Health Care Financing Administration
Kansas City Regional Office

Market Conduct Examination Report

Blue Cross and Blue Shield of Kansas City

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 Kansas City (BCBSKC), the state of Missouri had not incorporated into Missouri state law provisions and/or requirements that would bring Missouri state law into compliance with 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 July 29, 1999, a letter was sent to BCBSKC President, John P. Mascotte announcing the examination of BCBSKC and all affiliated companies.

On September 13, 1999 an entrance conference was held at BCBSKC headquarters in Kansas City, Missouri and the examination began.

History

BCBSKC was incorporated on May 17, 1982, as a Health Services Corporation 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. This entity is a result of the consolidation of Blue Cross of Kansas City and Blue Shield of Kansas City. As a corporation organized under the not-for-profit Corporation law, there is no capital stock ownership.

The Missouri Department of Insurance issued a Certificate of Authority to operate as a Health Services Corporation and a Health Maintenance Organization (HMO). The Company's licensing area includes 30 northwestern counties in Missouri and Johnson and Wyandotte counties in Kansas.

Affiliated Companies

BCBSKC is a parent insurance company of a holding company system that consists of four (4) other insurance companies (two of which are HMOs) and twelve (12) non-insurance companies.

All subsidiaries are 100% owned except,

- TriSource which is owned 52% by BCBSKC subsidiary company;
- Epoch Group which is owned 50% by BCBSKC subsidiary company; and
- Three other non-insurance companies which are owned 50% or less by BCBSKC

Management Structure

The Officers and Board of Directors of Blue Cross and Blue Shield of Kansas City as of December 31, 1998 are as follows:

John Pierre Mascotte	President
Sharon Irene O'Conner	Secretary
Marilyn Teague Tromans	Treasurer
David Richard Bywaters	Chairman
Anita Belle Gorman	Vice-Chairman
Karon Harris Hicks	
Charles Edward Kruse	
Travis Douglas Lee Newsome	
James Rudolph Roath	
Melvin Louis Glazer, M.D.	
Furman Merell Joye	
Margaret Hall Pence	
Danley Kent Sheldon	

Janice Christie Kreamer
Ben D. McCallister, M. D.
Lyle Keith Querry

Insurance Products

BCBSKC is licensed in Missouri as a Health Services Corporation and an HMO 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 (30) not serviced by Blue Cross and Blue Shield of Missouri.

At the time this market conduct examination began BCBSKC underwrote:

- 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;
- Preferred Care, a PPO offered as an individual and group product;
- Total Health Care, an HMO offered to groups;
- Total Health Care – 65 HMO (Medicare) (temporarily discontinued); and
- In addition to its underwritten business, administrative services only (ASO) for self-insured groups.

Use of Agents and Managing General Agents

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

Exception # 1- - Violation of 45 CFR 148.126

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

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Background

Blue Cross and Blue Shield of Kansas City (BCBSKC) furnishes health insurance in the individual market in the State of Missouri. As such, pursuant to Federal Regulations found at 45 CFR 148.120, BCBSKC is required to offer products that do not impose any preexisting condition exclusions on those individuals meeting the definition of an "eligible individual" as defined in Federal Regulations found at 45 CFR 148.103. In addition, BCBSKC is required to determine the eligibility of all individual applicants pursuant to the requirements found at 45 CFR 148.126.

The information provided to the examiners does not confirm that BCBSKC correctly determines the eligibility of each applicant for individual coverage.

Specific Violation

- **BCBSKC does not determine if all individuals applying for individual coverage are "eligible individuals" entitled to guaranteed available individual coverage without any preexisting condition exclusions.**

Federal Regulations found at 45 CFR 148.126 place the responsibility of determining the eligibility of an applicant 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." In addition, this subject was further clarified in the HCFA June 1999 *Program Memorandum 99-02*.

The BCBSKC underwriting procedures provided the on-site contract examiners state in part:

> "8. Each application is reviewed for HIPAA eligibility (or other pre-existing waivers) by reviewing question #30 on the application and any attached certificates of creditable coverage…"

The application provided the on-site contract examiners and represented as the only application used by BCBCKC in the determination of eligible individuals question #30 states:

"DO YOU OR ANY PERSON APPLYING FOR COVERAGE HAVE A MINIMUM OF 18 MONTHS OF CONTINUOUS PRIOR COVERAGE, MOST RECENT UNDER AN EMPLOYER GROUP PLAN, GOVERNMENT PLAN OR CHURCH PLAN?

___YES ___NO

IF 'YES,' PLEASE PROVIDE CERTIFICATE(S) OF CREDITABLE COVERAGE FROM PRIOR PLAN(S)."

Issue with Application Question #30

It is unclear if BCBSKC actually only uses question #30 and a certificate of creditable coverage to determine the eligibility of an applicant. While the applicable Federal Regulations would not prevent a less stringent standard than those outlined at 45 CFR 148.103 it would be unusual for an issuer to develop such a standard.

In this regard, HCFA notes that question #29 of the same application appears to be designed to also find out if applicants are eligible for a group health plan, Medicare, Medicaid, or have other health insurance coverage.

However, there is currently no evidence to indicate BCBSKC attempts to discover if applicants' last coverage was terminated due to nonpayment of premiums or fraud.

More importantly, there is no indication BCBSKC asks any questions to discover if applicants who have been offered COBRA or other State continuation coverage have elected and exhausted this option.

When responding to Exception #1 of this report HCFA requests BCBSKC include information and/or supporting documentation to clarify this issue.

Problems with Application Question #30

There appear to be at least two (2) problems with BCBSKC's apparent determination of eligible individual process.

1) **Question #30 does not correctly reflect the requirements of 45 CFR 148.103(1)** – Federal Regulations found at 45 CFR 148.103(1) state that in order for an applicant to meet the definition of an eligible individual, the individual must have "…at least 18 months of creditable coverage (as determined under 45 CFR 146.113)…"

   At the risk of oversimplification, "creditable coverage" as defined at 45 CFR 146.113 can be made up of almost an uncountable number of various coverage and 18 month coverage scenarios. Such coverage scenarios could include, but

would not be limited to, all the varying periods of time when an applicant was insured by a group health plan, Medicaid, Medicare, Indian Health Service coverage, State Risk pool coverage, coverage provided to members of uniformed services, etc. It is at least questionable, whether a question using the phrase "continuous coverage" would lead an applicant to consider all these various types of coverage scenarios when answering.

However, the most clear indication that question #30 will not properly identify all eligible individuals is **the question does not take into account breaks in coverage which do not meet the definition of a "significant break in coverage" as defined at 45 CFR 146.113(b)(iii)**. A period of "Creditable coverage" does not necessarily need to be "continuous coverage" as is asked by question #30. Federal Regulations found at 45 CFR 146.113(b)(ii) state in part "Days of creditable coverage that occur before a significant break in coverage are not required to be counted (emphasis added)." However, the definition of a "significant break in coverage" found at 45 CFR 146.113(b)(iii) generally defines a "significant break in coverage" as "…a period of 63 consecutive days during all of which the individual does not have any creditable coverage…" In summary, a BCBSKC applicant may in fact have 18 months of "creditable coverage" without necessarily having 18 months of "continuous coverage."

2) **BCBSKC appears to only accept certificates of creditable coverage as evidence –** Based on HCFA's current understanding of BCBSKC's determination of eligible individual process, it would at least appear BCBSKC does not make any provisions for accepting other evidence of prior creditable coverage as required by 45 CFR 148.126(c)(1). There is no language in question #30 (or elsewhere in the application) which would indicate an applicant may demonstrate creditable coverage through other means as allowed by following the requirements of 45 CFR 148.124(d)(1).

Adverse Impact to Missouri Consumers

- Based on the current information provided HCFA, not all applicants for individual coverage with BCBSKC are properly determined as either meeting, or not meeting, the definition of an "eligible individual."

Recommendation(s)

- BCBSKC should either:

1) Provide explanations and evidence addressing HCFA's conclusions regarding their determination of eligible individual process sufficient to prove compliance to HCFA or;

2) Develop procedures which would determine if all applicants for individual coverage meet the definition of an "eligible individual" as defined at 45 CFR 148.103.

Examination Note: Prior to the finalization of this examination report BCBSKC provided HCFA with information and documentation indicating it had taken affirmative steps attempting to correct the problems and/or issues outlined in this exception. While HCFA is not prepared at this time to confirm that all of these problems and/or issues have been corrected, BCBSKC's apparent commitment to addressing this exception and HCFA's concerns is hereby noted.

Exception # 2- - Violation of 45 CFR 148.120

General Subject Area(s) - - Offering all available coverage options

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Background

Blue Cross and Blue Shield of Kansas City (BCBSKC) furnishes health insurance in the individual market in the State of Missouri. As such, pursuant to Federal Regulations found at 45 CFR 148.120 BCBSKC is required to offer products that do not impose any preexisting condition exclusions on those individuals meeting the definition of an "eligible individual" as defined in Federal Regulations found at 45 CFR 148.103. BCBSKC is also required to determine the eligibility of all individual applicants pursuant to the requirements found at 45 CFR 148.126.

Upon determination an applicant meets the definition of an "eligible individual," Federal Regulations found at 45 CFR 148.120(a)(1)(i) require an insurer to provide the applicant "…information about all available coverage options." Pursuant to 45 CFR 148.120(a)(1)(ii) the insurer must then "Enroll the individual in any coverage option the individual selects." Pursuant to Federal regulations found at 45 CFR 148.120(a)(2) eligible individuals also have access to policies which do not "…impose any preexisting condition exclusion on the individual."

Pursuant to 45 CFR 148.120 insurers have three (3) general options regarding which products they will offer eligible individuals. This can include:

1) an "all products guarantee"
2) the insurer's two most popular policies, or

3) two (2) representative policy forms [see 45 CFR 148.120(a)(3)].

In a letter dated August 25, 1997 to the Kansas City Regional Office (KCRO) of HCFA, Blue Cross and Blue Shield of Kansas City (BCBSKC) elected to offer its two (2) most popular policy forms to those individuals meeting the definition of an "eligible individual." These two (2) policy forms are:

1) BCBSKC – Preferred Care Blue Premium Plan ($500 Deductible)
2) BCBSKC – Preferred Care Blue Rate Saver Plan ($1,000)

KCRO HCFA is currently unaware of any notice from BCBSKC which would change the aforementioned election.

When sold on an underwritten basis, that is, to individuals not meeting the definition of an eligible individual, these policies include preexisting condition limitations. When sold to "eligible individuals" these limitations are to be removed.

The information provided to the on-site contract examiners does not confirm that BCBSKC provides all applicants who meet the definition of an "eligible individual" with information regarding all available coverage options.

Specific Violation

- **BCBSKC does not provide information regarding all available coverage options to all eligible individuals.**

Federal Regulations found at 45 CFR 148.120 require 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.

From a listing provided by BCBSKC, the on-site contract examiners requested through a memorandum (Inquiry #41) a sample of policy application files. The examiners then presented BCBSKC with a set of questions along with a listing of 19 policies. The listing had been divided into two (2) groups;

1) those polices issued on an underwritten basis, and;
2) "HIPAA policies issued."

In BCBSKC's response to the inquiry, BCBSKC agreed that **16 of the applicants met the definition of an "eligible individual."**

Based on this agreement of the data between the on-site contract examiners and BCBSKC, it would appear eight (8) of the applicants did not meet BCBSKC's standard underwriting guidelines. However, each of these applicants would have the (2) two guaranteed issue coverage options available to them. That is, each

applicant would have had access to the two (2) products BCBSKC has selected to be offered to "eligible individuals" on a guaranteed available basis.

The other eight (8) applicants, who apparently both met BCBSKC's underwriting requirements and were also "eligible individuals," would have had at least three (3) options available to them. That is, these applicants were eligible for the underwritten product for which they originally applied and the two (2) aforementioned guaranteed available products. The on-site contract examiners asked additional questions through a memorandum entitled "Inquiry #41".

Question #4 from the "Inquiry #41" memorandum appeared as follows:

> "(4) The attached files indicate one premium quote. Were other quotes given for other policy options available to the applicant?"

BCBSKC provided the following response to question #4:

> "Standard Operating Procedure is if additional quotes are requested by clients they are supplied" (emphasis added).

Based on this exchange, and the current evidence available to the agency, HCFA is unable to confirm BCBSKC makes an offer of all available coverage options to all applicants meeting the definition of an "eligible individual." It would appear other options are only discussed when an applicant specifically *inquires* about other options.

Question #5 from the "Inquiry #41" memorandum appeared as follows:

> "(5) The attached files do not contain correspondence to the applicant explaining the policy options available. Is there any correspondence?"

BCBSKC provided the following response to question #5:

> "Policy options are discussed with the client at the time of the quote request with either the broker or sales representative."

It is unclear to HCFA how an applicant's policy options could be discussed with him or her at the time of the quote request (which HCFA assumes is at the time of application) with the applicant's broker or sales representative. At this point in the process BCBSKC's underwriting department would not yet have determined the applicant's eligibility status. As a result, the broker or sales representative likely would not know, or at least would have yet to have confirmed, all the coverage options available to the applicant.

Issue regarding rejection letter

The examination papers collected by the on-site contract examiners contained an underwriting rejection letter. While the copy of the letter is addressed to a specific individual, the letter appears to be a standard form letter. The letter states in part:

> "After careful review, we regret to inform you that we are unable to accept your application at this time. Please refer to the enclosed copy of the front page of your application for the reason(s) for the denial.
>
> Alternative coverage may be available through the State of Missouri Health Insurance Pool which is administered through Blue Cross and Blue Shield of Kansas City."

HCFA was unable to locate any application or corresponding documentation with respect to this letter. The examiners did note on the letter they believed that the applicant was ultimately issued a guaranteed available policy pursuant to the requirements of HIPAA.

While the mere existence of this letter does not confirm a violation or even a problem, **if this letter is ever used in connection with any applicants who met the definition of an "eligible individual" they should be offered one of BCBSKC's guaranteed available individual policies**. HCFA notes, there is no prohibition on an insurer pointing out the State of Missouri Health Insurance Pool as an option to either "eligible individuals" or those individuals who do not meet the definition of an eligible individual.

When responding to Exception #2 of this report HCFA requests BCBSKC include information and/or supporting documentation to clarify this issue.

Adverse Impact to Missouri Consumers

- Based on the current information provided HCFA, those applicants for individual BCBSKC coverage who meet the definition of an eligible individual are not provided information regarding all the coverage options available to them. Such applicants are forced to make an uninformed purchase decision and perhaps purchase a policy with a preexisting condition limitation or seek coverage with the State of Missouri Health Insurance Pool when guaranteed available coverage with BCBSKC was an option for them.

Recommendation(s)

- BCBSKC should either:

1) Provide explanations and evidence addressing HCFAs conclusions regarding it's providing information about all available coverage options to those applicants for individual coverage meeting the definition of an "eligible individual" as defined at 45 CFR 148.103.

2) Develop procedures which would provide information about all available coverage options to those applicants for individual coverage meeting the definition of an "eligible individual" as defined at 45 CFR 148.103.

Examination Note: Prior to the finalization of this examination report BCBSKC provided HCFA with information and documentation indicating it had taken affirmative steps attempting to correct the problems and/or issues outlined in this exception. While HCFA is not prepared at this time to confirm that all of these problems and/or issues have been corrected, BCBSKC's apparent commitment to addressing this exception and HCFA's concerns is hereby noted.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Federal Office Building
601 East 12th Street, Room 235
Kansas City, Missouri 64106

9/25/2001

John P. Mascotte, President and Chief Executive Officer
Blue Cross and Blue Shield of Kansas City
P.O. Box 419169
Kansas City, Missouri 64141-6169

RE: May 8, 2001 Market Conduct Examination Reports
Blue Cross and Blue Shield of Kansas City
TriSource HealthCare, Inc., d/b/a Blue Advantage
Your letter Dated June 4, 2001

Dear Mr. Mascotte:

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 Centers for Medicare and Medicaid Services' (CMS) (formerly the Health Care Financing Administration) review of Blue Cross and Blue Shield of Kansas City's (BCBS of KC) June 4, 2001 response to the market conduct examination reports of BCBS of KC and TriSource HealthCare, Inc., d/b/a Blue Advantage dated May 8, 2001.

Specifically, the requirements of 45 CFR 150.313(e)(3) provide CMS 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 CMS requires.

4. Notice to the issuer that there exists a potential violation of HIPAA requirements.

With respect to any issues CMS chooses to "Approve" or "Conditionally Approve" in this letter, CMS may pursue a Civil Monetary Penalty (CMP) should BCBS of KC not fulfill the requirements and/or take the appropriate corrective actions within the appropriate time frames. In addition, CMS will consider such a failure by BCBS of KC 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.

TriSource HealthCare, Inc., d/b/a Blue Advantage

Effective April 1, 2001, Blue Cross and Blue Shield of Kansas City (BCBS of KC) acquired 100% interest in TriSource HealthCare, Inc., d/b/a Blue Advantage (TriSource). At the conclusion of the transaction on April 1, 2001, TriSource had merged into BCBS of KC and the Blue-Advantage product line became a d/b/a of BCBS of KC. While TriSource ceased to exist as a legal entity, the products and networks remained as before, however BCBS of KC is now the only underwriting carrier for those products.

In their response to this market conduct examination, BCBS of KC provided actuarial information indicating that their two most popular plans as defined in Federal Regulations found at 45 CFR 148.120(c)(2) continues to be the following:

1) BCBSKC-Preferred Care Blue Premium Plan (PPO $500 Premium Deductible)

2) BCBSKC-Preferred Care Blue Rate Saver Plan (PPO $1,000 Rate Saver Deductible)

The market conduct examination findings for TriSource were essentially the same as those for BCBS of KC. Given TriSource no longer exists, BCBS of KC consolidated their comments to CMS. Therefore CMS will be responding in the same manner.

Blue Cross and Blue Shield of Kansas City

Exception #1 – Violation of 45 CFR 148.126 – Determination of Eligible Individuals

Background – The information provided to the on-site market conduct examiners did not confirm that BCBS of KC determined whether or not all applicants for individual coverage met the definition of an eligible individual as defined in Federal Regulations found at 45 CFR 148.103. BCBS of KC disputes CMS's findings in this regard, and indicated they are unaware of Missouri residents who have been denied their HIPAA rights.

However, BCBS of KC has revised its HIPAA training materials, revised its marketing brochure, and revised its Direct Enrollment application in order to ensure all applicants for individual coverage are properly identified.

CMS Response – Accept response based on the corrective actions described above provided:

1) BCBS of KC puts into use the revised direct enrollment application form number BCBSKC-DIRECT-0601 submitted to this agency via BCBS of KC letter dated June 15, 2001. A copy of this agency's acceptance of this form is enclosed.

2) BCBS of KC puts into use the revised training materials and incorporates the revised language submitted in BCBS of KS' response into its marketing brochure. **A final copy of the revised marketing brochure should be submitted to CMS when it is printed**.

Exception #2 – Violation of 45 CFR 148.120 – Offering All Available Coverage Options

Background – The information provided to the on-site market conduct examiners did not confirm that BCBS of KC provided information regarding all available coverage options to applicants identified as an "eligible individual." It appeared that some options were only discussed when the applicants made specific inquiries.

In its response, BCBS of KC disputed CMS's findings. However, BCBS of KC clarified and submitted evidence indicating that it makes available all of its individual products, and the opportunity to have the coverage issued either with or without any preexisting condition limitation, to eligible individuals meeting the company's underwriting guidelines.

Those applicants who are eligible individuals but do not meet the company's underwriting guidelines are offered one of the company's two most popular policies (i.e. PPO $500 Premium Deductible Plan or the PPO $1,000 Rate Saver Deductible Plan) without any preexisting condition limitations.

BCBS of KC further indicated they would be revising the language in their marketing brochure to better clarify which products are the PPO guarantee issue products as well as clarify when an eligible individual may request that a preexisting condition limitation apply.

In addition, BCBS of KC has revised the letters included with the delivery of the policies issued to eligible individuals who meet their underwriting guidelines to include the opportunity for the individual to change the preexisting condition limitation terms. Specifically, each letter, whether issued with or without a preexisting condition limitation, will include both the rate for the policy, and

instructions on how to either add the preexisting condition limitation (for a reduced premium) or remove the preexisting condition limitation (for an increased premium). Examples of this language is outlined below:

Example Paragraph #1 - Used when an Applicant Initially **Waives** Preexisting Condition Limitation

> *"If you qualify as an eligible individual under the Health Insurance Portability and Accountability Act (HIPAA) as described in your application, you are not subject to the pre-existing exclusion period and the rate above includes a minimum 10% premium surcharge. If you would like to have the pre-existing exclusion period apply in consideration of a reduced rate, please call our Customer Service Department.*"

Example Paragraph #2 - Used when an Applicant Initially **Does Not Waive** Preexisting Condition Limitation

> *"If you qualify as an eligible individual under the Health Insurance Portability and Accountability Act (HIPAA) as described in your application, you are not subject to the pre-existing exclusion period. However, you have requested that the pre-existing exclusion period apply in consideration of a reduced rate. The rate above is the reduced rate. If you would like to have the pre-existing exclusion period waived, please call our Customer Service Department.*"

As outlined earlier, those eligible individuals who do not meet BCBS of KC's underwriting guidelines are only offered the options of BCBS of KC's two most popular policies without a preexisting condition limitation.

CMS Response – Accept response based on the corrective actions described above provided:

1) BCBS of KC appropriately revises its marketing brochure and puts the brochures into use. **A final copy of the revised marketing brochure should be submitted to CMS when it is printed**.

2) BCBS of KC puts into use the aforementioned revised policy issuance letters.

Please direct any materials, information, or confirmations referenced in this letter that are required to be submitted to CMS 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,

///original signed///

Richard P. Brummel
Deputy Regional Administrator

CC: Connie Fries, Counsel, BC/BS of MO
Gale Arden, CMS, Private Health Insurance Group
Ruth Bradford, CMS, Private Health Insurance Group