



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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In the Matter of

EXCELLUS HEALTH PLAN, INC.

No. 2017-0024-S

Respondent.

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STIPULATION & CONSENT ORDER

WHEREAS, the Department of Financial Services (the “Department”) conducted a Market Conduct Examination (the “Examination”) of the affairs of Excellus Health Plan, Inc. (hereinafter “Respondent”) for the period from January 1, 2008 through December 31, 2013, which included a review of certain transactions subsequent to this period, and issued its Report on the Examination dated August 22, 2016.

WHEREAS, this Stipulation & Consent Order contains the Department’s findings and the relief agreed to by the Department and Respondent.

NOW, THEREFORE, the Department and Respondent are willing to resolve the matters cited herein in lieu of proceeding by notice and hearing.

Findings

1. Respondent is a domestic not-for-profit health service corporation organized and licensed pursuant to Article 43 of the New York Insurance Law.
2. Respondent, for the time period January 1, 2008 to June 30, 2014:

- Did not comply with Section 3224-a of the New York Insurance Law (“Prompt Pay Law”) relative to the payment of certain claims, payment of interest on such claims and the denial of certain claims;
 - Did not comply with New York Insurance Law when cost sharing was applied to contraceptive claims, and when contraceptive claims were denied due to errors in the coding of the status of provider groups.
 - Did not accurately process claims when certain claims were denied due to coding errors.
 - Did not comply with Section 4308(b) of the New York Insurance Law and Insurance Regulation No. 62 (11 NYCRR 52.40(g)(1)) by not experience rating certain groups in compliance with the approved formula on file with the Department.
 - Did not comply with Section 4802(d) of the New York Insurance Law when certain grievances were not acknowledged within 15 days of receipt and certain grievances were not resolved within 30 days.
3. Respondent’s violations during the aforementioned time period contravened New York Insurance Law and Regulations.

Violations

4. By reason of the foregoing, as reflected in the Department’s Report on the Examination, Respondent did not comply with: Sections 3224-a, 4308(b), and 4802(d) of the New York Insurance Law, and Insurance Regulation No. 62 (11 NYCRR 52.40(g)(1)).

Agreement

IT IS HEREBY UNDERSTOOD AND AGREED by Respondent, its successors and assigns (on behalf of its agents, representatives, employees, parent company, holding company, and any corporation, subsidiary or division through which Respondent operates) that:

5. Respondent will correct the violations cited herein and take all necessary steps to comply with the New York Insurance Law and Regulations with respect to its insurance products

in the future. Within ninety (90) days from the date of Respondent's signing of this Stipulation and Consent Order, Respondent will provide an up-to-date detailed summary of the corrective actions taken, or proposed to be taken, in response to the findings detailed in the aforementioned Report on the Examination dated August 22, 2016.

Penalty

6. Within seven (7) days of the execution of this Stipulation & Consent Order, Respondent shall pay a civil penalty of One Million Fifty Thousand Dollars (\$1,050,000.00). Respondent agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Stipulation & Consent Order.
7. The above referenced payment shall be payable to the New York State Department of Financial Services account at JPMorgan Chase Bank, N.A. via electronic transfer in accordance with the Department's instructions.

Breach of the Stipulation & Consent Order

8. In the event that the Department believes that Respondent has materially breached this Stipulation & Consent Order, the Department will provide written notice of such breach to Respondent and Respondent must, within ten (10) business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Superintendent, appear before the Department and have an opportunity to rebut the evidence, if any, on the issue of whether a breach has occurred and, to the extent pertinent, to demonstrate that any such breach is not material or has been cured.
9. The Department and Respondent understand and agree that Respondent's failure to appear before the Department to make the required demonstration within the period set forth in Paragraph 8 of this Stipulation & Consent Order is presumptive evidence of Respondent's breach. Upon a finding of breach, the Department has all the remedies available to it under

New York law and may use any and all evidence available in connection with all ensuing hearings, notices, orders and other remedies that are available.

Other Provisions

10. If Respondent defaults on the payment of its monetary obligations under this Stipulation & Consent Order, the Department may terminate the Stipulation & Consent Order at its sole discretion, upon ten (10) days' written notice to Respondent. In the event of such termination, Respondent expressly agrees and acknowledges that this Stipulation & Consent Order shall in no way bar or otherwise preclude the Department from commencing, conducting, or prosecuting any investigation, action, or proceeding against Respondent, however denominated, related to the subject matter of this Stipulation & Consent Order, or from using in any way the statements, documents, or other materials produced or provided by Respondent prior to or after the date of this Stipulation & Consent Order, except as may otherwise be provided in a written agreement with the Department.
11. The Department has agreed to the terms of this Stipulation & Consent Order based on, among other things, representations made to the Department by Respondent. To the extent that representations made by Respondent are later found to be materially incomplete or inaccurate, this Stipulation & Consent Order is voidable by the Superintendent in his or her sole discretion.
12. Upon request by the Department, Respondent shall provide all non-privileged documentation and information reasonably necessary for the Department to verify compliance with this Stipulation & Consent Order.
13. All notices, reports, requests and other communications to any party pursuant to this Stipulation & Consent Order shall be in writing and shall be directed as follows:

If to the Department:

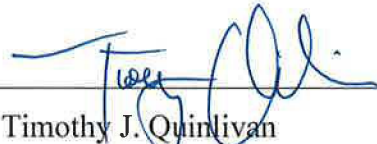
New York State Department of Financial Services
One State Street, 19th Floor
New York, NY 10004-1511
Attention: Scott Fischer, Executive Deputy Superintendent for Insurance

If to the Company:

Excellus Health Plan, Inc.
165 Court Street
Rochester, New York 14647
Attention: Timothy J. Quinlivan, Managing Senior Deputy General Counsel

14. This Stipulation & Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
15. This Stipulation & Consent Order may not be amended except by an instrument in writing signed on behalf of both of the parties to this Stipulation & Consent Order.
16. Respondent agrees that no provision of the Stipulation & Consent Order is subject to review in any court or tribunal outside the Department.
17. In the event that one or more provisions contained in this Stipulation & Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Stipulation & Consent Order.
18. This Stipulation & Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto or their designee and approved by the Superintendent of Financial Services.
19. This Stipulation & Consent Order constitutes the entire agreement between the Department and Respondent and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Stipulation & Consent Order. No inducement, promise, understanding, condition, or warranty not set forth in this Stipulation & Consent Order has been relied upon by any party to this Stipulation & Consent Order.

EXCELLUS HEALTH PLAN, INC.

By:  Dated: 4/7/17
Timothy J. Quinn
Managing Senior Deputy General Counsel

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By:  Dated: 4/17/17
Scott Fischer
Executive Deputy Superintendent for Insurance

THE FOREGOING CONSENT ORDER IS HEREBY APPROVED.

By:  Dated: 4/17/17
Maria T. Vullo
Superintendent of Financial Services