



**FOR IMMEDIATE RELEASE**

August 26, 2022

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With the encouragement of Governor Michelle Lujan Grisham, yesterday Hector Balderas, the Attorney General, and Russell Toal, the Superintendent of Insurance, sent a joint letter to all licensed Pharmacy Benefit Managers (PBMs) in the state urging them “to review their practices to ensure compliance with all state and federal law, with the Unfair Practices Act and the PBM regulations adopted by the Office of the Superintendent of Insurance, and self-report any potential or real noncompliance to our offices in writing with the next thirty days.”

This action was taken in follow-up to the Attorney General’s settlement agreement with Centene Corporation, which resulted in a payment of more than \$17 million to resolve claims that the company had violated consumer protection laws in connection with its spread pricing practices. As the Attorney General and Superintendent of Insurance noted in the letter, “we have a collective duty ensure that citizens are not being charged inappropriately”. The Superintendent of Insurance will be carefully monitoring the responses of the PBMs to ensure that they respond in a timely and complete manner.

A copy of the joint letter, and a copy of the Attorney General’s Press Release on the Centene settlement, are attached.

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SOI LETTER TO PBMs

[Date]

[Executive officer name}

[PBM Entity name]

[PBM entity address]

Dear [Executive name]

We are writing to all Pharmacy Benefit Managers (“PBMs”) licensed by the Office of the Superintendent of Insurance (“OSI”) under the provisions of the Pharmacy Benefits Manager Regulation Act (“PBMRA” or “the Act”), NMSA 1978, Sections 59A-61-1 to -8 (2014, as amended through 2019). As you are no doubt aware, the New Mexico Office of the Attorney General (“NMOAG”) recently announced the settlement of claims against the Centene Corporation in connection with Centene’s pharmacy benefit management services operations in New Mexico. A copy of the press release announcing the settlement is attached. See in particular the Attorney General’s statement that “[t]he settlement agreement with Centene includes an assurance of discontinuance related to the investigated conduct and an enhanced commitment from Centene to provide *complete pricing transparency on all pharmaceutical benefits and services provided to HSD.*” (emphasis added)

While Centene admitted to no wrongdoing, it agreed to pay more than \$17.2 million to resolve claims that the company had violated consumer protection laws in connection with its spread pricing practices. This settlement followed earlier settlements with multiple other states in which Centene agreed to pay more than \$100 million to resolve similar claims.

Section 3(C) of the PBMRA tasks the Superintendent of Insurance with the regulation and licensing of PBMs operating in New Mexico. Pursuant to this authority, OSI adopted regulations earlier this year that govern the licensing and conduct of PBMs in the state. See 13.10.30.1 through .20 NMAC. One such recently adopted regulation is 13.10.30.19(C) NMAC which specifically provides that a PBM shall not “[e]ngage in or commit any act or practice proscribed by any state or federal unfair practices law.” This regulation includes, but is not limited to, unfair or deceptive trade practices in violation of the New Mexico Unfair Practices Act, NMSA 1978 Section 57-12-2 (“the UPA”). Section 57-12-2 of the UPA prohibits a wide array of deceptive business practices, including misrepresentations regarding pricing of services. If a PBM willfully engages in conduct violative of the UPA, such PBM may be held liable for civil penalties of up to \$5,000 per occurrence per Section 57-12-11.

In light of the Centene settlement, we are concerned that other PBMs licensed and operating in New Mexico may have engaged in similar conduct. Indeed, we have reason to believe that inappropriate spread pricing practices may be utilized by other PBMs in NM. In addition, we

have reason to believe that some PBMs may not be providing accurate or current MAC prices on their websites, as OSI regulations require.

Sections 59A-4-3 and 59A-45-4 of the Insurance Code authorize this office to conduct inquiries and examinations of entities under the supervision of the Superintendent of Insurance. Section 57-12-12 of the UPA empowers the Attorney General to issue civil investigative demands to any company he believes may have information related to violations of the UPA. In order to avoid the need to conduct such inquiries and examinations, the costs of which must be paid by the entity being examined, we urge all PBMs operating in New Mexico to review their practices to ensure compliance with all state and federal law, and in particular, with the UPA and the PBM regulations adopted by OSI, and self-report any potential or real noncompliance to our offices in writing within the next thirty days.

Thank you for your cooperation. While we truly value the services that PBMs offer to New Mexico citizens, we have a collective duty to ensure that the citizens are not being charged inappropriately.

Sincerely,

Russell Toal

Superintendent of Insurance

Hector Balderas

Attorney General

CC: David Scrase, MD, Secretary of Human Services

**For Immediate Release:**

June 13, 2022

Contact: Jerri Mares - (505) 321-4372

**AG Balderas Announces \$13.7 Million Settlement with Centene Corporation Over Investigation of PBM Claims; Ongoing Investigation of remaining PBMs in NM in Partnership with Superintendent of Insurance**

ALBUQUERQUE – Today, New Mexico Attorney General Hector Balderas announced a \$13.7 million settlement with Centene Corporation regarding the Attorney General’s investigation of the company’s subsidiaries’ pricing and reporting of pharmacy benefits and services provided to the New Mexico Medicaid program which is overseen by the New Mexico Human Services Department (HSD).

“Vulnerable New Mexicans should not have to worry about paying surging prescription drug costs,” said Attorney General Balderas. “This investigation was necessary to shine a light on industry practices, ensure greater accountability and return \$13.7 million back to New Mexico.”

Upon referral from the Office of the State Auditor, in collaboration with HSD, the Attorney General’s investigation of Centene focused on concerns that Centene was layering fees and not passing on retail discounts to New Mexico’s Medicaid program, also called Centennial Care. Centennial Care provides healthcare services and medications to nearly one million New Mexicans, and Centene’s wholly-owned subsidiaries have provided pharmacy benefits and services to Centennial Care since 2019. Attorney General Balderas and Superintendent of Insurance Russell Toal, plan to work together and continue the investigation of this business sector to identify opportunities for transparency and increased consumer protections.

The settlement agreement with Centene includes an assurance of discontinuance related to the investigated conduct and an enhanced commitment from Centene to provide complete pricing transparency on all pharmaceutical benefits and services provided to HSD.

The importance of this settlement and the Attorney General’s ongoing investigation of the Pharmacy Benefit Managers (PBMs) servicing the New Mexico Medicaid program is highlighted by the Federal Trade Commission’s recent announcement that it is launching an inquiry into the PBM industry to scrutinize the impact of PBMs on the access and affordability of prescription drugs.

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