

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

OHIO BUREAU OF WORKERS'  
COMPENSATION  
30 W. Spring Street,  
Columbus, Ohio 43215

and

OHIO DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
400 Surface Road  
Columbus, Ohio 43228

and

STATE OF OHIO  
David A. Yost,  
Attorney General of Ohio  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, OH 43215

Plaintiffs,

V.

OPTUMRX ADMINISTRATIVE  
SERVICES, LLC.  
c/o Statutory Agent  
CT Corporation System  
4400 Easton Commons Way, Suite 125  
Columbus, OH 43219

Defendant.

CASE NO.

JUDGE

COMPLAINT

(JURY DEMAND ENDORSED HEREON)

Plaintiffs, the Ohio Bureau of Workers Compensation (“BWC”), the Ohio Department of Administrative Services (“DAS”), and the State of Ohio (collectively, “Plaintiffs”), for their Complaint against Defendant, OptumRx Administrative Services, LLC (“Defendant or OptumRX”), allege as follows:

## I. Nature of the Action

1. Plaintiffs bring this lawsuit to recover damages from OptumRx, which has been the pharmacy benefit manager (“PBM”) for BWC since 2009. OptumRx, formerly known as SXC Health Solutions, Inc. (“SXC”), was originally awarded the contract to perform PBM services (the “BWC Contract”) after submitting a proposal (the “2009 Proposal”) in response to the Request for Proposals issued by BWC on January 31, 2009 (the “2009 RFP”).

2. The BWC Contract is composed of a number of different documents, including: (1) the 2009 RFP and its addendums; (2) all materials and documents incorporated by reference in the 2009 RFP; (3) SXC’s proposal as amended, clarified, and accepted by BWC; (4) all materials and documents incorporated by reference in SXC’s proposal; and (5) any related amendments issued subsequent to the contract award, including but not limited to the May 20, 2016 Agreement referred to herein.

3. A copy of the BWC contract is not attached as it is voluminous and all parties have copies in their possession.

4. Defendant’s breaches of the BWC Contract include, but are not limited to, failing to provide a guaranteed discount on BWC’s generic drug pricing. As described herein, these breaches have resulted in millions of dollars in direct monetary damages to Plaintiffs.

5. Defendant’s breaches of the BWC Contract also include, but are not limited to, misusing information related to or drawn from the parties’ contractual relationship for other commercial purposes, including the subsidization of pricing offered to Defendant’s other customers.

6. Defendant made fraudulent misrepresentations in the course of its efforts to secure the BWC Contract, and this fraud has resulted in additional damages different than

contractual damages. As discussed in more detail herein, Defendant made misrepresentations to Plaintiffs, both (1) to induce Plaintiffs to choose Defendant as its PBM (Fraudulent Inducement) and (2) that misrepresentations were made without an actual intent to perform the professional services as promised (Promissory Fraud). The misrepresentations that form the basis of Plaintiff's claims were contained in the 2009 Proposal and concerned Defendant's Maximum Allowable Cost ("MAC") lists, which are price lists created by Defendant that set the amounts to be paid by BWC for generic medications.

## II. Parties

8. Plaintiff, BWC, is an agency of the State of Ohio and is the exclusive provider of workers' compensation insurance in the State of Ohio. With more than \$29 billion dollars in assets, it is the largest state-run insurance system in the United States, and its purpose is the protection of the citizens and employers of Ohio through the prevention, care, and management of workplace injuries and illnesses.

9. Plaintiff, DAS, is a department of the government of the State of Ohio that provides centralized services, specialized support and innovative solutions to state agencies, boards and commissions, as well as to local governments and state universities.

10. Plaintiff, the State of Ohio, brings this action by and through its Attorney General, David A. Yost, in its sovereign capacity in order to protect the interests of the State of Ohio.

11. Defendant OptumRx is a Texas limited liability company registered to do business in the State of Ohio.

## III. Jurisdiction and Venue

12. This Court has jurisdiction over the Plaintiffs' claims pursuant to R.C. 2305.01, which gives the Court of Common Pleas general jurisdiction over civil actions. This Court has

personal jurisdiction over Defendant because Defendant does business in Ohio and has the requisite minimum contacts with Ohio necessary to permit the Court to exercise jurisdiction.

13. Venue is proper in Franklin County, Ohio, pursuant to Ohio Civ. R. 3(B)(3).

14. That jurisdiction and venue are also proper because the terms of the BWC Contract expressly provide that the parties will bring their disputes in the appropriate court in Franklin County, Ohio.

#### IV. Factual Background

##### *PBMs Become the Hidden Gatekeepers Controlling America's Prescription Market*

15. PBMs are the silent middlemen of the American prescription drug industry. As originally conceived decades ago, they served a useful purpose – to handle the tedious and specialized business of processing pharmacy claims for the health insurance industry.

16. Eventually, the role of PBMs expanded into brokering the purchase and sale of prescription medicines between the health plans the PBMs represented and sellers in the marketplace, such as drug manufacturers and pharmacies. The goal was to use the combined purchasing power of the PBM's health plan clients to negotiate lower prices with suppliers. In most instances, the PBMs did not profit directly from this practice as they were paid only an administrative fee for the transactions they processed for their customers.

17. Over time, the PBM industry moved away from this business model in search of new compensation arrangements that would increase their profitability. Two new business models, manufacturer rebates and spread pricing practices, soon became commonplace in the PBM industry and resulted in fundamental changes to the U.S. marketplace for pharmaceuticals.

*The Rise of Rebates as a Source of PBM Profits*

18. First, PBMs discovered a new revenue source in the form of rebates. PBMs each maintain a list of drugs that are approved for use by the health plans the PBM manages. Only by agreeing to use and abide by these PBM-managed formularies can a health plan obtain the best guaranteed discounts and other price concessions offered by a PBM.

19. The PBMs quickly learned that they were able to demand rebates or other sorts of incentive payments from pharmaceutical manufacturers in exchange for “approved drug” status and inclusion in their formularies, and the practice soon became a primary source of income for the PBM industry. Though PBMs do not share rebate information publicly, industry analysts estimate that \$130 billion in such payments were made in 2017, representing nearly 30 percent of \$349 billion dollars that moved through the United States market in non-generic drugs.

20. Furthermore, the power of PBMs to demand rebates from the drug companies has increased considerably over the last decade due to mergers and acquisitions by the largest PBM companies. Where there were once dozens of PBM companies competing for business, today just three – Express Scripts, CVS Caremark and Defendant, OptumRx – control approximately 80% of the American market. These mega-PBMs have enormous leverage over the drug companies, who must satisfy their demands for increased rebate payments or risk losing access to tens of millions of customers.

21. Much of the \$130 billion in rebates collected by the PBMs is not passed through to its customers or the drug-purchasing public, but is retained by the PBMs as profit.

*Spread Pricing Contracts - Another Profit Center for PBMs*

22. The second way the PBMs learned they could make money was through the use of “spread pricing” contracts. In a simple example of such an arrangement, a PBM might

contract with its client to be reimbursed \$100.00 for a prescription, while at the same time having a contract with the pharmacy that fills the prescription to pay only \$80.00 for the same drug. The PBM pockets the \$20.00 difference, or the “spread.” Importantly, neither the pharmacy nor the PBM’s client knows what the other is paying – the PBM generally keeps such agreements from being disclosed under the contention that they are confidential and proprietary “trade secrets.”

23. Spread pricing contracts have recently come under scrutiny in Ohio as such contracts were used by the managed care organizations responsible for providing comprehensive health care services to the majority of Medicaid recipients in Ohio. On August 14, 2018, after a study revealed excessive profits had been generated by the PBMs under these contracts, the Ohio Department of Medicaid gave notice that these contracts would be terminated at the end of 2018.

24. There are a multitude of variations on such basic rebate and spread pricing scenarios, but the facts have become apparent and inarguable: PBMs, left unchecked by careful contracting and vigorous enforcement, add an opaque layer of hidden expense to the American prescription drug market.

#### *The 2009 RFP*

25. By the time BWC was ready to issue the 2009 RFP seeking a new PBM, it had become aware of some of the abuses in the PBM market and therefore included provisions in the 2009 RFP designed to protect against those dangers and produce a fair and transparent contract.

26. The 2009 RFP, for example, sought proposals for a “pass-through” PBM contract. In a pass-through contract, the PBM receives only administrative fees for the transactions it handles as compensation. The PBM is obligated to “pass-through” the costs of the drugs with no markup, eliminating the possibility of spread pricing issues as well as any rebates it receives from manufacturers.

27. Deprived of the opportunity to ramp up profits through rebates or spread, Defendant, OptumRx, found another way to add to its bottom line at the expense of BWC – by failing to provide the promised and agreed to pricing discounts for drugs purchased by BWC claimants.

28. In a pass-through contract, the pricing provided by a PBM to the client by way of its MAC lists becomes critical. That is because the pricing clauses of PBM contracts are typically written using a “lesser of” logic, which provides that the client will reimburse the PBM for a drug at the lesser of one of several defined prices. For generic drugs, which make up the majority of the prescriptions filled, one of these options, and the option generally most advantageous to the client, will be the PBM’s MAC list price, which is typically 60 to 80 percent below Average Wholesale Price (“AWP”).

29. In 2017, BWC reimbursed Defendant for 585,321 generic prescriptions vs. 87,479 prescriptions for brand-name drugs.

30. In the case of the BWC, its reimbursement rates are set by the Ohio Administrative Code Section 4123-6-21(G), which were incorporated into the 2009 RFP, and incorporated “lesser of” logic for generic drug pricing, as follows:

Brand Name (Single Source) Drugs	The lesser of Blue Book Average Wholesale Price (AWP) - 9% + \$3.50 dispensing fee* or the provider’s Usual and Customary charge.
Generic (Multi-Source) Drugs	The lesser of its current Offeror’s proprietary Maximum Allowable Cost (MAC) for widely-available generic products, the Centers for Medicare and Medicaid (formerly Health Care Financing Administration) Federal Upper Limit (CMS FUL) + \$3.50 dispensing fee*, the Blue Book Average Wholesale Price (AWP) - 9% + \$3.50 dispensing fee*, or the provider’s Usual and Customary charge.

31. This pricing structure, combined with the known volume of generic prescriptions utilized by BWC each year, made it critically important to Plaintiffs that the PBM that was awarded BWC’s contract (1) maintain a MAC list that included the generic drugs utilized by

BWC; (2) identify when drugs move from branded to generic on a timely basis; and (3) provide BWC with the greatest possible discounts on generic medications.

32. To ensure that the respondents to the 2009 RFP could provide these services, Plaintiffs required respondents to provide detailed information about their MAC lists. The information required by the RFP included how the drugs on the MAC lists were selected, how often the lists were updated, how often pricing was adjusted, how the generic drugs were identified for inclusion on the lists and how the respondents intended to utilize their MAC list pricing to provide advantageous results for BWC. Further, Plaintiffs maintained control over the methods used to differentiate between branded and generic drugs, alterations in the content of the MAC lists, and changes in MAC list pricing – all of which were required to be submitted to BWC for approval.

*Defendant's Response to the 2009 RFP*

33. In its response to the 2009 RFP, Defendant represented that its basic MAC list pricing, as used for various other state-managed plans, generated a Generic Effective Rate or “GER”, which is the average discount off Average Wholesale Price for all generic drugs utilized by BWC, of between AWP minus 74% and AWP minus 78%. Based on the drug utilization data provided by BWC as part of the RFP, Defendant further represented that its MAC list would produce a “weighted generic effective rate of AWP – 80.88%”.

34. Defendant represented in its response to the 2009 RFP that it recognized that “missed opportunities to qualify a drug as generic also result in missed savings” for its client and that it therefore “utilizes a defensible, sophisticated and comprehensive methodology for determining the generic status of a medication,” updating the indicators used in that analysis on a weekly basis.



35. Defendant also represented that it used MediSpan, a national drug information service that compiles pricing and utilization information data from multiple independent sources, to provide weekly and quarterly pricing updates for its MAC list drugs in order to generate “the most correct pricing at any given moment.”

36. Based on its response to the 2009 RFP, Defendant was awarded the BWC Contract, which went into effect on November 1, 2009, with an initial term of three years.

*Defendant's Performance Under the Contract*

37. Defendant began working in late 2009 as the PBM for BWC, and the contract was ultimately extended through 2016.

38. In 2015, BWC retained a consultant to examine Optum Rx's compliance with the BWC contract. This examination included an analysis of each individual claim processed by Defendant to determine whether the terms of the BWC contract were being met and whether Defendant was performing as represented in the 2009 Proposal.

39. The results of the 2015 investigation showed that OptumRx was not meeting the discounts represented in the 2009 RFP. This discovery led BWC to monitor Defendant's performance on an ongoing basis. Analyses conducted at the conclusion of 2015 showed that BWC's MAC list generic effective rate was falling considerably short of the 74% OptumRx represented as the minimum average discount BWC might receive. OptumRx's failure to meet this obligation, furthermore, was costing the Plaintiffs millions of dollars per year in additional health care costs.

40. Plaintiffs approached Defendant with these concerns, threatening to terminate the BWC Contract on October 31, 2016, if they were not addressed. Plaintiffs' concerns were eased by a May 20, 2016 Agreement, which amended the BWC Contract.

41. The May 20, 2016 Agreement, among other things, states that Defendant was obligated, beginning November 1, 2016, to manage BWC's MAC list to a MAC Effective Rate of AWP minus 74%. Based on the terms of the May 20, 2016 Agreement the BWC Contract was extended through October 31, 2018. The May 20, 2016 Agreement was incorporated into the BWC Contract, as was expressly noted and agreed in the extension to the BWC Contract executed by Defendant.

42. From 2009 until November 2016, Defendant failed to meet its obligation under the BWC Contract to manage BWC's MAC list to an effective rate of at least AWP minus 74%.

43. Beginning November 1, 2016 through the date of the filing of this Complaint, Defendant has failed to abide by the express affirmation of its obligation to manage BWC's MAC list to the effective rate of AWP minus 74% that is contained in the May 20, 2016 Agreement. This breach likewise has caused Plaintiffs damages of \$7,194,051, the amount they overpaid between November 1, 2016 and the end of the contract term on October 31, 2018.

44. When challenged by BWC about its failure to abide by the May 20, 2016, Agreement, Defendant, tellingly, did not deny BWC's obligations. Exhibit 1 and Exhibit 2, the enclosure to Exhibit 1 is not attached as it is voluminous and all parties have copies in their possession. Instead, Defendant admitted it had breached the agreement (and thus the BWC Contract). OptumRx, attempted to justify its actions by citing a January 1, 2017 change to the Ohio Administrative Code that altered the pricing under Section 4123-6-21(G) from AWP minus 9 percent to AWP minus 15 percent. Instead of giving Plaintiffs the agreed on 74% discount, OptumRx argued, it had been "managing the BWC MAC List to a MAC Effective Rate of AWP-67," in light of the statutory changes. Exhibit 2. Plaintiffs have consistently rejected these post-hoc explanations of Defendant's obvious and blatant contractual breaches. Exhibit 3.

45. During the same time period, OptumRx increased the prices of drugs on the BWC MAC List without explanation. In June 2017, these changes amounted to \$4.33 million dollars in increased costs to Plaintiffs in a single MAC List update, which appeared to be specifically targeted to affect the drug classes, such as anti-inflammatories and pain medications, most commonly utilized by BWC. Exhibit 1.

46. Plaintiffs employees, in meetings with Defendant's account managers, learned that the sudden price increases were actually part of Defendant's strategy to subsidize lower prices charged to its other clients. By charging higher prices to Plaintiffs, Defendant could provide larger discounts to other clients while still meeting pricing guarantees it had made to its retail pharmacy partners concerning the average prices to be paid by Defendant's clients for certain products. BWC filed a formal complaint to vendor/OptumRx challenging this conduct. Exhibit 1. Defendant has provided no response to this complaint.

47. On October 31, 2018, Defendant's contract with Plaintiffs expired.

#### COUNT I

#### BREACH OF CONTRACT

48. Plaintiffs hereby incorporate by reference all previous paragraphs.

49. The BWC Contract is a valid and enforceable contract.

50. Plaintiffs fully performed their obligations under the BWC Contract.

51. Pursuant to the terms of the BWC Contract, Defendant was required at all pertinent times to manage BWC's MAC Price List to a MAC Effective Rate of AWP minus 74%.

52. Pursuant to the terms of the BWC Contract, Defendant was required to provide to Plaintiffs accurate and timely information on the pricing of prescription medications, including generic medications.

53. Pursuant to the terms of the BWC Contract Defendant was required to make timely and accurate adjustments to price lists, specifically including MAC lists, so as to equitably track the fair market pricing of the drugs for which reimbursement was sought from Plaintiffs.

54. Pursuant to the terms of the BWC Contract, Defendant was required to refrain from using information gained through the BWC Contract for other and unrelated commercial purposes without authorization.

55. Defendant has breached its obligations under the BWC Contract.

56. These and other failures in performance constitute a breach of the BWC Contract, and also constitute a breach of the duty of good faith and fair dealing in the BWC Contract, inherent under Ohio law.

57. This failure to perform was committed by Defendant knowingly and in bad faith and with the intent to deprive Plaintiffs of the benefit of its bargain and to frustrate its reasonable expectations pursuant to the terms of the BWC Contract.

58. As a direct result of Defendant's breaches of the express and implied duties detailed herein, Plaintiffs suffered damages in excess of Fifteen Million Dollars (\$15,000,000.00).

## COUNT II

### FRAUDULENT INDUCEMENT

59. Plaintiffs hereby incorporate by reference all previous paragraphs.

60. Defendant made the following material assertions of fact in its response to the 2009 RFP on the dates shown thereon, which led to Defendant being chosen as the PBM for BWC:

- (a) Defendant's standard MAC List would generate an effective generic discount of 74% to 78% less than AWP;
- (b) Under the BWC's planned utilization, Defendant's MAC List would generate an effective generic discount of 80.88% less than AWP;
- (c) Defendant would use a defensible, sophisticated, and comprehensive methodology for determining the generic status of a medication and would update the inputs for that methodology on a weekly basis; and
- (d) Defendant would utilize pricing information from a national drug information provider to update prices, including MAC list prices, on a weekly basis.

61. These representations were material to Plaintiffs' decision to select Defendant as its PBM.

62. Defendant knew these representations were false at the time they were made or, alternatively, made the representations with such recklessness as to their truth or falsity that knowledge can be implied.

63. Defendant intended for these representations to induce Plaintiffs to enter into the BWC Contract.

64. Plaintiffs justifiably relied on the representations made by Defendant to its detriment.

65. As a proximate result of Defendant's fraudulent misrepresentations, Plaintiffs has expended sums on investigation, consultants, research and like efforts undertaken to discover the

impact of Defendant's misrepresentations on Plaintiffs' operations in an amount to be determined, as well as other damages in addition to breach of contract damages.

COUNT III

PROMISSORY FRAUD

66. Plaintiffs hereby incorporate by reference all previous paragraphs.

67. On the date it entered into the BWC Contract, Defendant never intended to deliver the services as represented therein.

68. At the time it entered into the BWC Contract, Defendant knew it would not deliver the services as represented therein.

69. As set forth Count II, above, Defendant's representations concerning the manner in which it would perform the professional services were material to Plaintiffs' decision to enter into the BWC Contract.

70. Defendant knew these representations were false at the time they were made or, alternatively, made the representations with such recklessness as to their truth or falsity that knowledge can be implied, and moreover, made such representations without any present intent to perform the professional services as promised.

71. Defendant intended that BWC rely on its representations.

72. Plaintiffs justifiably relied on Defendant's fraudulent misrepresentations to its detriment.

73. As a proximate result of Defendant's fraudulent misrepresentations, Plaintiffs have expended sums on investigation, consultants, research, and like efforts undertaken to discover the impact of Defendant's misrepresentations on BWC's operations in an amount to be determined, as well as other damages.

74. Defendant's behavior reflects and was a conscious disregard for the rights of Plaintiffs that had a great probability of causing substantial harm.

WHEREFORE, Plaintiffs respectfully request judgment against Defendant as follows:

1. Compensatory damages in excess of Fifteen Million Dollars (\$15,000,000.00);
2. Punitive damages in excess of Fifteen Million Dollars (\$15,000,000.00);
3. For all costs of this litigation, including reasonable attorneys' fees; and
4. Such other relief as the Court deems appropriate and just.

Respectfully submitted,

OHIO BUREAU OF WORKERS'  
COMPENSATION, and OHIO  
DEPARTMENT OF ADMINISTRATIVE  
SERVICES, and STATE OF OHIO,  
Plaintiffs.

  
\_\_\_\_\_  
Jack T. Diamond (#0023536)  
Donald W. Davis, Jr. (#0030559)  
Adam D. Fuller (#0076431)  
Elizabeth Shively Boatwright (#0081264)  
BRENNA MANNA DIAMOND, LLC  
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*Special Counsel for the Attorney General of  
the State of Ohio*

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues herein.

  
\_\_\_\_\_  
Attorney for Plaintiffs  
4848-8701-1467, v. 1

The BWC pharmacy department continues to experience failures of contract terms on the part of our Pharmacy Benefit Manager, OptumRx. These failures are in the areas of the Maximum Allowable Cost (MAC) drug pricing and the use of increased BWC prescription pricing to offset discounted contracts with other clients in Optum's price guarantees to retail pharmacies. BWC has met with the vendor account representative, as well as the vendor representative in charge of government accounts, both in person and over the telephone many times. OptumRx notified BWC on June 30, 2017 that there were no MAC updates for week ending 06/30/17 and sent a spreadsheet reflecting that. On July 5, 2017 BWC was notified that there were updates to the BWC MAC list for the week ending 06/30/17 and sent a spreadsheet noting these changes. The updates equated to an increased cost of \$4.33M in our four most commonly used drug classes:

Opioids ,

Antidepressants (with some anti-psychotics)

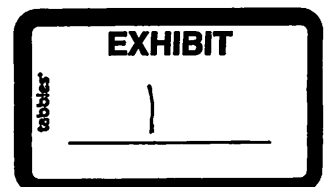
Anticonvulsants

Non-steroidal Anti-inflammatories.

Those 4 classes represent 74% of the total costs for MAC drugs. That represents a 15.4% annual increase over 2016 MAC prices for those drug classes. This is the most dramatic price change that BWC has experienced in over a year.

This price increase is on top of the additional projected \$5M (293%) increase in administrative fees being paid to OptumRx in 2017 as a result of the contract renewal. Again, we feel that this is a strong indicator that OptumRx is using BWC to support lower prices for other clients, a clear violation of the language of the contract.

Attached is a spreadsheet received from OptumRx with the updates to the MAC list for the week ending 06/30/17. Additional tabs have been added by BWC one of which titled "projected impact" of the changes to the MAC pricing.







December 6, 2017

Carol Clingman  
State Procurement Analyst  
Ohio DAS, Office of Procurement Services  
4200 Surface Road  
Columbus, OH 43228

Subject: Pharmacy Benefits Management (PBM) Services Renewal of Agreement  
OptumRx Administrative Services, LLC ("OptumRx") and the Office of  
Procurement Services (the "State"); contract number CSP903609, as amended  
(the "Agreement")

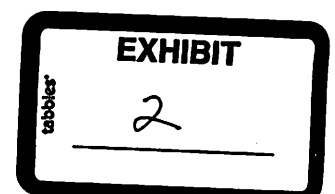
Dear Carol:

Thank you again for speaking with me and the OptumRx team last week. As requested, this letter sets out OptumRx's proposal to resolve the MAC Effective Rate ("MER") issues related to the Agreement.

As OptumRx has previously conveyed to BWC and to the Ohio DAS, OptumRx disagrees with the State's interpretation of the contract pricing. The Agreement specifies a rate of AWP-9% for brand name drugs, which we feel strongly is the contractually enforceable rate. The May 25, 2016 contract renewal was negotiated without OptumRx being aware of the change in the brand AWP discount. Subsequently the Ohio Administrative Code was changed to revise the State's fee schedule amount from AWP-9% to AWP-15% for brand drugs. This change has never been reflected in the Agreement. Nonetheless, OptumRx has been adjudicating brand name claims at AWP-15% since January 1, 2017, despite the contract specified rate of AWP-9%. To achieve the results of the mutually-agreed upon cost models while implementing as OptumRx has previously notified the State, OptumRx has been managing the BWC MAC List to a MAC Effective Rate of AWP -67.

On March 2, 2017, OptumRx offered to BWC to alter the MAC Effective Rate from AWP -67% to AWP-70%. As no response was received, that change was not implemented.

On a go forward basis effective February 1, 2018, OptumRx will agree to manage the BWC MAC List at a MAC Effective Rate of AWP -74% and to continue to adjudicate brand





claims at AWP-15%. Although not required in the Agreement, as a show of partnership with BWC we believe we can now manage to a MER of AWP-74% with a brand discount of AWP-15% on a go forward basis. In order to implement the necessary system updates to implement this change, particularly at this busy time of the year for our business, we ask that BWC confirm its agreement to this change in resolution of the MER issue no later than December 15, 2017 by returning a signed copy of this this letter to OptumRx by that date. We note that our internal processes provide for 60 days lead time for changes at this time of year, and the December 15, 2017 date is only a 45 day lead time, but we do commit to honoring implementation for February 1, 2018 if we receive the written confirmation by that date. Please do not hesitate to contact me should you wish to discuss this letter.

Sincerely,

A handwritten signature in black ink that reads "Ellen R. Nelson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ellen Nelson, Senior Vice President  
Government Markets, Relations & Reform

Signature of State Designee: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Date: \_\_\_\_\_

December 29, 2017

OptumRx Administrative Services, LLC  
Attn: Ellen Nelson  
1600 McConnor Parkway  
Schaumburg, IL 60173-6801

RE: Pharmacy Benefits Manager (PBM) for the Bureau of Workers' Compensation (BWC) Pharmacy Program, Contract CSP903609

Dear Ms. Nelson,

Thank you for your December 6, 2017 letter addressing prescription medication pricing. The State of Ohio is pleased that OptumRx is going to process the MAC Effective Rate (MER) change to AWP-74% on an accelerated schedule to meet the February 1, 2018 deadline. However, the State continues to disagree with OptumRx's managing the BWC MAC List to a MER pricing unilaterally changed by Optum from AWP-74% down to AWP- 67% on January 1, 2017. The State agrees to OptumRx's proposed changes on February 1, 2018, but this does not resolve or remediate the financial impact BWC has incurred due to OptumRx between January 1, 2017 to February 1, 2018.

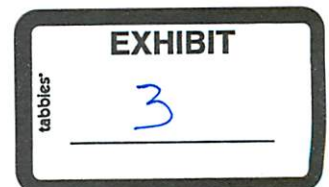
Sincerely,



Randall F. Dublikar  
State Purchasing Contracts Manager

RD:cc

C: file



*The State of Ohio is an equal opportunity employer.*