

Health Care Financing Administration
Kansas City Regional Office

Market Conduct Examination Report

Blue Cross and Blue Shield of Missouri

Background

Generally, the individual and group market requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) became effective on July 1, 1997.

As of the commencement of the market conduct examination of Blue Cross and Blue Shield of Missouri (BCBSMo) the state of Missouri had not incorporated into Missouri state law provisions and/or requirements that would bring Missouri state law into compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a result, pursuant to Federal Regulations found at 45 CFR 146.184 (b)(2)(I) and 45 CFR 148.200 (b)(1) (since replaced by Federal Regulations found at 45 CFR 150.203(a)), the enforcement of the requirements of HIPAA in Missouri are the responsibility of the Health Care Financing administration (HCFA), primarily, the HCFA Kansas City Regional Office (KCRO).

Utilizing enforcement tools similar to those used by State insurance departments, the HCFA KCRO undertook the responsibility of the enforcement of HIPAA through form review, complaint investigation, and market conduct examinations.

HuffThomas, a regulatory consulting firm, was contracted by HCFA to perform the on-site portion of market conduct examinations of issuers identified by HCFA.

On April 26, 1999, a letter was sent to BCBSMo President, John O' Rourke announcing the examination of BCBSMo and all affiliated companies.

On June 10, 1999 an entrance conference was held at BCBSMo headquarters in St. Louis, Missouri and the examination begun.

Preliminary Examination Findings in Brief

With respect to the guaranteed availability of individual policies to “eligible individuals” as defined at 45 CFR 148.103, BlueCross BlueShield of Missouri (BCBSMo) utilizes an overall marketing, policy issuance and application process hostile to Missouri residents attempting to exercise their rights as provided for in the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Generally, this process:

1. Withholds maternity benefits from eligible individuals.
2. Withholds access to information regarding guaranteed available policies from consumers attempting to access information through BCBSMo’s marketing web site.
3. Requires applicants to obtain “certifications” from former employers regarding COBRA and/or other continuation, which employers are not legally required to provide.
4. Requires applicants to request information on guaranteed available coverage in order to be determined an eligible individual and then to be offered all available coverage options.

With respect to the issuance of certificates of creditable coverage to individuals ceasing BCBSMo coverage, BCBSMo creates the potential for unnecessary problems by issuing certificates which do not clearly disclose the name of the issuer.

Company History

Group Hospital Services, Inc. was formed on April 10, 1936, to provide prepaid hospital services to individuals in St. Louis, Missouri. As a not-for-profit corporation, Group Hospital Services, Inc. was officially granted corporate perpetuity with a Pro Forma Decree on April 17, 1936. Group Hospital Services, Inc. began providing prepaid hospital services to groups in 1942. On June 19, 1964, Group Hospital Services, Inc. changed its name to Blue Cross Hospital Services Incorporated of Missouri.

The Missouri Department of Insurance (at the time, the Division of Insurance) issued a Certificate of Authority to Blue Cross Hospital Services Incorporated of Missouri as a qualified Health Services Corporation on September 26, 1974. The Company filed amended Articles of Incorporation on April 24, 1979, to qualify under Chapter 354 RSMo (1978), (Health Services Corporations, Health Maintenance Organizations, Prepaid Dental Plans) as a Health Services Corporation. In May of 1985, Blue Cross Hospital Services Incorporated of Missouri changed its name to Blue Cross Health Services Incorporated of Missouri and, consequently, was issued a Certificate of Authority under this name by the Missouri Director of Insurance on June 19, 1985.

Missouri Medical Service was incorporated as a not-for-profit organization on September 18, 1944, with a loan from the Missouri State Medical Association. Missouri Medical Service commenced business on April 1, 1945, to provide prepaid medical services to individuals. The Missouri Director of Insurance issued the Company's first Certificate of Authority on September 26, 1974. Missouri Medical Service received its Certificate of Amendment as a general not-for-profit corporation on December 3, 1984, effectively allowing the Company to offer prepaid health care and related services.

In October 31, 1986, Missouri Medical Service was merged into Blue Cross Health Services Incorporated of Missouri. The surviving entity was Blue Cross and Blue Shield of Missouri (BCBSMo). As a general, not-for-profit corporation, BCBSMo was issued an amended Certificate of Authority on November 26, 1986, by the Missouri Director of Insurance.

BCBSMo is organized as a not-for-profit Health Services Corporation, organized under the General not-for-profit Corporation law (Chapter 355) and regulated under the Health Services Corporation law (chapter 354) of the state of Missouri. BCBSMo does not have any issued or outstanding common capital stock. The Company is, however, required to maintain statutory reserves of \$250,000 to operate.

On August 8, 1994, a major reorganization was completed that included the initial public offering of RightCHOICE Managed Care, Inc. (RIT) and the transfer of a majority of the assets of BCBSMo to RIT in exchange for approximately 80% of the stock of RIT.

Subsequent to the reorganization, the Missouri Department of Insurance (DOI) sued BCBSMo alleging that the reorganization and public offering constituted a de facto conversion to a for-profit corporation.

On April 22, 1998, RIT and the DOI arrived at a tentative settlement whereby BCBSMo will be dissolved and all its shares of RIT will be contributed to a health care-focused foundation to be created by Missouri state officials. All the current subscribers of BCBSMo will become insureds of either Healthy Alliance Life Insurance Company or HMO Missouri, Inc.

On September 20, 1998, the settlement agreements were executed, and courtesy copies were provided to the Circuit Court. RIT and BCBSMo had intended that following the remand to the Circuit Court of the litigation relating to the Reorganization and Public Offering, RIT, BCBSMo together with the DOI and Missouri Attorney General would file a motion with the Circuit Court seeking approval of the settlement agreements and the proposed reorganization.

On October 29, 1998, notwithstanding the fact that the litigation relating to the Reorganization and Public Offering had not yet been remanded to the Circuit court, the Circuit Court, "acting on its own motion," issued an Order providing for, among other things, the appointment of a receiver/custodian to take exclusive possession and control of all of the issued and outstanding shares of RIT owned by BCBSMo.

On November 2, 1998, BCBSMo filed its Motion to Vacate Order and its Memorandum in Support of Motion to Vacate in response to the October 29 Order.

On November 2, 1998, the Blue Cross and Blue Shield Association filed a complaint against RIT alleging that the appointment of the receiver/custodian caused the automatic termination of the licenses to use the service marks.

On November 4, 1998, the Circuit Court issued an Order vacating the October 29 Order and declaring it to be void ab initio. The Circuit Court also appointed a special master for the purpose of collecting and analyzing information related to the proposed settlement.

On November 19, 1998, the Blue Cross and Blue Shield license agreements were reinstated.

On February 10, 1999, the special master recommended that the proposed settlement agreement "not be approved in its present form."

On September 9, 1999 the Missouri Supreme Court ordered a lower court to rule on the settlement between Blue Cross and Blue Shield of Missouri and the state's insurance department. The high court ordered the circuit judge to issue a ruling by November 9, 1999.

Affiliated Companies

BCBSMo, a Health Services Corporation, is the ultimate parent of a holding company system that consists of five insurance companies (includes two health maintenance organizations (HMOs) and nine non-insurance companies. BCBSMo owns 80.33% of RIT, a publicly traded company on the New York Stock Exchange. RIT does business as Alliance Blue Cross Blue Shield (ABCBS) and either directly, or indirectly, owns the other insurance companies, excluding BCBSMo, in the insurance holding company system.

All subsidiaries are 100% owned except for:

- BCBSMo owns 80.33 of RIT.
- The EPOCH Group L.C. is owned 50% by RIT and 50% by Blue Cross and Blue Shield of Kansas City.
- HealthCare Interchange, Inc., Diversified Life Insurance Agency is owned 45% by RIT.

Management Structure

The affairs of BCBSMo are managed, supervised and controlled by a self-perpetuating Board of Directors that shall have all of the rights, powers, duties and discretion vested in a board of directors under Chapter 355, MoRS, and shall have the voting power provide in the bylaws. The Board consists of at least eleven but not more than fifteen members, as determined by the Board of Directors from time to time. At least four of the Directors shall be Provider Directors, but a majority of the Directors shall be non-provider directors, one of whom may be the president of BCBSMo. The members of the Board of Directors shall be selected to provide a reasonable distribution between those Directors who reside or are employed in the metropolitan area and those who reside outside the metropolitan area. A provider director is a natural person who is a licensed physician, medical doctor or doctor of osteopathy, or holds a senior executive position in a licensed hospital.

The officers of BCBSMo consist of the Director-Officers and Staff-Officers. The Director-Officers include the Chairman of the Board of Directors, a Vice Chairman of the Board, and a Chairman of the Finance and Investment Committee. The Staff-Officers include a President, Secretary, and a Treasurer, and may include an Executive Vice President and such other officers as authorized by the Board of Directors. The President shall have immediate supervision of the business and work of BCBSMo, including the employment and discharge of employees, and shall be the Chief Executive Officer. As of December 31, 1998, the Officers and Directors or Trustees are the following individuals:

| | |
|---------------------------|---------------------------------------|
| John A. O'Rourke | President and Chief Executive Officer |
| Susanne Sharon Casey | Secretary and Vice President |
| Gary L. Whitworth | Treasurer and Vice President |
| Darius Keith Adams | |
| Duane Conrad Hellam, M.D. | |

Daniel Joseph McVey
James Henry Buford
Robert Joseph Kelley
William John Sschicker
Donald Wray Charpentier
Allan Erwin Kolker, M.D.
Norman John Tice
Henry Givens, Jr. , Ph.D.
Joseph Edwin Lammers

Chairman

Insurance Products

BCBSMo is licensed only in Missouri as a Health Services Corporation subject to sections 354.010 through 354.380 of the Health Services Corporation law. In addition, its licensing arrangement with the Blue Cross and Blue Shield Association limits it to the counties in Missouri (84 plus St. Louis City) not serviced by Blue Cross and Blue Shield of Kansas City.

BCBSMo currently underwrites:

- Its share of the Blue Cross and Blue Shield Association's contract with the Office of Personnel Management to provide health insurance to federal employees; and
- Basic Blue Individual that is a limited product offered only to low income individuals who have no other health care coverage available to them.

In addition to the aforementioned underwritten business, BCBSMo administers the National Accounts in its service area, the Missouri Health Insurance Pool and provides administrative services only (ASO) for self-insured groups.

Use of General Agents, Managing General Agents and Third Party Administrators

BCBSMo does not use General Agents (GAs) or Managing General Agents (MGAs) as a distribution system for its products. Licensed agencies, agents and brokers are used for the external distribution system.

Exception #1- - Violations of 45 CFR 148.120(c)(1)(ii) and 45 CFR 148.120(c)(2)

General Subject Area(s) - - Guaranteed Availability & 2 Most Popular Policy Forms

Background

BCBSMo offers one (1) individual product, BasicBlue. This is an income-related product developed for low-income individuals who can only afford a limited health insurance product. The product is medically underwritten and provides for basic hospitalization with some medical benefits. The product as issued to “non-eligible” individuals includes a preexisting condition exclusion provision and a waiting period for maternity.

BCBSMo is therefore an issuer offering health insurance coverage in the individual market and is required pursuant to the requirements of Federal Regulations found at 45 CFR 148.120 to offer the product on a guaranteed issue basis to “eligible individuals” as defined at 45 CFR 148.103.

Specific Violation

- **Documents collected by examiners indicate BCBSMo offers BasicBlue to eligible individuals without coverage for maternity.**

Federal Regulations found at 45 CFR 148.120(c)(1)(ii) require issuers to offer their two (2) most popular policy forms to eligible individuals. In the case of BCBSMO, it only has one policy to issue. While maternity benefits are available to “non-eligible” individuals purchasing a BasicBlue policy from BCBSMo, company documents indicate maternity benefits are not available to those eligible individuals who obtain a BasicBlue policy on a guarantee issued basis. Specifically, the document the company provided the examiners entitled “HIPAA Groups” states in part “NOTE: There are NO MATERNITY BENEFITS for the HIPAA BASIC BLUE....”

The removal of maternity benefits from policies offered to eligible individuals does not comply 45 CFR 148.120(c)(1)(ii) and 45 CFR 148.120(c)(2) given that a different policy with different benefits is being issued to eligible individuals.

Examiners were unable to locate a policy amendment or other information that confirmed the contractual removal of the maternity benefits. In an effort to confirm or refute the company document specifying the removal of maternity benefits, examiners requested a copy of all maternity claims paid for individuals issued a

BasicBlue policy for the period beginning 7/1/97 to 8/10/99. No claims had been paid.

Adverse Impact to Missouri Consumers

- “Eligible individuals” are being discriminated against and are not being provided access to the type of policy (and coverage) guaranteed them under the HIPAA law.
- Potential for severe adverse financial impact to eligible individuals who purchase a guaranteed available BasicBlue policy who incur maternity expenses (i.e. individuals would be liable for the incurred charges).

Recommendation(s)

- BCBSMo should provide evidence that maternity benefits are not denied to eligible individuals or;
- If BCBSMo is unable to provide the aforementioned evidence BCBSMo should:
 - 1) Discontinue the practice;
 - 2) Reprocess any claims denied as a result of the practice;
 - 3) Provide evidence that all guaranteed available policyholders have been notified that any maternity claims not submitted for maternity may be resubmitted.

In either case, BCBSMo should provide evidence to HCFA that all BCBSMo sales representatives, agents, and customer service and claims personnel have been informed that maternity benefits are available to eligible individuals obtaining a BasicBlue policy on a guaranteed available basis.

Exception #2 - - Violation of 45 CFR 148.120(c)(1)(i)

General Subject Area(s) - - Guaranteed Availability - Actively Marketed

Background

BCBSMo uses agents, brokers and inside sales personnel to market the BasicBlue product. The information reviewed and collected by examiners would indicate that BasicBlue is marketed in essentially the same manner to both individuals meeting the definition of an “eligible individual” as defined in Federal Regulations found at 45 CFR 148.103 and to “non-eligible individuals” with one notable exception. No information regarding the availability of BasicBlue to eligible individuals is included in BCBSMo’s web site.

Specific Violation

- **BCBSMo does not inform consumers of the availability of BasicBlue coverage to eligible individuals through its marketing web site.**

Federal Regulations found at 45 CFR 148.120(c)(1)(i) require that policy forms available for guaranteed available to eligible individuals must be “...actively marketed to...both eligible and other individuals.” BasicBlue is not marketed to eligible individuals through the web site, but is marketed to other individuals through the site.

Adverse Impact to Missouri Consumers

- “Eligible individuals” utilizing BCBSMo’s marketing web site are denied the complete and equal marketing information provided to other individuals.

Recommendation(s)

- BCBSMo should add information regarding the availability of BasicBlue coverage to eligible individuals to its marketing web site.

Exception #3 - - Violation of 45 CFR 148.126

General Subject Area(s) - - Determination of an Eligible Individual

Background

BCBSMo requires an individual applying for a guaranteed available individual policy to have a letter from his/her previous employer certifying the applicant has exhausted COBRA or state continuation or that the applicant was not eligible for any continuation of coverage. Without this letter BCBSMo does not consider the application complete and will not continue processing the application.

Specific Violation

- **BCBSMo will not process an application for guaranteed available individual coverage without a letter from the applicant's prior employer certifying that COBRA or other state continuation has been exhausted or the applicant was not eligible for any continuation.**

Federal Regulations found at 45 CFR 148.126 place the responsibility of determining the eligibility of an individual to guaranteed available coverage on the issuer. An issuer must exercise "reasonable diligence" in making the determination and is allowed to request additional information if the information provided by the applicant is "substantially insufficient."

However, BCBSMo's business practice of only accepting a certification letter from prior employers to confirm an applicant's eligibility transfers the burden onto the applicant to determine his or her eligibility. In addition, while a letter from a prior employer would be acceptable as evidence of eligibility, accepting only such a letter is inappropriate for the following reasons:

- 1) Requirement does not correctly reflect the requirements of 45 CFR 148.103(6) and as a result, could force an employer to "certify" to an illegal act.

Federal Regulations found at 45 148.103(6) state that "If an individual has been **offered** the option of continuing coverage under a COBRA continuation provision or a similar State program, the individual has both elected and exhausted the continuation of coverage" (emphasis added). Eligibility for COBRA or other continuation is not sufficient. An individual who has been illegally denied his COBRA or other continuation rights would likely have great difficulty obtaining a "certification" from the employer admitting to the violation.

- 2) Requires a certification letter that employers are not under any legal obligation to provide.

The notice requirements of COBRA do not require employers to provide any notices to those individuals not eligible for COBRA. Aggravating this lack of any legal requirements to provide such a notice is the reality that not all individuals separate employment on favorable terms (i.e. they are fired). Such individuals would likely have even greater difficulty in obtaining the requested certification.

- 3) For eligible individuals moving to Missouri from many other states, a letter from an employer would be irrelevant.

Many state continuation laws place the responsibility for notifying and providing for State continuation on the insurer, not the employer. In these cases a letter from the employer would be irrelevant.

Adverse Impact to Missouri Consumers

- Missouri consumers who are unable to obtain a certification letter from their previous employer regarding continuation of coverage, are denied their right to obtain a guaranteed available individual policy. This right is denied regardless of any other evidence supporting that they meet requirements COBRA and/or other continuation requirements of an eligible individual as defined at 45 CFR 148.103(6).

Recommendation(s)

- BCBSMo should discontinue the practice of not processing an application for guaranteed available individual coverage without a letter from the applicant's prior employer certifying that COBRA or other state continuation has been exhausted or the applicant was not eligible for any continuation.

BCBSMo should allow individuals to provide other forms of evidence or attest to meeting the aforementioned requirement and then take the appropriate steps to confirm the information.

Exception #4 - - Violation of 45 CFR 148.124(b)(2)(ii)(C)

General Subject Area(s) - - Certificates of Creditable Coverage – Required Information

Background

BCBSMo issues certificates of creditable coverage to individuals discontinuing individual, non-group, coverage which identify Alliance BlueCross and BlueShield, BlueCHOICE and BlueCross BlueShield of Missouri as part of the letterhead.

Specific Violation

- **BCBSMo does not provide certificates of creditable coverage which clearly provides the name of the issuer.**

Federal Regulations found at 45 CFR 148.124(b)(2)(ii)(C) state that “The name,...of the issuer required to provide the certificate” be disclosed on certificates of creditable coverage provided to individuals discontinuing individual coverage.

While it can be argued that the name of the issuer does in fact appear on the certificates of creditable coverage (on the letterhead), the intent of the “required information” requirements of 45 CFR 148.124(b)(2)(ii) is to clearly disclose the identity of the prior issuer. Individuals and issuers receiving BCBSMo certificates of creditable coverage are faced with the options of either 1) accepting the individual who was issued the certificate had prior creditable coverage with one of three possible issuers or; 2) calling to confirm the precise identity of the prior issuer.

Adverse Impact to Missouri Consumers

- Creates unnecessary confusion, and adds an unnecessary obstacle, for individuals and issuers seeking to use the BCBSMo certificates of creditable coverage to confirm prior creditable coverage.

Recommendation(s)

- BCBSMo should clearly disclose it is the issuer on the certificates of creditable coverage it issues.

Exception #5 - - Violation of 45 CFR 148.126 & 45 CFR 148.120

General Subject Area(s) - - Determination of an Eligible Individual & Providing Information About All Available Coverage Options

Background

As outlined earlier in this report, BCBSMo is required to offer the one (1) individual product it markets (BasicBlue) to eligible individuals. BCBSMo indicates it provides information to all applicants regarding HIPAA guaranteed available individual coverage. However, based upon the information provided to the examiners, it appears BCBSMo does not determine the eligibility of each BasicBlue applicant.

Specific Violation

- **BCBSMo does not determine if all individuals applying for individual coverage are “eligible individuals” entitled to guaranteed available individual coverage without any preexisting condition exclusion limitations.**

In addition, as a result of the failure to properly determine applicants, BCBSMo is not able to provide information regarding all available coverage options to all eligible individuals.

The information provided the examiners indicates that BCBSMo guidelines require that all applicants be provided information regarding HIPAA guaranteed available individual coverage.

Specifically, the company indicates that “All information kits sent to prospects contain an insert page describing HIPAA eligibility.” However, no insert page which describes HIPAA eligibility appears to have been provided to the examiners. The BasicBlue brochure provided to the examiners mentions HIPAA, however, it does not describe the requirements an individual must meet in order to meet the definition of an eligible individual. A form letter describing HIPAA eligibility is sent to some applicants, however this letter also indicates it is provided only when the applicant requests such information.

BCBSMo utilizes a separate “Application for HIPAA Required BasicBlue Coverage.” While company documents indicate that an individual may apply for both underwritten coverage as well as guaranteed available coverage simultaneously no information was provided regarding how an applicant obtains such an application.

In summary, based on the information provided to the examiners (with perhaps with the exception of applicants who phone in, or apply in person), an applicant must request information on guaranteed available individual coverage. This request in turn prompts BCBSMo to send specific information regarding the requirements which must be met in order to be considered an eligible individual and a HIPAA application.

Federal Regulations found at 45 CFR 148.126 place the responsibility of determining the eligibility of an individual to guaranteed available coverage on the issuer. An issuer must exercise “reasonable diligence” in making the determination and is allowed to request additional information if the information provided by the applicant is “substantially insufficient.”

HCFA further clarified issuers’ responsibilities in this regard through Program Memorandum 99-02 which notes the following as a practice that creates potential problems:

“An issuer does not attempt to identify an applicant as an eligible individual unless and until the applicant states he or she is seeking coverage on a guaranteed available basis, or the applicant is required to state other key words.”

The same bulletin goes on to state:

“An issuer does not exercise ‘reasonable diligence’ in making a determination...unless it makes a reasonable effort to determine whether any applicant for any type of coverage in the individual market...is an eligible individual, regardless of whether the individual knows or believes he or she has this status, and regardless of whether he or she specifically applied for a HIPAA product.”

HCFA further clarified the requirements of 45 CFR 148.126 in Appendix A of 45 CFR Part 150, Subpart C, *II. Basis for Imposition of Civil Monetary Penalties – Actions in the Individual Market*, d.(2) which describes the following practice as a failure to comply:

“Requires eligible individuals to specify their desire to invoke the requirements of part 148 or to explicitly request their rights under the law in order to obtain information about products available to them.”

Federal Regulations found at 45 CFR 148.120 requires that “...with respect to any eligible individual who requests coverage...” issuers must provide information regarding all coverage options and enroll the individual in any coverage option the individual selects. Given BCBSMo is not determining the eligibility of all applicants, it would be unable to inform those eligible individuals of its improperly determining their option to obtain a guaranteed available policy.

Adverse Impact to Missouri Consumers

- BCBSMo applicants failing to request information on BCBSMo guaranteed available policies are denied their right to determination of their eligibility for such coverage.
- Those applicants failing to request such information, and who do in fact meet the definition of an eligible individual, are denied information to all the coverage options available to them. Such applicants are forced to make an uninformed purchase decision (i.e. they are denied their right to a consider, and perhaps purchase, a policy without any preexisting condition limitation exclusions).

Recommendation(s)

- BCBSMo should determine if all applicants for individual coverage meet the definition of an “eligible individual” as defined at 45 CFR 148.103. Those meeting the definition then should be provided information about all available coverage options.

Final Page of Report

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January 17, 2001

John Allen O'Rourke, President
Blue Cross and Blue Shield of Missouri
1831 Chestnut Street
St. Louis, Missouri 63103

RE: Response to August 1, 2000 Market Conduct Examination Report

Dear Mr. O'Rourke:

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) market conduct examination requirements found at 45 CFR 150.313(e)(3), this letter will convey the results of the Health Care Financing Administration's (HCFA) review of Blue Cross and Blue Shield of Missouri's (BCBSMo) August 30, 2000 response to the market conduct examination report of BCBSMo dated August 1, 2000.

Specifically, the requirements of 45 CFR 150.313(e)(3) provide HCFA with the following four (4) response options to each issue identified in a market conduct examination report:

1. Concurrence with the issuer's position.
2. Approval of the issuer's proposed plan of correction.
3. Conditional approval of the issuer's proposed plan of correction, which will include any modifications HCFA requires.
4. Notice to the issuer that there exists a potential violation of HIPAA requirements.

With respect to any issues HCFA chooses to "Approve" or "Conditionally Approve" in this letter, should BCBSMo not fulfill the requirements and/or take the appropriate corrective actions within the appropriate time frames, HCFA may pursue a Civil Monetary Penalty (CMP) with respect to those issues. In addition, HCFA will consider such a failure by BCBSMo to be an aggravating factor as provided for at 45 CFR 150.312 and calculate any CMPs to the maximum amount allowed under the law.

Exception #1 - 45 CFR 148.120(c)(1)(ii) and 45 CFR 148.120(c)(2) Guaranteed Availability & 2 Most Poplar Policy Forms

Background – At the time of the examination, BCBSMo offered one individual product ("BasicBlue") in Missouri, and as a result, was obligated to offer this same product to "eligible individuals" on a guaranteed available basis. However, the information reviewed by the on-site examiners appeared to indicate that BCBSMo would not offer this product with maternity coverage to "eligible individuals." Maternity coverage was available to "non-eligible individuals." BCBSMo denied withholding maternity benefits to "eligible individuals" and attempted to further

address this finding by reviewing the claims history of active and inactive BasicBlue members. They indicated no claims for maternity benefits were found.

HCFA Response – Accept response and concur with BCBSMo’s position as there is no other evidence or indication of a problem in this area.

Exception #2 - 45 CFR 148.120 Guaranteed Availability – Actively Marketed

Background - BCBSMo’s marketing web site lacked information regarding the guaranteed availability of products to eligible individuals. In a letter dated October 18, 2000 to Jorge Lozano, Health Insurance Specialist at the Kansas City Regional Office of HCFA, BCBSMo stated the following:

“...BCBSMo will be reorganized and merged with RightCHOICE Managed Care Inc. d/b/a Alliance Blue Cross and Blue Shield (RightCHOICE). As a result of the reorganization, RightCHOICE or its subsidiaries will absorb the remaining assets and related liabilities of BCBSMo. If all conditions to the closing are completed, including the receipt of shareholder approval, the closing could occur as soon as November 30, 2000. After closing, BasicBlue will be underwritten by HALIC. Since HALIC has selected the two most popular products option, we anticipate, based on BasicBlue’s current and projected premium volume, that BasicBlue will no longer need to be offered as a HIPAA product.”

HCFA Response – Accept response and concur with BCBSMo’s explanation.

Exception #3 – 45 CFR 148.126 – Determination of Eligible Individuals

Background – Information reviewed during the examination indicated BCBSMo will not process an application for guaranteed available individual coverage without a letter from the applicant’s prior employer certifying that COBRA or other state continuation has been exhausted or the applicant was not eligible for any continuation. BCBSMo denied this was the company’s practice but did agree to revise its HIPAA informational insert to reflect that BCBSMo will accept an attestation from the applicant regarding the exhaustion or unavailability of group continuation of coverage.

HCFA Response – Approval of corrective actions.

Exception #4 – 45 CFR 148.124(b)(2)(ii)(C) – Certificates of Creditable Coverage – Required Information

Background – Certificates of creditable coverage issued by BCBSMo reviewed during the examination indicated they did not clearly provide the name of the issuer, that is, BCBSMo. Specifically, all the BCBSMo affiliated companies’ names appear in the letterhead. BCBSMo concedes the point of the exception, but believes no individuals receiving such a certificate are placed in a position of disadvantage. BCBSMo has offered to include a statement at the bottom of each certificate of creditable coverage explaining all underwriting companies’ names and DBAs.

HCFA Response - Approval of the proposed plan of correction provided BCBSMo submits to HCFA an example copy of the revised certificates of creditable coverage within 30 days of the date of this letter.

Exception #5 – 45 CFR 148.126 and 45 CFR 148.120 – Determination of Eligible Individuals and Providing Information About All Available Coverage Options

Background – Information reviewed during the examination indicated BCBSMo does not determine if all individuals applying for individual coverage are “eligible individuals” entitled to guaranteed available individual coverage. As a result of this failure to properly determine all applicants, BCBSMo is not able to provide information regarding all available coverage options to all eligible individuals. BCBSMo denies this violation, indicating that staff members ask questions of all prospective enrollees regarding HIPAA eligibility and advise those individuals who may be “eligible” they may want to apply for both a regular and HIPAA product. In addition, BCBSMo indicates each pre-sales packet includes an explanation of the criteria for HIPAA as a standard business practice.

HCFA Response – HCFA will issue a notice of violation. In summary, based on the information currently available to the agency, applicants must specifically apply for a guaranteed available product before their eligibility status is ever determined by the company.

Please direct any materials, information, or confirmations referenced in this letter that are required to be submitted to HCFA to Jorge Lozano of my insurance reform staff. In addition, if you have any questions please contact Jorge directly at (816) 426-5472 ext. 3120.

Sincerely,

///signed///

Richard P. Brummel
Deputy Regional Administrator

CC: David Henley, Counsel, BC/BS of MO
Gale Arden, HCFA Private Health Insurance Group
Ruth Bradford, HCFA Private Health Insurance Group



Region VII
Federal Office Building
601 East 12th Street
Kansas City, Missouri 64106

June 29, 2001

Refer to:
ORA:
E 59R

David M. Henley
Healthy Alliance Life Insurance Company
1831 Chestnut Street
St. Louis, MO 63103

RE: Healthy Alliance Life Insurance Company (HALIC) - Market Conduct
Exception #7 - Blue Cross and Blue Shield of Missouri (BC/BS of MO) - Market Conduct
Exception #5 - 1/10/01 Civil Monetary Penalty Notices - Your Letter dated June 19, 2001

Dear Mr. Henley:

This letter will serve to close the Centers for Medicare and Medicaid Services (CMS) (formerly the Health Care Financing Administration) market conduct examination of the captioned companies.

Specifically, this agency is accepting HALIC's proposed plan of correction as outlined in your letter dated June 19, 2001 and pursuant to Federal Regulations found at 45 CFR 150.325 we will discontinue plans to pursue a market conduct related Civil Monetary Penalty (CMP) with respect to these matters.

Our decision to close this market conduct review and not pursue a CMP at this time does not apply to any other issues, reviews or complaints that may be pending before CMS regarding HALIC's compliance with the Health Insurance Portability and Accountability Act of 1996, or any other statute enforced by CMS. This decision also does not preclude further CMS complaint investigations or market conduct reviews of HALIC. Any compliance matters arising from subsequent reviews or investigations will be addressed and resolved separately in accordance with the procedures and standards of the statute(s) and implementing regulations applicable to the matter raised.

In addition, our acceptance is based and contingent upon the following:

- 1) Our correct understanding that pursuant to the assumption agreement between BC/BS of MO and HALIC, HALIC assumed all of BC/BS of MO's individual policies. In addition, all of the assets and liabilities associated with these policies were transferred to HALIC.
- 2) That HALIC will use Application Form # AMK-208 REV 6/01 and the HIPAA Information Sheet Form # AMK-875 REV 06/01 in the manner outlined in HALIC's letter. A copy of this agency's letter accepting the aforementioned forms is attached.

Page 2 – David Henley

If there are any questions or if discussion is desired, please contact Jorge Lozano of this office at (816) 426-5472, ext. 3120. Once again, thank you for your cooperation.

Sincerely yours,

///signed///

Richard P. Brummel
Deputy Regional Administrator

Enclosure

CC: Gale Arden, Private Health Insurance Group, CMS
Ruth Bradford, Private Health Insurance Group, CMS
Paula White, Private Health Insurance Group, CMS