Health Care Financing Administration
Kansas City Regional Office

Market Conduct Examination Report

Healthy Alliance Life Insurance Company

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 Healthy Alliance Life Insurance Company (HALIC), 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 as sent to Blue Cross and Blue Shield of Missouri (BCBSMo) President John O' Rourke announcing the examination of BCBSMo and all affiliated companies. HALIC is one of those affiliated companies.

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

History

In January 1992, Blue Cross and Blue Shield of Missouri (BCBSMo) formed a life insurance company subsidiary named Healthy Alliance Life Insurance Company. This company was domiciled in the State of Missouri with an initial capitalization of $1,500,000 and $900,000 paid in capital.

On June 5, 1992, BCBSMo purchased American Transcontinental Life Insurance Company, a life, accident, and health insurer domiciled in Arizona, with licenses in 37 states and the District of Columbia, for $9,115,694.

On October 12, 1992, the name of American Transcontinental Life Insurance Company was changed to Healthy Alliance Life Insurance Company.

On November 22, 1993, the two Healthy Alliance Life Insurance Companies were merged, with the surviving corporation being named Healthy Alliance Life Insurance Company (HALIC), a Missouri domiciled insurance company authorized to sell life, accident, and health insurance.

On August 1, 1994, as part of a reorganization authorized by the Missouri Department of Insurance, all of the shares of outstanding stock of HALIC were transferred to RightCHOICE Managed Care, Inc. (RIT) a publicly traded subsidiary of BCBSMo of which BCBSMo owns approximately 80%.

On January 10, 1996, the name of the Company was changed to HALIC Insurance Company and on April 30, 1996, the name of the Company was changed back to Healthy Alliance Life Insurance Company.

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

Affiliated Companies

HALIC is a wholly-owned subsidiary of RightCHOICE Managed Care, Inc. (RIT), a publicly traded company on the New York Stock Exchange, which is 80.33% owned by BCBSMo. BCBSMo filed Holding Company Registration Statements on behalf of itself and RIT, HALIC, HMO Missouri, Inc., HealthLink HMO, Inc. and RightCHOICE Insurance Company (an Illinois domiciled insurer).

All subsidiaries of BCBSMo are 100% owned except for:

- BCBSMo owns 36,740 of 3,709,000 shares of class A common stock outstanding and 100% of the 14,962,500 shares of class B common stock outstanding of RIT, giving BCBSMo an 80.33% ownership.

- The EPOCH Group L.C. is 50% owned by RIT. The other 50% is owned by Blue Cross and Blue Shield of Kansas City.

- HealthCare Interchange, Inc. is 45% owned by RIT.

Management Structure

The governing body of HALIC is its Board of Directors. The Articles of Incorporation call for not less than nine nor more than twenty-one directors. The Board elects the Chairman and Vice Chairmen as it deems appropriate from among its members. The chairman of the Board serves as President of the Corporation.

The officers of HALIC shall consist of a President, a Secretary, a Treasurer and such Vice Presidents as the Board may chose. Other officers and agents may be chosen by the Board. The President shall be the CEO of HALIC and, subject to the power of the Board, shall have the general management of the business of the corporation with the power and duty to direct, control and supervise its operation and personnel. The President shall be the Chairman of the Board.

As of December 31, 1998, the Company had 11 directors.

NAME	BUSINESS AFFILIATION
John A. O'Rourke	President and Chief Executive Officer, BCBSMo
	Chairman, President and CEO, RIT
Lawrence P. Glascott III	Treasurer and Director
Judith A. Dawson	Secretary and Director
Richard S. Smith	Vice President and Director
Sandra Ann Van Trease	Vice President and Director
Edward J. Tenholdler	Director
Stuart K. Campbell	Director
Mary L. Cronin-Doyle	Director
Michael Fulk	Director
Connie L. Van Fleet	Director
Kathleen M. Zorica	Director

The Blue Cross companies had a total of 1,887 employees as of September 1997; 1,500 were employed by RIT, 294 by HealthLink HMO, Inc., and 93 by BCBSMo. HALIC had no employees.

Insurance Products

HALIC is licensed as a life, accident, and health insurer in 35 states and the District of Columbia, though it writes premiums in only two states, Missouri and Kansas.

HALIC underwrites the following products:

1. Alliance
2. AllianceCHOICE
3. HealthNet Blue
4. Short-Term Medical
5. Medicare Supplement
6. Unbranded Products
7. Managed Indemnity
8. Stop-loss coverage

HALIC has reached a network access agreement with Blue Cross and Blue Shield of Kansas City designed to make the two companies more competitive in the Missouri market.

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

HALIC 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.

Preliminary Examination Findings in Brief

With respect to the guarantee issuance of individual policies to "eligible individuals" as defined at 45 CFR 148.103, Healthy Alliance Life Insurance Company (HALIC) 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 access to information regarding guaranteed available policies from consumers attempting to access information through HALIC's marketing web site.

2. Requires applicants to obtain "certifications" from former employers regarding COBRA and/or other continuation, which employers are not legally required to provide.

3. Requires applicants to request information regarding guaranteed available coverage in order to be determined an eligible individual and then to be offered all available coverage options.

4. Significantly reduces agent commissions and excludes agents from "bonus" compensation programs for all sales made to eligible individuals.

In addition, HALIC's business practices in the group market do not comply with many of the requirements of HIPAA. Areas of concern identified through the examination include:

1. HALIC does not offer coverage to small employers of 26 to 50 employees.

2. HALIC significantly reduces agent commissions and excludes agents from "bonus" compensation programs for all sales made to small employers who obtain coverage through the guaranteed availability protections of HIPAA (that is, those small employers not eligible for the company's "preferred rates").

3. HALIC does not provide, or make a reasonable disclosure regarding the availability of, information required to be made available to small employers.

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

Exception #1 - - Violation of 45 CFR 148.120

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

---

Background

Healthy Alliance Life Insurance Company (HALIC) underwrites and offers a number of individual products in the Missouri health insurance marketplace. The names of its primary products are "Alliance", "AllianceCHOICE", and "HealthNet Blue."

HALIC 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 products on a guaranteed available basis to "eligible individuals" as defined at 45 CFR 148.103.

Pursuant to Federal Regulations found at 45 CFR 148.120 (c)(2), HALIC offers to "eligible individuals" as their two most popular policy forms the 1) "Alliance" individual $300 deductible and the 2) "Alliance" individual $1,000 deductible policies, both without maternity benefits.

HALIC markets its individual products in part through the Alliance Blue Cross and Blue Shield web site. However, no information regarding the availability of HALIC's "Alliance" product to eligible individuals is included in the web site.

Specific Violation

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

Federal Regulations found at 45 CFR 148.120(c)(1)(ii) require that issuers electing to offer their two (2) most popular policy forms on a guaranteed available basis to eligible individuals must actively market these forms to eligible individuals. HALIC's "Alliance" product 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 the HALIC marketing web site are denied the complete and equal marketing information provided to other individuals.

Recommendation(s)

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

Exception # 2- - Violation of 45 CFR 146.150(a)(1)

General Subject Area(s) - - Guaranteed Availability – Small Employers

---

Background

Healthy Alliance Life Insurance Company (HALIC) is an issuer offering small group health insurance coverage in the group market and is required pursuant to the requirements of Federal Regulations found at 45 CFR 146.150 (a)(1), to offer the product on a guaranteed available basis to all small employers as defined at 45 CFR 144.103. Generally, a small employer as defined at 45 CFR 144.103 is one who employs 2 to 50 employees.

The advertising provided and reviewed by the on-site examiners indicates HALIC only markets and offers small group coverage to employers with 2 to 25 employees.

Specific Violation

- **HALIC does not offer to small employers of 26 to 50 employees small group coverage.**

Federal Regulations found at 45 CFR 146.150(a) and 45 CFR 146.150(a)(1) require that "…each health insurance issuer that offers health insurance coverage in the small group market must (1) – *Offer, to any small employer in the State, all products that are approved for sale in the small group market, and that the issuer is actively marketing*, and must accept any employer that applies for any of those products…"(emphasis added).

While the examiners found no evidence to indicate HALIC is refusing to accept any employer meeting the definition of a small employer found at 45 CFR 144.103 none of the advertising provided and reviewed by the examiners makes an offer of coverage to these small employers. All the advertising provided references "Small Group Coverage" as being available to small employers with 2 to 25 employees.

Adverse Impact to Missouri Consumers

- Missouri small employers of 26 to 50 employees are denied information that small group coverage is available to them and their employees on a guaranteed available basis.

Recommendation(s)

- HALIC should revise its marketing materials to offer small group coverage to all small employers with 2 to 50 employees.

Exception #3 - - Violation of 45 CFR 146.150(a)

General Subject Area(s) - - Guaranteed Availability – Small Employers – Reduction in Agent Commissions

---

Background

Healthy Alliance Life Insurance Company (HALIC) reduces compensation to agents and brokers selling guaranteed available coverage to small employers.

Specific Violation

- **HALIC significantly reduces the commissions paid to agents and brokers marketing small group coverage to small employers of 2 to 50 employees if these groups are not eligible for HALIC "preferred rates." In addition, such sales are excluded from consideration in "bonus" compensation programs.**

HALIC currently reduces the 1st year and renewal commissions to agents and brokers for "HIPAA groups of 2 to 50" that is, groups not eligible for HALIC's preferred rates, in the following manner:

Annual Premium	1st Year & Renewals (non-HIPAA)	1st Year & Renewals (HIPAA Groups 2 – 50)
First $15,000	10.00%	7.00%
Next $15,000	7.50%	5.20%
Next $20,000	5.00%	3.40%
Next $50,000	2.00%	1.40%
Next $150,000	1.00%	.70%
Over $250,000	.50%	.30%

In addition, HALIC "…will not count HIPAA Guarantee premium or contracts" in the premium calculation for the "Blue Ribbon Group Bonus" Program.

Federal Regulations found at 45 CFR 146.150(a) and 45 CFR 146.150(a)(1) require that "…each health insurance issuer that offers health insurance coverage in the small group market must (1) – Offer, to any small employer in the State, all products that are approved for sale in the small group market, and that the issuer is actively marketing, and must accept any employer that applies for any of those products…"

In Program Memorandum 98-01 HCFA clarified that:

> "If an issuer pays agents less through all forms of agent compensation (Commissions, bonuses, or other rewards) for high risk individuals and groups than it pays for those with better risk profiles, this act constitutes a circumvention of the insurance reform provisions of HIPAA."

Program Memorandum 98-01 goes on to state:

> "The guaranteed issue provisions of the statutes generally require that issuers' normal conduits for receiving applications and offering coverage to be open to HIPAA-eligible individuals or small employers. Issuers commonly use agents as an important part of their marketing and distribution system, and ordinarily compensate these agents by paying commissions on the coverage they sell. Commission payment is included among the costs used to calculate the premium rate for a given form of coverage. For an issuer to modify the normal operation of its marketing and distribution system so as not to attract its fair share of the high risk individuals and small groups protected by HIPAA does not accord with the intent of the statues to protect these individuals and groups. HCFA will carefully monitor such practices and will take appropriate enforcement action to the extent practices are found, under the regulations, to constitute a failure to offer coverage."

HCFA further clarified the requirements of 45 CFR 146.150 in Appendix A of 45 CFR Part 150, Subpart C, I *Basis for Imposition of Civil Monetary Penalties – Action in the Group Market*, j. (5), which describes the following practice as a failure to comply:

> "Sets agents commissions so low as to discourage agents from marketing policies to, or enrolling, these groups so that a failure to offer coverage results."

Adverse Impact to Missouri Consumers

- Missouri small employers of 2 to 50 employees may be denied information regarding the guaranteed availability of small group coverage to them and their employees by HALIC agents and brokers who are required to work under a compensation system which makes the sale of such products less profitable to them.

Recommendation(s)

- HALIC should either:

1. Discontinue the practice of reducing agent and broker compensation for sales made to small employer "HIPAA groups of 2 to 50"; or

2. Provide evidence that this practice does not constitute a failure to offer as outlined in the aforementioned regulations and Program Memorandum.

Exception # 4 - - Violation of 45 CFR 148.120

General Subject Area(s) - - Guaranteed Availability – Individual Coverage – Reduction in Agent Commissions

---

Background

Healthy Alliance Life Insurance Company (HALIC) reduces compensation to agents and brokers selling guaranteed available individual coverage to eligible individuals.

Specific Violation

- **HALIC significantly reduces the commissions paid to agents and brokers marketing individual coverage to eligible individuals. In addition, such sales are excluded from consideration in "bonus" compensation programs.**

HALIC currently reduces the 1st year and renewal commissions to agents and brokers for individual coverage "HIPAA-required offerings" in the following manner:

Product	1st Year Commission (Percent of Premium)	Following years policy service fee (Percent of Premium)
Standard	12.00%	8.00%
Guarantee issue (HIPAA)	6.00%	4.00%

In addition, HALIC will not count sales and premiums generated by any "HIPAA-required individual plans" towards the "Individual Markets Bonus" Program.

Federal Regulations found at 45 CFR 148.120(1) require, with respect to an eligible individual, an issuer "May not decline to offer coverage or deny enrollment under any policy form that it actively markets in the individual market…"

In Program Memorandum 98-01 HCFA clarified that:

> "If an issuer pays agents less through all forms of agent compensation (Commissions, bonuses, or other rewards) for high risk individuals and groups than it pays for those with better risk profiles, this act constitutes a circumvention of the insurance reform provisions of HIPAA."

Program Memorandum 98-01 goes on to state:

> "The guaranteed issue provisions of the statutes generally require that issuers' normal conduits for receiving applications and offering coverage to be open to HIPAA-eligible individuals or small employers. Issuers commonly use agents as an important part of their marketing and distribution system, and ordinarily compensate these agents by paying commissions on the coverage they sell. Commission payment is included among the costs used to calculate the premium rate for a given form of coverage. For an issuer to modify the normal operation of its marketing and distribution system so as not to attract its fair share of the high risk individuals and small groups protected by HIPAA does not accord with the intent of the statues to protect these individuals and groups. HCFA will carefully monitor such practices and will take appropriate enforcement action to the extent practices are found, under the regulations, to constitute a failure to offer coverage."

HCFA further clarified the requirements of 45 CFR 146.150 in Appendix A of 45 CFR Part 150, Subpart C, II *Basis for Imposition of Civil Monetary Penalties – Actions in the Individual Market*, a. (3) which describes the following practice as a failure to comply:

> "Sets agents commissions for sales to eligible individuals so low as to discourage agents from marketing policies to, or enrolling, these individuals so that a failure to offer coverage results."

Adverse Impact to Missouri Consumers

- Missouri eligible individuals may be denied information regarding the guaranteed availability of individual coverage to them by HALIC agents and brokers who are required to work under a compensation system which makes the sale of such products less profitable to them.

Recommendation(s)

- HALIC should either:

1. Discontinue the practice of reducing agent and broker compensation for sales made to eligible individuals; or

2. Provide evidence that this practice does not constitute a failure to offer as outlined in the aforementioned regulations and Program Memorandum.

Exception # 5 - - Violation of 45 CFR 146.160

General Subject Area(s) - - Disclosure of Information

Background

When offering small group coverage, issuers are required to make a reasonable disclosure to small employers regarding the availability of specific types of information, and when requested by a small employer, provided the aforementioned information.

Specific Violation

- **Healthy Alliance Life Insurance Company (HALIC) does not provide, or make a reasonable disclosure of the availability of, information required to be provided small employers seeking small group coverage.**

Federal Regulations found at 45 CFR 146.160 state:

> (a) *General rule.* In connection with the offering of any health insurance coverage to a small employer, a health insurance issuer is required to—
>
> > (1) Make a reasonable disclosure to the employer, as part of its solicitation and sales materials, of the availability of information described in paragraph (b) of this section; and
> >
> > (2) Upon request of the employer, provide that information to the employer
>
> (b) *Information described.* Subject to paragraph (d) of this section, information that must be provided under paragraph (a)(2) of this section is information concerning the following:

(1) Provisions of coverage relating to the following:

> (i) The issuer's right to change premium rates and the factors that may affect changes in premium rates.
> (ii) Renewability of coverage.
> (iii) Any preexisting condition exclusion, including use of the alternative method of counting creditable coverage.
> (iv) Any affiliation periods applied by HMOs.
> (v) The geographic areas served by HMOs.

(2) The benefits and premiums available under all health insurance coverage for which the employer is qualified, under applicable State law. See § 146.150(b) through (f) for allowable limitations on product availability.

(c) *Form of information.* The information must be described in language that is understandable by the average small employer, with a level of detail that is sufficient to reasonably inform small employers of their rights and obligations under the health insurance coverage. This requirement is satisfied if the issuer provides each of the following with respect to each product offered:

(1) An outline of coverage. For purposes of this section, outline of coverage means a description of benefits in summary form.

(2) The rate or rating schedule that applies to the product (with and without the preexisting condition exclusion or affiliation period).

(3) The minimum employer contribution and group participation rules that apply to any particular type of coverage.

(4) In the case of a network plan, a map or listing of counties served.

(5) Any other information required by the State.

(d) *Exception.* An issuer is not required to disclose any information that is proprietary and trade secret information under applicable law.

HALIC indicated to the on-site examiners that while it "…does not have a single disclosure document for employers" the information "…is included in the various materials that are given to prospective groups as part of the proposal process."

However, the list provided by HALIC describing where and how the required information described at 45 CFR 146.160(b)(1)(i) through 45 CFR 146.160(b)(1)(v) is provided to small employers indicates that some of the information is provided either through the group agreement or the group certificate. The types of information found in these agreements and/or certificates include:

1. The issuer's right to change premium rates and the factors that may affect changes in premium rates.
2. Renewability of coverage.
3. Any preexisting condition exclusion, including use of the alternative method of counting creditable coverage

Based on the information provided the examiners, it would not appear that the aforementioned required information is provided to small employers until the

group agreement and/or certificates of coverage are issued. Such a disclosure would not comply with the requirements of 45 CFR 146.160, given disclosure of the availability of the information, and if requested, the actual information, is intended to be available prior to the sale of the coverage.

Adverse Impact to Missouri Consumers

- Missouri small employers do not receive important information regarding premium rates, renewability of the coverage they are considering purchasing, and preexisting condition exclusions until the coverage is actually purchased from HALIC.

Recommendation(s)

- HALIC should revise its solicitation and sales materials to make a reasonable disclosure of the availability of the information described in Federal Regulations found at 45 CFR 146.160(b) and develop materials to disclose this required information to small employers prior to issuance of the group agreements and/or the group certificates.

Exception # 6 - - Violation of 45 CFR 148.126

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

---

Background

Healthy Alliance Life Insurance Company (HALIC) 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 HALIC does not consider the application complete and will not continue processing the application.

Specific Violation

- **HALIC 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, HALIC's business practice of <u>only</u> accepting a certification letter from prior employers to confirm an applicant's eligibility transfers the burden on the applicant to determine his or her eligibility. In addition, while a letter from a prior employer would be acceptable as evidence of eligibility, <u>only</u> accepting such a letter is inappropriate for the following reasons:

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

   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 that employers 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 of COBRA and/or other continuation requirements of an eligible individual as defined at 45 CFR 148.103(6).

Recommendation(s)

- HALIC 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.

  HALIC 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 # 7- - 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

The Healthy Alliance Life Insurance Company (HALIC) underwrites and offers to "eligible individuals" as their two most popular policy forms the 1) "Alliance" individual $300 deductible and the 2) "Alliance" individual $1000 deductible policies, both without maternity benefits. However, the information provided to the examiners does not confirm that HALIC determines the eligibility of each applicant and provides these individuals with information regarding all available coverage options.

Specific Violation

- **HALIC does not determine if all individuals applying for individual coverage are "eligible individuals" entitled to guaranteed available individual coverage.**

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

The information provided to the examiners would indicate that HALIC guidelines require that all applicants be provided information regarding guaranteed available individual coverage.

Specifically, the company documents indicate that "A HIPAA-required product outline will be included with all fulfillment kits sent out; it details the programs available, eligibility requirements, and documentation required to enroll."

While examiners were provided an Alliance brochure that describes HIPAA, HALIC also utilizes a separate "Application for HIPAA Required Alliance BlueCross BlueShield Coverage." It remains unclear how an applicant obtains such a "HIPAA Required" application.

In addition, company documents state "Applicants who do not qualify for one of our regular underwritten products, or who are offered coverage with an amendment for an excluded condition or excluded family member, will be sent information with their denial/exclusion letter informing them of the availability of a HIPAA – required product for those who meet the specific criteria."

In summary, based on the information provided the examiners, an applicant must request information on guaranteed available Alliance individual coverage. This request in turn prompts HALIC to begin the eligibility determination process. In this regard, examiners were provided with a form letter which reads in part "Here is the information you requested about Alliance Blue Cross Blue Shield programs that health insurance carriers are required to make available due to the Health Insurance Portability and Accountability Act of 1996, or HIPAA."

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 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. Given HALIC is not determining the eligibility of all applicants, it would be unable to inform those eligible individuals they did not properly determine of their option to obtain a guaranteed available policy.

Adverse Impact to Missouri Consumers

- HALIC applicants failing to request information on HALIC guaranteed available policies are denied their right to determination of their eligibility for such coverage.

- Those applicants failing to request a determination, 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)

- HALIC 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.

Exception # 8 - - Violation of 45 CFR 148.124(b)(2)(ii)(C)

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

---

Background

The Healthy Alliance Life Insurance Company (HALIC) issues certificates of creditable coverage to individuals discontinuing coverage which identify Alliance BlueCross and BlueShield, BlueCHOICE and BlueCross BlueShield of Missouri as part of the letterhead.

Specific Violation

- **HALIC does not provide certificates of creditable coverage which clearly provide 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 HALIC 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 HALIC certificates of creditable coverage to confirm prior creditable coverage.

Recommendation(s)

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

Final Page of Report

(This page intentionally left blank)

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services
Deputy Regional Administrator

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

January 17, 2001

John Allen O'Rourke, President
Healthy Alliance Life Insurance Company
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 Healthy Alliance Life Insurance Company's (HALIC) August 30, 2000 response to the market conduct examination report of HALIC 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 HALIC 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 HALIC 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 Guaranteed Availability – Actively Marketed

Background - HALIC's marketing web site lacked information regarding the guaranteed availability of products to eligible individuals. HALIC proposed to add this information within eight (8) weeks. A cursory review of the web site prior to the mailing of this letter indicated a link had been added.

HCFA Response – Approval of HALIC's proposed plan of action.

Exception #2 – 45 CFR 146.150(a)(1) – Guaranteed Availability – Small Employers

Background – Information reviewed during the examination indicated that HALIC was not offering to small employers of 26 to 50 employees small group coverage on a guaranteed available basis. HALIC indicated it does in fact offer coverage to all groups of 2 to 50 employees as required by HIPAA and indicated that particular advertising pieces reviewed by the on-site examiners that lead to this exception were targeted to the very small employers, that is, those employers with 2 to 25 employees.

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

Exception #3 – 45 CFR 146.150(a) – Guaranteed Availability – Small Employers – Reduction in Agent Commissions

Background – HALIC significantly reduced agents' commissions for sales of coverage to small employer groups of 2 to 50 which were not eligible for "preferred rates." In addition, such sales were not eligible to be included in agent "bonus program" calculations. HALIC agreed in its August 30, 2000 response, and further clarified in a letter dated October 18, 2000, to use the same commission schedules for its group "HIPAA business" as is used for its "non-HIPAA business." In addition, "HIPAA business" will be included in bonus calculations. These changes would apply to new business beginning on or after January 1, 2001.

HCFA Response – Approval of HALIC's proposed plan of action.

Exception #4 – 45 CFR 148.120 – Guaranteed Availability – Individual Coverage – Reduction in Agent Commissions

Background – HALIC significantly reduced agents' commissions for sales of guaranteed available individual policies. In addition, such sales were not eligible to be included in agent "bonus program" calculations. HALIC agreed in its August 30, 2000 response, and further clarified in a letter dated October 18, 2000 to use the same commission schedules for its
individual "HIPAA" policies as are used for its "non-HIPAA" policies. In addition, "HIPAA business" will be included in bonus calculations. These changes would apply to new business beginning on or after January 1, 2001.

HCFA Response – Approval of HALIC's proposed plan of action.

Exception #5 – 45 CFR 146.160 – Disclosure of Information

Background – Examination indicated HALIC did not disclose the following information as part of the offer of coverage to small employers as required by 45 CFR 146.160:

Premium Change Information

Preexisting condition exclusions

HALIC indicated all the aforementioned required information is in fact disclosed as part of all its sales packets mailed or delivered to prospective groups.

HCFA Response – Conditional approval and concurrence provided HALIC submits to HCFA within 30 days of the date of this letter example copies of the referenced sales packets and these sales packets confirm HALIC's claim of compliance.

Exception #6 – 45 CFR 148.126 – Determination of Eligible Individuals

Background – Information reviewed during the examination indicated HALIC 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. HALIC denied this was the company's practice but did agree to revise its HIPAA informational insert and its "*Application for HIPAA – Required Nongroup Coverage in the Alliance PPO Program*" to reflect that HALIC will accept an attestation from the applicant regarding the exhaustion or unavailability of group continuation of coverage.

HCFA Response – Approval of corrective actions.

Exception #7 – 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 HALIC 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, HALIC is not able to provide information regarding all available coverage options to all eligible individuals. HALIC 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, HALIC 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.

Exception #8 – 45 CFR 148.124(b)(2)(ii)(C) – Certificates of Creditable Coverage – Required Information

Background – Certificates of creditable coverage issued by HALIC reviewed during the examination indicated they did not clearly provide the name of the issuer, that is, HALIC. Specifically, all the HALIC affiliated companies' names appear in the letterhead. HALIC

concedes the point of the exception, but believes no individuals receiving such a certificate are placed in a position of disadvantage. HALIC 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 HALIC submits to HCFA an example copy of the revised certificates of creditable coverage within 30 days of the date of this letter.

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

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services
Deputy Regional Administrator

Region VII

June 22, 2001

Refer to:
ORA:
E 59R

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

RE: Alliance et. al. Application Form # AMK-208 REV 6/01
HIPAA Information Sheet Form # AMK-875 REV 06/01

Dear Mr. Henley:

This letter conveys the results of our review of the above captioned forms.

At this time, the State of Missouri has not incorporated into 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, the enforcement of the requirements of HIPAA in Missouri is presently the responsibility of this office.

The captioned forms submitted to this office for review have been accepted by this office as of this date with respect to those issues which evidence compliance with HIPAA according to current regulation. We have not enclosed stamped copies of the accepted forms, as this letter will serve as a record of our acceptance. Please be advised that this review does not replace the form review and approval procedures required by Missouri State insurance law.

Please note that in accordance with Title I of HIPAA, as codified at 42 U.S.C.A.§ 300gg-22 and § 300gg-61 and regulations at 45 CFR 150.319, this department is allowed to take into account the insurer's previous record of compliance with respect to any situations which arise where the imposition of a Civil Monetary Penalty is warranted. Be advised that this notification of acceptance of the captioned form filing and your company's cooperation in this process will become a part of the record that will be maintained as evidence of your effort to comply with HIPAA.

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,

////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

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services
Deputy Regional Administrator

Region VII

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 Blues 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.

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