ORDER NO. E19-34

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceeding by the Commissioner of Banking and Insurance, State of New Jersey, to fine Horizon Healthcare of New Jersey, Inc.	)))	CONSENT ORDER

TO: Horizon Healthcare of New Jersey, Inc.
3 Penn Plaza East
Newark, NJ 07105

This matter, having been opened by the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon information that Horizon Healthcare of New Jersey, Inc. ("Horizon HMO"), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Horizon HMO is a health maintenance organization ("HMO") authorized to transact business since May 1, 1986 pursuant to N.J.S.A. 26:2J-1 to -47; and

WHEREAS, N.J.S.A. 26:2J-2 defines an HMO as any person which directly, or through contracts with providers, furnishes at least basic comprehensive health care services on a prepaid basis to enrollees in a designated geographical area; and

WHEREAS, N.J.A.C.11:24-9.1(d)1 provides that an HMO member has the right to available and accessible services when medically necessary, including availability of care 24 hours a day, seven days a week for urgent or emergent conditions; and

WHEREAS, N.J.S.A. 26:2J-5b provides that the unfair trade practice provisions of the New Jersey insurance law (N.J.S.A. 17B:30-1 to -22) shall be construed to apply to health maintenance organizations, health care plans and evidence of coverage except to the extent that the Commissioner determines that the nature of health maintenance organizations, health care plans and evidence of coverage render such sections clearly inappropriate; and

WHEREAS, N.J.S.A. 17B:30-13.1b defines an unfair claim settlement practice to include failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; and

WHEREAS, N.J.S.A. 17B:30-13.1c defines an unfair claim settlement practice to include failing to adopt and implement reasonable standards for the prompt investigations of claims arising under insurance policies; and

WHEREAS, N.J.S.A. 17B:30-13.1f defines an unfair claim settlement practice to include not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear; and

WHEREAS, N.J.A.C. 11:2-17.6(d) provides that every insurer, upon receipt of any inquiry from the Department of Banking and Insurance ("Department") respecting a claim shall, within 15 working days of receipt of such inquiry, furnish the Department with, based on the information available to the insurer, a complete and accurate written response to the inquiry; and

WHEREAS, the Department received a complaint on behalf of a Horizon HMO member on December 11, 2018 concerning the member's inability to obtain medical supplies that had been authorized by Horizon HMO on November 7, 2018; and

WHEREAS, the Department asked for a response from Horizon HMO that day confirming that the supplies has been authorized and identifying when the supplies would be shipped and delivered; and

WHEREAS, Horizon HMO responded the same day that the supplies had been authorized, that a single case agreement was being negotiated with the out-of-network supplier of the supplies at issue and that the supplier, despite Horizon HMO advising that the industry standard practice is to fulfill requests upon receipt of authorization, would not ship the supplies until the single case agreement was executed in addition to the authorization; and

WHEREAS, the out-of-network supplier is the only supplier of the particular supply that the member requested;

WHEREAS, the Department advised Horizon HMO on December 14, 2018 that the member had not received the authorized supplies and that the out-of-network supplier has indicated that it will not send the supplies because it had not executed an agreement with Horizon HMO for same despite having an authorization; and

WHEREAS, on December 21, 2018 Horizon HMO advised the Department that negotiations continued with the out-of-network supplier; and

WHEREAS, on January 2, 2019 the Department again asked Horizon HMO when the member would receive the authorized preferred supplies; and

WHEREAS, after several Department follow-ups, Horizon HMO advised the Department on January 9, 2019 that the member received a shipment of the authorized supplies; and

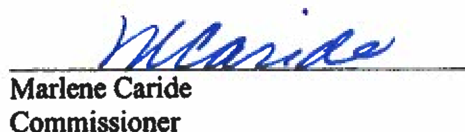
WHEREAS, on or around January 10, 2019, the Department asked for a list of all Horizon HMO members that utilized the out-of-network supplier, which Horizon HMO provided; and

WHEREAS, all members utilizing the out-of-network supplier have received their authorized supplies and Horizon HMO has revised its procedures so that similar delays do not recur, and that complete and accurate responses are provided to Department inquiries; and

NOW, THEREFORE, IT IS on this 28th day of March , 2019

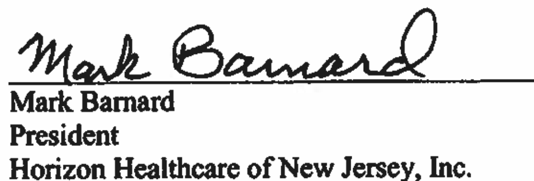
ORDERED AND AGREED that, Horizon will pay a penalty of one million nine hundred forty thousand dollars ($1,940,000), upon its execution of this Consent Order. The payment shall be made through a certified check, attorney trust account check, money order or electronic funds transfer made payable to "State of New Jersey – General Treasury" and shall be sent to Gale Simon, Assistant Commissioner, Department of Banking and Insurance, 20 West State Street, P.O. Box 329, Trenton, NJ 08625-0329; and

IT IS FURTHER ORDERED AND AGREED that the provisions of this Consent Order represent a final agency decision and constitute a full and final resolution of the matters addressed herein.



Marlene Caride
Commissioner

Consented to as to Form, Content and Entry:



Mark Barnard
President
Horizon Healthcare of New Jersey, Inc.

Date 3-26-19