

Minnesota Department of Commerce

Insurance Division

NOTICE OF HEARING

Proposed Rules Governing Pharmacy Benefits Management (PBM) Licensure and Regulation, *Minnesota Rules*, Chapter 2737; Revisor's ID Number R-04625, OAH docket number 21-9009-37561

Overview. This notice is the Minnesota Department of Commerce's (Commerce) legal notice of its intent to adopt new rules following a hearing. The purpose of these rules is to provide industry and other stakeholders with clarity and predictability in the enforcement of the PBM law passed in 2019.

This notice provides you the opportunity to submit your comments on this rule to the Administrative Law Judge (ALJ) either orally at the hearing or in writing at any time before the close of the hearing record. The **Subject of Rules** section provides further description of these proposed rules. If the proposed rules affect you in any way, the Commerce encourages you to participate in the rulemaking process.

View the **Alternative Format/Accommodation** and **Commerce Contact Person** sections of this notice for information on requesting this document in an alternative format.

Public Hearing. The Department of Commerce intends to adopt rules after a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2200 to 1400.2240, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.131 to 14.20. On Monday, September 20, 2021, starting at 9:00am CST and continuing until 5:00pm CST, the agency will hold a remote public hearing on the above-named rules, for video and audio connection to the virtual hearing, join through an internet connection, such as with a computer or tablet:

Enter: <https://minnesota.webex.com>

Meeting number: 146 559 7572

Meeting password: PyPHa54thb7

For audio connection only, join the hearing by phone:

Call: 1-415-655-0003

Access code: 146 559 7572

The agency will schedule additional days of hearing if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements may be submitted without appearing at the hearing.

Additional information regarding the hearings and the rules being proposed is provided at <http://mn.gov/commerce/policy-data-reports/rulemaking/index.jsp?id=17-412841>. Hearing exhibits will also be posted to this website before the hearing.

Administrative Law Judge. Administrative Law Judge Kimberly Middendorf will conduct the hearing. The rule hearing procedure is governed by *Minnesota Statutes*, sections 14.131 to 14.20, and by the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2000 to 1400.2240. You should direct questions about the rule hearing procedure to the administrative law judge. Judge Middendorf's Legal Assistant Michelle Severson can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7900 and fax 651-539-0310 or denise.collins@state.mn.us.

Subject of Rules, Statutory Authority, and Agency Contact Person. The proposed rules would be a new chapter and are about the licensure and regulation of PBMs. The proposed rules are authorized by Section 20 of Minnesota Session Laws – 2019, Regular Session, Chapter 39 (codified in Minnesota Statutes, chapter 62W). The rules provide processes, forms and procedures for initial PBM licensure, license renewal, PBM data reporting, PBM business practices, as well as enforcement of the statute by Commerce.

A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed and is available at the agency's website at <http://mn.gov/commerce/policy-data-reports/rulemaking/index.jsp?id=17-412841>. A print copy is available for the cost of reproduction by contacting the agency contact person named below.

A copy of Statement of Need and Reasonableness (SONAR) is available at the agency's website at <http://mn.gov/commerce/policy-data-reports/rulemaking/index.jsp?id=17-412841>. The SONAR summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. A print copy is available for the cost of reproduction by contacting the agency contact person named below.

The agency contact person is: Andrew Kleinendorst (andrew.kleinendorst@state.mn.us), 651-539-1500; 85 7th Place East, Suite 280, Saint Paul, MN 55101.

If you wish to be placed on Commerce's rulemaking interested party mailing list, please contact the agency contact person.

Public Comment. You and all interested or affected persons, including representatives of associations and other interested groups, will have an opportunity to participate. The administrative law judge will accept your views either orally at the hearing or in writing at any time before the close of the hearing record. Please submit written comments **to the administrative law judge via the Office of Administrative Hearings Rulemaking eComments website** <https://minnesotaoah.granicusideas.com/discussions>. If it is not possible for you to use the eComments website, you may submit your written comments in person, by U.S. mail, or by fax to the judge using the contact information contained in the Administrative Law Judge section of this notice. Any comments or materials that you present or submit must relate to the proposed rules.

After the hearing, you may submit written comments to the administrative law judge using the eComments website (the preferred method) or by mail, fax, or personal delivery. These comments must be submitted within five working days after the hearing date. At the hearing, the administrative law judge may order this five-day comment period be extended for no more than 20 calendar days.

After the comment period ends, there is an additional five-working-day rebuttal period during which Commerce and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period.

All comments and responses must be submitted no later than 4:30 p.m. on the due date. All comments or responses received are public and will be available for review at <https://minnesotaoah.granicusideas.com/discussions>.

You may learn more about the OAH Rulemaking eComments website, including step-by-step instructions and frequently asked questions at <https://mn.gov/oah/forms-and-filing/ecomments/>. Questions about submitting comments via the OAH Rulemaking eComments website should be directed to the OAH at 651-361-7900.

Please note that comments regarding the Commerce Department's proposal must be sent to the ALJ. Comments sent to Commerce alone will not be part of the rulemaking record. Comments submitted after the close of the comment period will not be accepted or considered part of the record.

Modifications. The agency may modify the proposed rules as a result of the rule hearing process. It must support modifications by data and views presented during the rule hearing process. The adopted rules may not be substantially different than these proposed rules, unless the agency follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the agency encourages you to participate.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Adoption Procedure after the Hearing. After the close of the hearing record, the administrative law judge will issue a report on the proposed rules. You may ask to be notified of the date when the judge's report will become available and can make this request at the hearing or in writing to the administrative law judge. You may also ask to be notified of the date that the agency adopts the rules and files them with the Secretary of State or ask to register with the agency to receive notice of future rule proceedings. You may make these requests at the hearing or in writing to the agency contact person stated above.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You should direct questions regarding this requirement to the Campaign Finance and Public Disclosure Board at:

Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

8/02/2021

Date



Grace Arnold, Commissioner
Minnesota Department of Commerce