

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

SUPERIOR COURT
DEP'T OF THE TRIAL COURT
Civil Action No. 2284CV00408

In the Matter of Optum Rx, Inc.)
_____)

2/23/2022

ASSURANCE OF DISCONTINUANCE
PURSUANT TO M.G.L. CHAPTER 93A, § 5

I. Introduction

The Office of Attorney General Maura Healey (“AGO”), is conducting an investigation pursuant to M.G.L. c. 93A into the sale of prescription drugs¹ at prices in excess of those allowable under Massachusetts workers' compensation laws and regulations (“the Investigation”). As part of the Investigation, the AGO has reviewed transactions involving Optum Rx, Inc. (“Optum”).

Based on that review, the AGO alleges that Optum billed and obtained payment for prescription drugs from payors of workers' compensation claims in excess of amounts permitted by Massachusetts laws and regulations. These alleged overcharges occurred on prescription drugs provided by pharmacies to workers’ compensation insurance beneficiaries who utilized CVS, Walgreens, Rite Aid and other pharmacies in various MA locations such as: Springfield, New Bedford, Boston, and Worcester.

In recognition of Optum's cooperation with the Investigation, the AGO agrees to accept this Assurance of Discontinuance ("Assurance") on the terms and conditions contained herein.

¹ This investigation is regarding the sale of prescription drugs not already covered by the Assurance of Discontinuance entered into by the AGO and StoneRiver Pharmacy Solutions, Inc. (n/k/a SRPS, LLC).

Optum, without admitting any facts, liability or any wrongdoing, in the interest of resolution of this matter and for settlement purposes only, agrees to accept this Assurance on the terms and conditions contained herein. This Assurance is made without trial or adjudication of any issue of fact or of law.

II. Terms of the Assurance of Discontinuance

1. Optum shall make a payment totaling \$5,800,000, which may be used by the AGO in its sole discretion for education, consumer outreach, amelioration of consumer harm, and/or support for public interest programs and efforts regarding workers' compensation insurance, work-place injury prevention, rehabilitation, and prescription choices and management. A portion of Optum's payment may also be allocated by the AGO, in its sole discretion, as attorneys' fees and investigative costs, and such allocated funds shall be directed to the Treasury's General Fund. The payment by Optum shall be made to the AGO in accordance with check or wiring instructions provided by the AGO, and shall be delivered within ten (10) business days of the AGO providing such instructions.

2. For all Massachusetts workers' compensation prescription drug transactions processed by Optum, Optum shall ensure that such billings and payments comply with all relevant Massachusetts laws and regulations. To facilitate such compliance, Optum shall develop a Compliance Pricing Protocol ("the Protocol"), set forth in a separate agreement between Optum and the AGO. Optum and the AGO shall work together in good faith to implement the Protocol within 90 days of the filing of this Assurance. Should Optum need additional time to implement the Protocol, the parties shall agree in writing to reasonable extension(s) of this 90-day period.

3. The AGO agrees that, subject to the provisions in the Protocol as well as paragraphs 5-6 below, any workers' compensation prescription drug transactions in Massachusetts priced in accordance with the Protocol shall be considered substantially in compliance with the requirements of this Assurance, and the AGO shall not bring an action against Optum for its pricing/payment conduct regarding such transactions except as set forth in paragraphs 5 and 6 *infra*.

4. The Protocol shall be subject to change as necessary to remain in compliance with applicable Massachusetts laws and regulations concerning pricing for prescription drugs covered by workers' compensation insurance. Except as otherwise noted in the Protocol, any such changes to the Protocol shall only be made by Optum (or any third party retained by Optum) after review by the AGO to determine that such changes conform to the requirements of this Assurance and after written acceptance of those changes by the AGO.

5. Optum shall fully cooperate with the Attorney General in implementing this Assurance. Upon request, and subject to the confidentiality provisions of G.L. c. 93A § 6, Optum will provide the AGO (or any third-party auditor retained by the AGO) with data and documents sufficient to permit the AGO to verify Optum's implementation of the Protocol. Should the AGO or its authorized auditor determine that a payor has overpaid Optum for a workers' compensation prescription drug transaction, pursuant to the provisions of M.G.L. c. 152, 101 CMR 331.00, or other applicable governing law or regulation (an "AGO overcharge"), Optum will either refund the AGO overcharge ("refund amounts") or, if Optum contests in good faith the existence or amount of such AGO overcharge, provide a written statement to the AGO setting forth the reasons for contesting such AGO overcharge. To the extent Optum issues such refund amounts on or before ninety (90) days after the later of (i) the date on which the AGO

initially notifies Optum that the refund amount is required to be made, or (ii) if Optum contests in writing the existence or amount of the AGO overcharge, the date on which the AGO makes a final determination in writing as to any owed refund amount, the AGO shall not seek to recover any additional amounts for such refunded AGO overcharge including multiples, penalties, attorneys' fees, or other costs.

6. To the extent that Optum is (i) provided with funds by a pharmacy in the context of the pharmacy having performed a review and determined that it has previously overcharged Optum for a prescription or set of prescriptions under the Massachusetts laws or regulations governing workers' compensation drug pricing or based on a protocol the pharmacy has agreed to with the AGO ("Pharmacy Funds") and (ii) such Pharmacy Funds are not accompanied by an itemized list of which ultimate payors are associated with which portions of such funds, Optum shall, instead of retaining such Pharmacy Funds, disgorge or direct them to the AGO within 90 days of receipt along with any and all claim information and correspondence provided by the pharmacy to Optum relating to that payment.² Pharmacy Funds shall be provided to and handled by the AGO in accordance with paragraphs governing other monies paid under this Assurance by Optum to the AGO. To the extent the AGO, or its authorized auditor, in its sole discretion determines Optum is entitled to retain a portion of the Pharmacy Funds, such funds will be remitted to Optum.

7. By agreeing to bill and accept payments under the Protocol, Optum is not agreeing, acknowledging, or admitting that the Protocol applies to, or is appropriate for, any prescription drug transactions other than Massachusetts workers' compensation prescription drug transactions. Nor is Optum agreeing, acknowledging, or admitting that its past Massachusetts

² Further, in instances where Pharmacy Funds are provided as part of an itemized list where portions of the funds are attributed to payors, Optum shall transfer those funds to the payors or provide the monies to the AGO.

workers' compensation prescription drug pricing practices violated Massachusetts laws or regulations.

8. It is Optum's view that materials and information provided to the AGO as part of this investigation and during the implementation of this AOD constitute confidential commercial and trade secret information and have been or are provided pursuant to M.G.L. c. 93A, § 6, and thus are subject to the provision of M.G.L. c. 93A, § 6(6). By providing such information to the AGO (or its authorized auditor) in connection with the Investigation and/or with this Assurance and Protocol, Optum has not and will not waive any rights that Optum may have to protect against improper use or disclosure of its information.

9. This Assurance is not intended to impair any right of action that Optum may have against any other person or entity, or any right of action that any person or entity other than the AGO might have against Optum. Neither the terms of this Assurance nor the payment of any money hereunder is, nor shall either be construed to be, an admission of any wrongdoing, nor an admission to the allegations in this Assurance. Optum expressly denies any liability or wrongdoing related to this matter.

10. Any funds or portion of funds paid under this Assurance may, at the discretion of the AGO, if not otherwise obligated, encumbered, or expended by May 19, 2022, be directed to the Treasurer for deposit in the General Fund.

11. This Assurance may be modified or supplemented only by a written document signed by both parties.

12. By signing below, Optum agrees to comply with all of the terms of this Assurance. By signing below, the AGO agrees that this Assurance shall be in lieu of a civil action or proceeding against Optum for any acts or practices prior to the date of this Assurance

related to the Investigation and the Investigation allegations. The terms of this Assurance may be enforced by the AGO in a civil action or proceeding pursuant to G.L. c. 93A, § 5.

Respectfully Submitted:

FOR: Optum Rx, Inc.

FOR: Attorney General, Maura Healey

By: *Christopher R. Zaetta*

By: *Glenn Kaplan*

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Dated: February 18, 2022

Dated: 2/22/22