CONSENT ORDER NO. E08- 71

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of Banking and Insurance, State of New Jersey, to fine Health Net of New Jersey, Inc., Ref. No. 7695351	)))	CONSENT ORDER

TO: Health Net of New Jersey, Inc.
One Far Mill Crossing
P.O. Box 904
Shelton, CT 06484

This matter, having been opened by the Commissioner of Banking and Insurance (hereinafter "Commissioner"), State of New Jersey, upon information that Health Net of New Jersey, Inc. ("Health Net"), a health maintenance organization ("HMO") incorporated under the laws of the State of New Jersey and currently authorized in New Jersey to provide health care services pursuant to N.J.S.A. 26:2J-1 et seq., has violated provisions of New Jersey law; and

WHEREAS First Option Health Plan of New Jersey, Inc. ("FOHPNJ") was issued a certificate of authority to operate as an HMO on January 6, 1994; and

WHEREAS on March 31, 1997 FOHPNJ was purchased by Foundation Health Systems, Inc. (predecessor to Health Net, Inc.); and

WHEREAS Foundation Health Systems purchased Physicians Health Services, Inc. on December 31, 1997, the parent of several HMOs operating in the

northeast United States, including Physicians Health Services of New Jersey, Inc. ("PHSNJ"); and

WHEREAS on December 31, 1998 PHSNJ merged into FOHPNJ, with a simultaneous name change to PHSNJ; and

WHEREAS in 2001 PHSNJ changed its name to Health Net; and

WHEREAS N.J.A.C. 11:21-7.13 provides:

> (a) In paying benefits for covered services under the terms of small employer health benefits plans provided by health care providers not subject to capitated or negotiated fee arrangements, small employer carriers shall pay covered charges for medical services, on a reasonable and customary basis or actual charges, and, for hospital services, based on actual charges. Reasonable and customary means a standard based on the Prevailing Healthcare Charges System profile for New Jersey or other state when services or supplies are provided in such state, incorporated herein by reference published and available form the Ingenix, Inc., 12125 Technology Drive, Eden Prairie, Minnesota 55344.
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> 1. The maximum allowable charge shall be based on the 80th percentile of the profile.
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> 2. Carriers shall use the profile effective as of July 1993, and shall update their databases within 60 days after receipt of periodic updates released by the Prevailing Healthcare Charges System; and

WHEREAS the small employer health ("SEH") statute at N.J.S.A. 17B:27A-17 and regulations at N.J.A.C. 11:21-1.2 define medical care as amounts paid: (1) for the diagnosis, care, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body; and (2) transportation primarily for and essential to medical care referred to in (1) above; and

WHEREAS the Prevailing Healthcare Charges System ("PHCS") profile is contained in eight modules that are released twice per year as set forth below;

Allowed Medical	May and November
Anesthesia	May and November
Dental	January and July
HCPCS	June and December
Inpatient Facility	June and December
Outpatient Facility	June and December
Medical/Surgical	May and November
RBRVS	June and December;

and,

WHEREAS on May 22, 2002 a Health Net member filed a complaint with the Department of Banking of Insurance ("Department") concerning Health Net's determination of the reasonable and customary fee for an out of network service alleging that his prior carrier paid a benefit of $125 for the service while Health Net was paying a benefit of $77 for the same service; and

WHEREAS the Department contacted Health Net on June 5, July 25 and August 6, 2002 requesting a response to the complaint; and

WHEREAS Health Net replied to the Department on August 13, 2002 stating only that reimbursement was determined pursuant to a 1998 PHCS module; and

WHEREAS the Department asked Health Net if the complainant was covered by a small employer plan on August 16, August 28 and September 13, 2002; and

WHEREAS Health Net advised on September 17, 2002 that the complainant was covered by a small employer plan; and

WHEREAS the Department advised Health Net on September 26, 2002 of the requirements of N.J.A.C. 11:21-7.13 and asked how Health Net intended to remedy the situation; and

WHEREAS on October 4, 2002 the Department met with representatives of Health Net who advised the Department that Health Net had made a business decision to use a 1998 version of the PHCS modules for payment of out of network benefits, that Health Net understood that the 1998 modules should not have been used to pay out of network claims under SEH contracts, that the 1998 modules were improperly used to pay out of network claims under SEH contracts from July 30, 2001 to October 2002, that the error would be corrected and that all affected claims would be reprocessed; and

WHEREAS on October 8, 2002 the Department confirmed by e-mail to Health Net that the company would reprocess all SEH claims using the correct PHCS modules and pay the difference with interest required under the prompt pay law to members; and

WHEREAS by letter dated December 12, 2002 Health Net advised the Department that it had developed a plan to remediate its members for the incorrect use of the 1998 PHCS modules from July 2001 to October 2002 in the SEH market, that 4,708 subscribers were affected, that a total payout of $813,996.82 would be issued and that a draft letter to members was enclosed; and

WHEREAS by e-mail of December 13, 2002 the Department advised Health Net that interest must accompany the payments and the letter to members should be revised; and

WHEREAS by e-mail of December 16, 2002 Health Net agreed to make the requested changes in the member letter; and

WHEREAS on December 23, 2002 the Department and Health Net executed Consent Order E02-287 which provides in part that Health Net will remediate its SEH members whose claims were paid on the basis of outdated PHCS modules; and

WHEREAS the Department subsequently learned that the text of the member letter that accompanied the remediation paid by Health Net pursuant to Consent Order E02-287 was different from the text that was approved by the Department; and

WHEREAS the Department issued Order to Show Cause E03-63 ordering Health Net to appear and show cause why it should not be fined $5,000 for its use of the unapproved member letter; and

WHEREAS on September 5, 2003 Health Net and the Department executed Consent Order E03-90 which provides that Health Net will pay a fine of $5,000 for the use of the unapproved member letter; and

WHEREAS in January 2005 the Department learned that Health Net asserted in federal litigation that Health Net had advised the Department in

November 2003 that Health Net's use of outdated PHCS modules began on January 1, 1999 rather than in July 2001 as Health Net had represented to the Department at the October 4, 2002 meeting and thereafter; and

WHEREAS the Department immediately disputed and continues to dispute Health Net's assertions made to the federal district court judge; and

WHEREAS by letter dated January 20, 2005 the Department asked Health Net for information regarding the expanded scope of underpayments, including a list of affected claims; and

WHEREAS by letter dated February 4, 2005 Health Net advised the Department for the first time that it interpreted N.J.A.C. 11:21-7.13 as applying only to physician services and not including mental health, pharmaceutical, chiropractic and home health services and supplies, an after-the-fact explanation with which the Department disagreed; and

WHEREAS by letter dated February 16, 2005 the Department advised Health Net that it rejected the position that use of the PHCS modules was not required for services other than physician services and asked for detailed information regarding the remediation that was paid to comply with E02-287 ; and

WHEREAS by letter dated April 8, 2005 Health Net explained that in October 2002 it performed an assessment that recalculated claims for 1999 through October 2002 using the correct PHCS modules but that it provided the Department

with only that portion of that assessment that showed claims from July 1, 2001 through October 2002; and

WHEREAS by letter dated May 9, 2005 the Department detailed its concerns with the inconsistencies and inaccuracies it noted in the explanations provided by Health Net relating to its use of outdated PHCS modules; and

WHEREAS by the end of 2005 the Department concluded that in order to determine the true extent of Health Net's underpayment of out of network claims it would conduct a limited scope examination pursuant to N.J.S.A. 26:2J-18.1 and review the processing of such claims as well as the payments made to comply with Consent Order E02-287; and

WHEREAS the Department retained RSM McGladrey to perform said examination and to review the out of network claims paid by Health Net, Managed Health Network Services ("MHN") (the Health Net affiliate that processed Health Net's mental health claims) and the vendor company that processed Health Net's chiropractic claims; and

WHEREAS the examiners calculated variances between the claim amounts that should have been paid using the appropriate release of the PHCS modules and the claim amounts actually paid for medical claims processed by Health Net from 1996 to 2005, for dental claims processed by Health Net from 1999 to 2006, for chiropractic claims processed by the chiropractic vendor from 1999 to 2006 and for mental health claims processed by MHN from 1999 to 2006; and

WHEREAS the examiners' report was sent to Health Net on May 21, 2008, Health Net commented on the report on July 15, 2008 and the Department filed the report on July 29, 2008 ; and

WHEREAS the examiners found, among other things, that during the exam period

- Health Net and MHN did not consistently follow the requirements of N.J.A.C. 11:21-7.13 for paying out of network claims. Health Net did not consistently purchase the PHCS modules over the exam period. Furthermore, when the modules were purchased they were not always installed timely as required.

- PHCS modules were not used for dental claims. Instead the company either paid claims at 70% of an internal fee schedule or 35% of charges.

- The chiropractic vendor used its in network fee schedule to pay out of network large employer claims contrary to the large employer contract language which refers to PHCS.

- Chiropractic claims were improperly denied for lack of pre-authorization contrary to N.J.A.C. 11:22-6.4; and

WHEREAS the examiners identified the following underpayments:

	Principal	Interest	Total
Health Net	$7,629,749	7,203,749	14,833,498
Dental	1,518,393	846,328	2,364,721
MHN	2,456,386	1,581,442	4,037,828
Chiropractic	2,800,382	1,962,361	4,762,742
TOTAL	14,404,910	11,593,880	25,998,790;

and

WHEREAS the above figures include out of network claims paid under Health Net's large employer contracts which contracts, for the relevant time period, defined Usual, Customary and Reasonable Charge as the amount the Company determines to be the reasonable charge for a particular Service in the geographical area in which it is performed based upon a percentile of a modified nationwide data base used for reimbursement to physicians, providers and hospitals; and

WHEREAS the underpayments identified by the examiners affect approximately 88,000 members; and

WHEREAS the examiners are performing additional work to identify underpayments resulting from Health Net's failure to use the appropriate HCPCS modules and to review claim denials by MHN; and

WHEREAS Health Net has agreed to pay appropriate remediation, including interest, for underpayments identified by such additional work; and

WHEREAS the underpayment of out of network claims through use of outdated PHCS modules violates N.J.S.A. 17B:30-13.1a (requiring accurate representation of pertinent facts and insurance policy provisions), N.J.S.A. 17B:30.13.1f (requiring prompt, fair and equitable settlement of claims) and N.J.A.C. 11:21-7.13; and

WHEREAS Health Net's assertion that it disclosed the true extent of the underpayments to the Department in November 2003 and Health Net's explanations of the nature and scope of the underpayments provided to the

Department from October 2002 to May 2005 violated N.J.S.A. 17B:30-5b (requiring carriers to make true statements to the Department); and

WHEREAS Health Net has demonstrated an increased cooperation with the Department in responding to inquiries and resolving issues, has taken affirmative steps to correct identified issues (e.g., timely loading of PHCS modules), has acknowledged its responsibility to comply with all applicable New Jersey laws and regulations and has paid all fees associated with the limited scope examination of its out of network claims processing; and

WHEREAS Health Net having accepted responsibility for the aforementioned violations and actions and having represented that it is currently utilizing best efforts to administer all of its group contracts in accordance with the terms of those contracts and/or applicable Department and Small Employer Health Benefits Program Board regulations; and

WHEREAS Health Net having represented that it has remediated the aforesaid violations by issuing payment of restitution in the amount of $14,353,749 in principal and $11,432,165 in interest for a total of $25,785,913 (the small discrepancy between these final restitution amounts and the examiners' findings being the result of a subsequent agreement between the Department and Health Net with respect to certain disputed claims); and

WHEREAS Health Net having represented that it will pay on or before September 30, 2008, in accordance with the Department's order, approximately

$89,000, including all appropriate interest, for approximately 300 claims that remain outstanding; and

WHEREAS Health Net having agreed to pay appropriate remediation, including interest, arising from underpayments identified by the additional work performed by the examiners with respect to HCPCS modules and MHN claim denials as well as the fees for such additional work; and

WHEREAS Health Net having agreed that the Department's examiners will audit Health Net's payment of the above remediation at Health Net's expense; and

WHEREAS Health Net having waived its right to a hearing to contest the aforementioned violations and instances of nonconformance, and having consented to the payment of a fine in the amount of thirteen million dollars ($13,000,000) for the above violations, any violations identified in the examiners' report, dated April 28, 2008, and any violations identified in the additional work of the examiners with respect to the HCPCS modules and MHN claim denials; and

IT APPEARING that this matter should be resolved upon the consent of the parties to these proceedings without resort to a formal hearing on the aforementioned violations and instances of nonconformance, and further good cause appearing;

NOW, THEREFORE, IT IS on this 26th day of August, 2008

ORDERED AND AGREED that Health Net shall complete the issuance of the $25,785,913 in underpayments identified by the examiners by August 15, 2008

and that any remediation amounts not issued by that date shall be accompanied by additional interest for the period from July 1, 2008 to the date of payment; and

IT IS FURTHER ORDERED AND AGREED that Health Net pay a fine in the amount of thirteen million dollars ($13,000,000) to the Department of Banking and Insurance; and

IT IS FURTHER ORDERED AND AGREED that said fine shall be paid to the New Jersey Department of Banking and Insurance, 20 West State Street, P.O. Box 329, Trenton, New Jersey 08625, attention: Lee Barry, Assistant Commissioner, by wire transfer or company check made payable to the State of New Jersey, General Treasury, in two parts; one half upon execution of this Consent Order by Health Net and the other half no later than January 1, 2009; and

IT IS FURTHER ORDERED AND AGREED that the Department will audit the payment of the remediation at Health Net's expense, in a manner, form and level of detail satisfactory to the Department; and

IT IS FURTHER ORDERED AND AGREED that the provisions of this Consent Order represent a final agency decision and constitute a final resolution of the violations and instances of nonconformance contained herein; and

IT IS FURTHER ORDERED AND AGREED that Health Net continue to institute measures and monitor operations in order to identify and cure practices which may result in the violations and instances of nonconformance addressed in

this Order.

Donald Bryan, Director
Division of Insurance

Consented to as to
Form and Content

Health Net of New Jersey, Inc.
By: Paul S. Lambdin
President

2/25/08
Date