



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
FINANCIAL FRAUDS AND CONSUMER PROTECTION DIVISION

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In the Matter of

**HEALTHNOW NEW YORK INC.,**

No. 2015-0012-A

Respondent.

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**CONSENT ORDER**

Pursuant to Financial Services Law §404, the Acting Superintendent of Financial Services caused an investigation (“the Investigation”) to be made into the business practices of HealthNow New York Inc. (hereinafter “HealthNow” or the “Company”) with respect to its small group policy renewal program (the “Program”). This Consent Order contains the findings of the Investigation, and the relief agreed upon by the Department of Financial Services (the “Department”) and HealthNow.

**Factual Findings**

1. HealthNow New York Inc. is a domestic not-for-profit health service corporation authorized to transact business in this State pursuant to Article 43 of the New York Insurance Law.

2. HealthNow operates under the names: Blue Cross and Blue Shield of Western New York (“BCBSWNY”) within its Western New York division; HealthNow, within its Central New York division; and Blue Shield of Northeastern New York (“BSNENY”), within its Eastern New York division.
3. In 2013, the Department became aware that, HealthNow had issued a letter to small groups in regard to their policy renewals which stated in part:

*“New Participation requirements:  
Upon renewal, all Indemnity, POS, PPO, and EPO plans will require the higher of 5 subscribers or 50% participation....”* (emphasis added).
4. HealthNow’s application of the above minimum participation requirement in the small group market contravenes:
  - i) Section 360.4(c) of Insurance Regulation No. 145 in that said regulation provides that an insurer in the small group market must offer its small group policies to all small groups comprised of two to 50 employees and members<sup>1</sup>, and may not limit the issuance of any policy form to small groups of certain sizes, and
  - ii) Section 4235(c)(1)(A) of the New York Insurance Law (“NYIL”) by imposing a minimum participation requirement that discriminates against some groups within the small group market. This underwriting guideline by HealthNow precluded any small group of 4 or fewer members from being able to obtain coverage under the plan.
5. HealthNow’s BSNENY began using the underwriting requirement in question in January, 2013. HealthNow’s BCBSWNY began using the underwriting requirement in January, 2007. The Company ceased using the underwriting requirement in December 2013 for policies issued or effective on or after January 1, 2014.

### **New York Insurance Law Violations**

6. Section 360.4(c) of Insurance Regulation No. 145 states:

“Insurers, other than health maintenance organizations, are not required to offer small group policies. For those insurers choosing to do so coverage must be offered to all small groups comprised of two to 50 employees or members and all applicants must be accepted subject to

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<sup>1</sup> Note that Chapter 56 of the Laws of 2013 amended Insurance Law § 4317 so that, effective January 1, 2013, small group policies include those covering between *one* and fifty employees.

permissible eligibility rules set forth in this Part, and no applicant may be rejected based on a failure to apply for, purchase or be accepted for another type of insurance coverage. Insurers may choose to classify individual proprietors within the small group category provided that any such classification is applied consistently to all individual proprietors. No insurer may limit the issuance of any policy form to small groups of certain sizes, such as only groups of 25 to 50.” (emphasis added).

7. Section 4235(c)(1)(A) of the New York Insurance Law states:

No policy of group accident, group health or group accident and health insurance shall be delivered or issued for delivery in this state unless it conforms to one of the following descriptions:

- (A) A policy issued to an employer or to a trustee or trustees of a fund established by an employer, which employer or trustee or trustees shall be deemed the policyholder, insuring with or without evidence of insurability satisfactory to the insurer, employees of such employer, and insuring, except as hereinafter provided, all of such employees or all of any class or classes thereof determined by conditions pertaining to the employment or a combination of such conditions and conditions pertaining to the family status of the employee, for insurance coverage on each person insured based upon some plan which will preclude individual selection. However, such a plan may permit a limited number of selections by employees if the selections offered utilize consistent plans of coverage for individual group members so that the resulting plans of coverage are reasonable. The premium for the policy shall be paid by the policyholder, either from the employer’s funds, or from funds contributed by the insured employees, or from funds contributed jointly by the employer and employees. If all or part of the premium is to be derived from funds contributed by the insured employees, then such policy must insure not less than fifty percent of such eligible employees or, if less, fifty or more of such employees when such policy is providing coverage for group hospital, medical, major medical or similar comprehensive types of expense reimbursed insurance and, for all other types of group accident and health insurance, must insure a minimum of fifty percent or five of such eligible employees, whichever is fewer.

8. HealthNow’s group participation requirements were violative of the above sections.

Contrary to the law, the Company improperly terminated policy holders with groups of 5 or fewer subscribers and denied coverage to groups with fewer than 5 subscribers thereby avoiding high loss ratios.

**Agreement**

**WHEREAS**, HealthNow New York Inc. and the Department of Financial Services are willing to settle and resolve this Investigation; and the Acting Superintendent is willing to accept this Consent Order in lieu of commencing an administrative or other proceeding arising out of the subject matter of this Consent Order.

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

**Penalty and Remediation**

9. Within seven (7) days of the execution of this Consent Order, HealthNow New York Inc. shall pay a civil penalty of Seven Hundred Fifty Thousand Dollars (\$750,000.00). HealthNow 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 Order.
10. The above referenced payment shall be in the form of a certified or bank check made payable to "Acting Superintendent of Financial Services" and mailed to:

New York State Department of Financial Services  
One State Street Plaza, 19<sup>th</sup> Floor  
New York, NY 10004-1511  
Attention: Joy Feigenbaum, Executive Deputy Superintendent  
Financial Frauds & Consumer Protection

11. HealthNow shall comply with all aspects of the New York Insurance Law and Regulations with respect to its small group policies and any of its other products in the future.

#### **Breach of the Consent Order**

12. In the event that the Department believes that HealthNow has materially breached this Consent Order, the Department will provide written notice of such breach to the Company and HealthNow 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 Department, 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.
13. The Department and HealthNow understand and agree that HealthNow's failure to appear before the Department to make the required demonstration within the period set forth in Paragraph 12 of this Consent Order is presumptive evidence of HealthNow's breach. Upon a finding of breach, the Department has all the remedies available to it under the New York Insurance Law and Financial Services Law and may use any and all evidence available in connection with any ensuing hearings, notices, orders and other remedies available under the New York Insurance Law and Financial Services Law.

#### **Other Provisions**

14. If HealthNow defaults on the payment of its monetary obligations under this Consent Order, the Department may terminate the Consent Order at its sole discretion, upon ten (10) days' written notice to HealthNow. In the event of such termination, HealthNow expressly agrees and acknowledges that this Consent Order shall in no way bar or otherwise preclude the Department from commencing, conducting, or prosecuting any investigation, action, or proceeding against HealthNow, however denominated, related to

the subject matter of this Consent Order, or from using in any way the statements, documents, or other materials produced or provided by HealthNow prior to or after the date of this Consent Order, except as may otherwise be provided in a written agreement with the Department.

15. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by HealthNow and the Department's own factual investigation. To the extent that representations made by HealthNow are later found to be materially incomplete or inaccurate, this Consent Order is voidable by the Department in its sole discretion.
16. Upon request by the Department, HealthNow shall provide all non-privileged documentation and information reasonably necessary for the Department to verify compliance with this Consent Order.
17. All notices, reports, requests and other communications to any party pursuant to this 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, 19<sup>th</sup> Floor  
New York, NY 10004-1511  
Attention: Lisa Lazarus, Director of Disciplinary Unit  
Financial Frauds & Consumer Protection

If to the Company:

HealthNow New York Inc.  
257 West Genesee Street  
Buffalo, NY 14202-2657  
Attention: Kenneth J. Sodaro, Senior Vice President,  
General Counsel & Corporate Secretary

18. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
19. This Consent Order may not be amended except by an instrument in writing signed on behalf of both of the parties to this Consent Order.
20. HealthNow agrees that no provision of the Consent Order is subject to review in any court or tribunal outside the Department.
21. In the event that one or more provisions contained in this 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 Consent Order.
22. This 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 and approved by the Acting Superintendent of Financial Services or their designee.
23. This Consent Order constitutes the entire agreement between the Department and the Company and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.
24. Upon execution by the parties to this Consent Order, the Department will discontinue the Investigation as and against HealthNow with respect to the subject matter as set forth in this Consent Order. The Department will take no further action against HealthNow for the conduct set forth in this Consent Order provided that HealthNow complies with its terms.

**WHEREFORE**, the signatures evidencing assent to this Consent Order have been affixed hereto on the dates set forth below.

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By: Joy Feigenbaum Dated: 12-24-15  
Joy Feigenbaum, Executive Deputy Superintendent  
Financial Frauds & Consumer Protection

HealthNow New York Inc.

By: Kenneth J. Sodaro Dated: 12-15-15  
Kenneth J. Sodaro, Senior Vice President, General Counsel  
& Corporate Secretary

*THE FOREGOING CONSENT ORDER IS HEREBY APPROVED.*

Dated: New York, NY

Dec. 24, 2015

By: SEmami  
Shirin Emami  
Acting Superintendent of Financial Services