the facsimile number of the Health Advocacy Unit. The PRA is in violation of Section 15-10A-02(f)(2)(v)(5).

RESPONSE

OptumRx agrees with this finding. The Company has taken measures to ensure compliance with this statutory section. A Corrective Action Plan was created to address this finding, as a result OptumRx updated its adverse determination letters in May 2022. Implementation of this change took place on May 22, 2022.

We look forward to your response.

Thank you,

Christine R. Parrish, CPhT, AIE, MCM, FLMI
Manager, External Audits

MARYLAND INSURANCE ADMINISTRATION*
200 ST. PAUL PLACE, SUITE 2700
BALTIMORE, MARYLAND 21202

V.

OPTUMRX, INC.
2300 MAIN STREET
IRVINE, CA 92814

CASE NO.: MIA-2022-11-018
EXAMINATION NO.: MCLH-3-2021-E

* * * * *

CONSENT ORDER

This Consent Order ("Order") is issued by the Maryland Insurance Administration ("Administration") against OptumRx, Inc. ("Respondent") with its consent, pursuant to §§ 2-204 and 2-208 of the Insurance Article, Md. Code Ann., (2017 Repl. Vol. & Supp.) ("Insurance Article").

Findings

1. At all times relevant to this Consent Order, Respondent has held and currently holds a certificate of authority from the Administration to operate in the State as a private review agent.

2. Pursuant to §§ 2-205, 2-207, 2-209, 15-10B-19, and 15-10B-20 of the Insurance Article, the Administration conducted a targeted Market Conduct Examination ("Examination") of Respondent relating to its compliance with applicable Maryland insurance laws and regulations with respect to the criteria and standards for operating as a registered Private Review Agent.¹ The period covered by the Examination was August 1, 2019 to July 31, 2021.

¹ Section 15-10B-20 of the Insurance Article wherein market conduct examinations of any pharmacy benefit manager registered as a private review agent shall be conducted at least once every 3 years.

4. The Administration identified a non-compliant practice during the Examination. As stated in Examination Report number MCLH-3-2021-E ("the Report");

a. The Respondent failed to send adverse decision notices to the member and the provider which includes the facsimile number of the Health Advocacy Unit, in violation of Section 15-10A-02(f)(2)(v)(5) of the Insurance Article.

5. The Respondent was cooperative during the market conduct examination, acknowledged that its practice did not comply with Maryland law, and provided the following compliance plan to remediate the violations identified in the Examination Report:

a. Respondent created a corrective action plan to address this finding, and as a result Respondent updated its adverse determination letters on May 22, 2022 to ensure compliance with Section 15-10A-02(f)(2)(v)(5) of the Insurance Article.

Conclusions of Law

6. The Administration concluded that Respondent violated the following Maryland Laws and Regulations:

- Section 15-10A-02(f)(2)(v)5 of the Insurance Article

7. The detailed legal and factual bases of that conclusion are set forth in the Report, which is incorporated by reference as if set forth in full herein.

8. Both Respondent and the Administration agree to the conditions of the Consent Order and the remedial measures set forth herein. The parties acknowledge that this Consent Order is in the public interest and desire to resolve this matter without further proceedings.

9. Respondent executes this Consent Order knowingly and voluntarily.

Order

WHEREFORE, for the reasons set forth above, it is **ORDERED** by the Commissioner and consented to by Respondent, that

A. Respondent shall accept the Report as final and waive any right to a hearing on or for judicial review of the Report.

B. Respondent shall pay an administrative penalty to the State of Maryland for the violations stated herein in the amount of Five Thousand Dollars (\$5,000.00) contemporaneously with Respondent's execution of this Consent Order. Administrative penalties shall be made payable to the Maryland Insurance Administration and shall identify the case by number. Unpaid penalties will be referred to the Central Collection Unit for collections.

Other Provisions

C. The executed Consent Order and any administrative penalty shall be sent to the attention of: Mary M. Kwei, Associate Commissioner, Market Regulation & Professional Licensing, 200 St. Paul Place, Suite 2700, Baltimore, MD 21202.

D. Respondent agrees that no amounts paid pursuant to Paragraph B of this Consent Order shall be included in or recoverable as expenses in any rate filing filed with the Administration or any other regulatory authority.

E. For the purposes of the Administration and for any subsequent administrative or civil proceedings concerning Respondent, whether related or unrelated to the foregoing paragraphs, and with regard to requests for information about the Respondent made under the Maryland Public Information Act, or properly made by governmental agencies, this Consent Order will be kept and maintained in the regular

course of business by the Administration. For the purposes of the business of the Administration, the records and publications of the Administration will reflect this Consent Order.

F. The parties acknowledge that this Consent Order resolves all matters relating to the factual assertions and agreements contained herein and are to be used solely for the purposes of this proceeding brought by or on behalf of the Administration. Nothing herein shall be deemed a waiver of the Commissioner's right to proceed in an administrative action or civil action for violations not specifically identified in this Consent Order, including, but not limited to, specific consumer complaints received by the Administration, nor shall anything herein be deemed a waiver of the right of Respondent to contest other proceedings by the Administration. This Consent Order shall not be construed to resolve or preclude any potential or pending civil, administrative, or criminal action or prosecution by any other person, entity or governmental authority, including, but not limited to, the Insurance Fraud Division of the Administration, regarding any conduct by Respondent including the conduct that is the subject of this Consent Order.

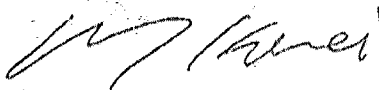
G. Respondent has had the opportunity to have this Consent Order reviewed by legal counsel of its choosing, and is aware of the benefits gained and obligations incurred by the execution of the Consent Order. Respondent waives any and all rights to any hearing or judicial review of this Consent Order to which it would otherwise be entitled under the Insurance Article with respect to any of the determinations made or actions ordered by this Consent Order.

H. This Consent Order contains the entire agreement between the parties relating to the administrative actions addressed herein. This Consent Order supersedes any and all earlier agreements or negotiations, whether oral or written. All time frames set forth in this Consent Order may be amended or modified only by subsequent written agreement of the parties.

I. This Consent Order shall be effective upon signing by the Commissioner or her designee, and is a Final Consent Order of the Commissioner under § 2-204 of the Insurance Article.

J. Failure to comply with the terms of this Consent Order may subject Respondent to further legal and/or administrative action.

KATHLEEN A. BIRRAINE
INSURANCE COMMISSIONER



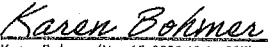
By: Mary M. Kwei
Associate Commissioner
Market Regulation & Professional Licensing

Date: 11/18/22

RESPONDENT'S CONSENT

RESPONDENT hereby CONSENTS to the representations made in, and to the terms of, the above Consent Order. On behalf of Respondent, the undersigned hereby affirms that he or she has taken all necessary steps to obtain the authority to bind Respondent to the terms of this Consent Order resolving Report number MCLH-3-2021-E.

Name: Karen Bohmer

Signature: 
Karen Bohmer (Nov 15, 2022 13:10 CST)

Title: Secretary

Date: 11/15/2022