



Hugh McDonald
SECRETARY OF COMMERCE

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DEPARTMENT

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

FROM: Alan McClain, Commissioner, AID; Daniel Holland, PBM General Counsel and Director,
AID
TO: Executive Committee & ALC
DATE: June 20, 2025
RE: Status Report on Implementation of Rule 128 & PBM Enforcement

This is the June report, as required by ALC and the Executive Committee, which approved AID Rule 128: *Fair and Reasonable Pharmacy Reimbursements* (Rule 128). Pursuant to an oral motion in the Executive Committee, AID now offers this report on activities related to the implementation of Rule 128, including enforcement efforts and ongoing pharmacy benefit manager ("PBM") regulation.

Rule 128: Fair and Reasonable Reimbursement Rates

AID received a total of 3,347 data reports from health plans and PBMs pursuant to Rule 128 and Bulletin 18-2024. Approximately 654 (19%) of those plans self-reported an average annual reimbursement to pharmacies below the national average drug acquisition cost ("NADAC") (See Figure 1). These 654 plans that consistently reimburse pharmacies below NADAC, in violation of Ark. Code Ann. § 23-92-506(b)(5)(A), cover approximately 340,000 Arkansas lives.

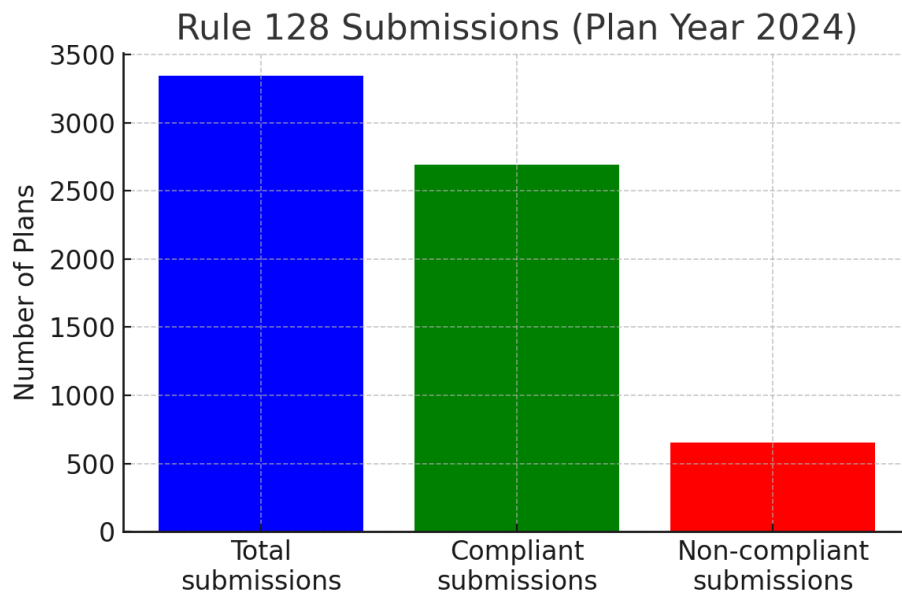
Rule 128 data submitted to AID further shows 2,372 plans (71%) cover fewer than 25 Arkansas lives, and almost 50% of the plans cover fewer than 10 Arkansas lives. (See Figure 2). On the other end of this spectrum, only 26 plans cover more than 5,000 Arkansas lives. Of those 26 plans with more than 5,000 covered lives, 11 are within the non-compliant category and reimburse, on average, less than NADAC. Of the plans with less than 25 covered lives, 407 are within the non-compliant category and reimburse, on average, less than NADAC.

Rule 128 Implementation: Next Steps

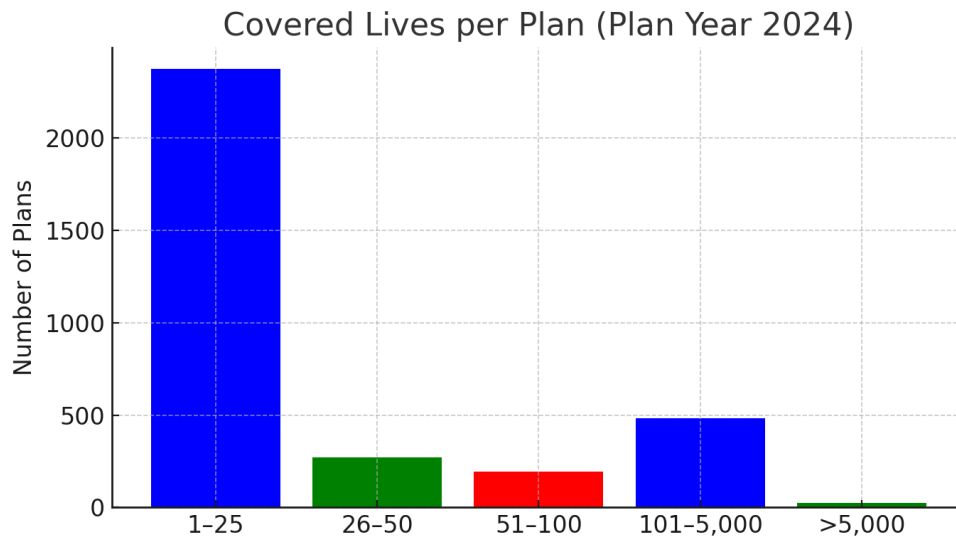
Using the data received from health plans and PBMs pursuant to Rule 128, AID will first focus on the 654 plans who reported an average annual reimbursement below NADAC, in violation of the Arkansas Pharmacy Benefits Manager Licensure Act (“PBMLA”). AID will send a Notice to Cure to each of these deficient plans and their PBMs which requires submission of a Corrective Action Plan (“CAP”) to AID detailing how the filer will bring their reimbursements into compliance with current Arkansas law. Each deficient plan and their PBM will then have forty-five (45) days to increase their reimbursements to 100% of NADAC, or face enforcement actions under the PBMLA.

This initial targeted approach will bring more plans and PBMs into compliance with existing Arkansas law, allowing AID to better assess the final amount of a cost to dispense and to which plans it should apply. This targeted approach provides the quickest and least costly path to compliance with existing Arkansas law, and allows AID to implement Rule 128 in a way that causes minimal premium impact to Arkansas citizens.

Once the forty-five (45) day Notice to Cure window is closed, AID will then determine the amount of a cost to dispense under Rule 128, and to which plans and PBMs that cost should apply.



(Figure 1)



(Figure 2)

PBM Enforcement Actions

Below is an update on the PBM Division's Enforcement Actions:

- Express Scripts Administrators: On June 4, 2025, a hearing was held in AID v. Express Scripts Administrators L.L.C., AID Case No. 165918, regarding a direct contract offered to Arkansas' pharmacies that allegedly fails to comply with Ark. Code Ann. § 23-92-506(b)(5)(A). The parties are now drafting their proposed findings of fact and conclusions of law for a final determination by the Commissioner.
- Express Scripts Administrators: the hearing previously scheduled for June 12, 2025, regarding several prescription reimbursements from July of 2024 that were allegedly paid below NADAC has been postponed and will be rescheduled, likely in July or August of 2025.
- Magellan: AID and Magellan have reached a settlement in principle regarding several alleged below-NADAC reimbursements from July of 2024. The parties are currently drafting an agreed Consent Order to memorialize the settlement.
- Prime Therapeutics: the enforcement action against Prime Therapeutics has been consolidated into the settlement in principle with Magellan.
- Caremark CVS: a public hearing may occur regarding alleged below-NADAC reimbursement violations from July 2024 unless the parties reach an agreement. Settlement negotiations are ongoing.

- SaveRx: an enforcement action was initiated against SaveRx for below-NADAC reimbursement violations from early 2025. SaveRx has responded and paid a \$1,000 penalty.
- OptumRx: an enforcement action was initiated against OptumRx for below-NADAC reimbursement violations from early 2025. OptumRx has responded and paid a \$3,000 penalty.
- Navitus Health Solutions: an enforcement action was initiated against Navitus for below-NADAC reimbursement violations from early 2025. Navitus has responded and AID is currently reviewing that response and investigating the underlying reimbursements.

Rule 128 Bulletins

In addition to AID Bulletin 18-2024, which outlines that data report requirements for Rule 128, AID issued Bulletin 2-2025 which expanded the review period for AID from twenty (20) days to sixty (60) days. This was issued after AID received most submissions and realized the need for an expanded review period.

On June 9, 2025, AID published Bulletin 8-2025, which extended the “Plan Year 2026” reporting deadline to July 31, 2025. This Bulletin was published to extend the previous July 1, 2025 deadline that fell within the data reporting window.

AID will publish another Rule 128 Bulletin that will include specific guidance for both compliant and non-compliant plans once the Notice to Cure window is closed.



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FROM: Daniel Holland, PBM General Counsel and Director, AID; Jimmy Harris, Deputy
Commissioner – Market Regulation, AID
TO: Executive Committee & ALC
DATE: August 8, 2025
RE: Status Report on Implementation of Rule 128 & PBM Enforcement

This is the August report, as required by ALC and the Executive Committee, which approved AID Rule 128: *Fair and Reasonable Pharmacy Reimbursements* (Rule 128). Pursuant to an oral motion in the Executive Committee, AID now offers this report on activities related to the implementation of Rule 128, recently initiated enforcement efforts, ongoing audits, and licensing activity related to pharmacy benefit managers (“PBM”).

I. Rule 128: Fair and Reasonable Reimbursement Rates

A. Notices to Cure

Since the last report to the Arkansas Legislative Council, AID sent Notices to Cure to the twelve PBMs who manage the 654 plans labeled as deficient because they cited average below-NADAC reimbursements. Of those PBMs currently managing deficient plans, six cite confusion regarding the data requests as the reason for their deficient Rule 128 Report. The other six PBMs managing deficient plans have submitted a Corrective Action Plan (CAP) to AID for review. Those CAPs have since been reviewed and approved by the Commissioner.

The primary reason cited for average below-NADAC reimbursements was internal computer system limitations that allegedly hinder some PBMs from aligning their pricing with NADAC, which is updated by CMS on a weekly and monthly basis. Several PBMs also cited unique situations in which

their internal computer systems defaulted to other pricing benchmarks at a time when those benchmarks fell below NADAC.¹

The six PBMs who submitted CAPs will now have 60 days to implement their corrective actions then report back to AID at the conclusion of the corrective window. AID will then evaluate whether those PBMs have increased their average reimbursement to NADAC along with a fair and reasonable cost to dispense. The corrective window for these PBMs will close in September.

The six PBMs who did not submit CAPs alleged there was confusion regarding the data requested pursuant to Rule 128. Upon receipt of the Notice to Cure from AID, these PBMs clarified what their reporting sought to convey, then assured AID they are compliant with the reimbursement standards in Arkansas. AID has initiated audits of these PBMs to verify the reimbursement data contained in their reports. These audits should also conclude in September.

B. Rule 128 Reporting – July 2025

The deadline for the second round of Rule 128 reporting was July 31, 2025. AID has currently received approximately 3,000 Rule 128 reports from plans and PBMs. The July reports will be used to evaluate overall reimbursement trends that occurred in the beginning of 2025 after the passage of Rule 128, and specifically to evaluate the plans identified as “deficient” in the first round of reporting.

II. July 2025 PBM Enforcement Actions

The PBM Division has initiated 9 new enforcement actions containing 26 total prescriptions that were reimbursed below NADAC between June and July of 2025, in violation of Ark. Code Ann. § 23-92-506(b)(5)(a). Investigations into these enforcement actions began in July of 2025, and will result in consent orders that include statutory penalties pursuant to the Pharmacy Benefits Manage Licensure Act,² or an AID administrative order should the PBM request an administrative hearing.

In addition to ongoing investigations that occur each month related to reimbursement violations, the PBM Division has also initiated multiple investigations into alleged network denials, in violation of Ark. Code Ann. § 23-92-512, *et seq.*

¹ PBM contracts with pharmacies include multiple pricing benchmarks (i.e., usual and customary price, average wholesale price, or maximum allowable cost), with the PBM reimbursing the pharmacy at the lowest applicable rate. Sometimes this rate falls below NADAC.

² AID may assess penalties up to \$5,000 per violation pursuant to Ark. Code Ann. § 23-92-508(c)(1).

III. PBM Audits

AID, along with our third-party consultants, is currently examining the top 5 PBMs who manage prescription reimbursements for plans in Arkansas.³ These Limited Scope Examinations (LSEs) focus on each company's reimbursement practices for affiliated and non-affiliated pharmacies during calendar years 2023 and 2024. Data requests have been sent to each PBM, and they are currently working to produce the large amount of information requested. The results of these LSEs are expected early next year.

IV. PBM Licensing 2025

The following PBMs have renewed their license within the last 60 days for plan year 2025-2026:

- Benecard Services, Inc.
- CarelonRx, Inc.
- Caremark, L.L.C.
- Caremark PCS Health, L.L.C.
- Centene Pharmacy Services
- Fairview Health Services, d/b/a ClearScript
- MaxorPlus, Ltd.
- MedImpact Healthcare Systems, Inc.
- Navitus Health Solutions, L.L.C.
- WellDyneRx, L.L.C.
- ServeYouRx

³ The PBMs included in these examinations are OptumRx, Inc., Navitus Health Solutions, L.L.C., Magellan Rx Management, L.L.C., Express Scripts, Inc., and CVS Caremark, L.L.C.