Health Care Financing Administration
Kansas City Regional Office

HIPAA Market Conduct Examination Report

Kaiser Foundation Health Plan Of Kansas City

November 1, 2000

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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 Kaiser Foundation Health Plan of Kansas City, 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 October 13, 1999, a letter as sent to Kaiser Foundation Health Plan, Inc. CEO Dr. David Lawrence announcing the examination of Kaiser Foundation Health Plans in California and Missouri.

On February 1, 2000 an entrance conference was held at Kaiser headquarters in Overland Park, KS and the examination begun.

History

Kaiser Foundation Health Plan of Kansas City (Kaiser or Health Plan) was incorporated on May 19, 1991, as a Health Maintenance Organization (HMO) under the not-for-profit Corporation law of the State of Kansas. A certificate of Authority to operate as an HMO was issued by the State of Missouri on July 1, 1991. The Health Plan's service area is Johnson, Leavenworth, and Wyandotte counties in Kansas; and Jackson, Cass, Clay, and Platte counties in Missouri.

Affiliated Companies

The Health Plan is a subsidiary of Kaiser Foundation Health Plan, Inc. (KFHP). The Health Plan contracts with Kaiser Foundation Hospitals and the Permanente Group of Mid-America, P. C. to provide or arrange hospital and medical services to its members.

Management Structure

The Board of Directors consists of at least five but not more than eleven members selected by KFHP. As of December 31, 1999, the Officers and Directors are as follows:

OFFICERS

Cynthia A. Finter	President
Kirk E. Miller	Secretary
L. Dale Crandall	Chief Financial Officer
William A. Gillespie, MD	Executive V P-Chief Operating Officer
Steven R. Zatkin	Senior V P-Government Relations

BOARD OF DIRECTORS

Karen K. Clegg	Leon Logan
Cynthia Finter	John S. Raydo
William A. Gillespie, MD	Alan Wheat
Charles W. Hucker	Steven R. Zatkin

Insurance Products

The Health Plan currently offers HMO Group and Individual products.

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

The Health Plan does not use General Agents (GA) or Managing General Agents (MGA) as a distribution system for their products. Some outside (non-Kaiser employee) licensed agencies, agents and brokers are utilized for group sales. In addition, these outside agents are allowed to submit “Direct pay” (individual coverage) applications. Outside agents submitting “Direct pay” applications are compensated at a flat 10% per monthly premium paid.

Preliminary Examination Findings in Brief

Note that the primary focus of the Kaiser Foundation Health Plan of Kansas City (KFHP) market conduct examination was KFHP's compliance with the individual health insurance market requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

In this regard, examiners found KFHP to be in violation of the requirements requiring KFHP to identify the eligibility status (as defined at 45 CFR 148.103) of all applicants for individual coverage, and upon confirmation of the applicant's eligibility, to provide information about all available coverage options.

KFHP became aware of this issue prior to the completion of the examination and took affirmative steps to attempt to correct the problem.

Exception #1- - 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

Kaiser Foundation Health Plan of Kansas City (KFHP) offers one (1) individual direct enrollment product in the general market. This product contains no pre-existing condition limitations and is issued without any permanent exclusion riders.

KFHP is required to offer on a guaranteed available basis to eligible individuals as defined at 45 CFR 148.103 the aforementioned product. However, the information provided to the examiners did not confirm that KFHP determines the eligibility of every applicant for individual coverage.

Specific Violation

Kaiser Foundation Health Plan of Kansas City does not determine if all individuals applying for individual coverage are "eligible individuals" entitled to guarantee available individual coverage.

Documentation reviewed by examiners indicated KFHP underwrote all applicants for individual coverage. Those not meeting KFHP's standard underwriting guidelines were notified of their denial by letter. Through this denial letter applicants were made aware of the possibility of obtaining the policy on a guaranteed available basis. Applicants were then advised to apply for the guaranteed available coverage by completing a HIPAA eligibility questionnaire.

The examination revealed no other indications KFHP was otherwise attempting to deflect or divert eligible individuals from obtaining guaranteed available coverage from KFHP.

In summary, based on the information provided the examiners, applicants were required to request a determination of their status as "eligible individuals." This request in turn prompted KFHP to begin the eligibility determination process.
Those individuals not requesting a determination were never informed whether or not they met the definition of an "eligible individual," and those meeting the definition but not determined, were not advised of their right to guaranteed available coverage and offered coverage.

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 required 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.

Adverse Impact to Missouri Consumers

- KFHP applicants failing to request to have their status as "eligible individuals" determined are denied their right to a determination.

Those applicants requesting a determination are forced to complete an additional unnecessary application step.

Those applicants failing to request a determination, and who do in fact meet the definition of an eligible individual, are denied the information they are eligible for guaranteed available coverage and denied an opportunity to enroll.

Recommendation(s)

KFHP 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 should then be provided information about the opportunity to obtain coverage on a guaranteed available basis and enrolled if they so desire.

Examination Note: Prior to the completion of the examination KFHP identified this violation and took affirmative steps to correct the problems, seeking out HCFA's input in this regard. While these initial steps have not completely corrected all the problems, KFHP's apparent commitment to correcting this violation is hereby noted.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration
Deputy Regional Administrator

Region VII

Dec 23 2000

Cynthia A. Finter, President
Kaiser Foundation Health Plan of Kansas City, Inc.
10561 Barkley, Suite 200
Overland Park, Kansas 66212-1886

RE: Response to 12/7/00 Kaiser Market Conduct Examination Report

Dear Ms. Finter:

Pursuant to the 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 Kaiser Foundation Health Plan's (Kaiser's) December 7, 2000 response to the market conduct examination report of Kaiser dated November 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 HCFA's approval of the following response, should Kaiser not fulfill the requirements and/or take the appropriate corrective actions within the appropriate time frame, HCFA may pursue a Civil Monetary Penalty (CMP) with respect to the issue. In addition, HCFA will consider such a failure by Kaiser to be an aggravating factor as provided for at 45 CFR 150.312 and calculate a CMP to the maximum amount allowed under the law.

Exception #1 - 45 CFR 148.126 & 45 CFR 148.120 - - Determination of an Eligible Individual & Providing Information About all Available Coverage Options

Background – Findings during the market conduct examination indicated that Kaiser failed to determine the HIPAA eligibility status of all individuals entitled to guaranteed available individual coverage. As a result, applicants failing to request eligibility determination were

denied the protections they were entitled to under HIPAA, and those who did request determination were burdened with an additional unnecessary application step. Having

reviewed its policies, Kaiser now includes HIPAA information with all individual enrollment packets and requests that all applicants complete a questionnaire that facilitates Kaiser's identifying eligible individuals.

HCFA Response – Approval of Kaiser's plan of correction.

If you have any questions please contact Jorge Lozano of my Insurance Reform staff directly at (816) 426-5472 ext. 3120.

Sincerely,

Richard P. Brummel
Deputy Regional Administrator

CC: Gerard Grimaldi, Kaiser Public Affairs
Gale Arden, HCFA Private Health Insurance Group, Central Office
Ruth Bradford, HCFA Private Health Insurance Group, Central Office