

STATE OF NORTH DAKOTA
BEFORE THE COMMISSIONER OF INSURANCE

**In the Matter of the)
Examination of Noridian Mutual)
Insurance Company dba Blue Cross)
Blue Shield of North Dakota of)
Fargo, North Dakota.)**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

INTRODUCTION

The North Dakota Insurance Department has conducted a market conduct examination of Noridian Mutual Insurance Company dba Blue Cross Blue Shield of North Dakota (hereinafter "Respondent") in order to determine compliance with North Dakota law. The examination was made of the condition and affairs of Respondent from 1990 through September 2000, with emphasis on chiropractic claims dating from January 1, 1995, to September 1, 2000. Respondent was last examined by the Insurance Department for the period ended December 31, 2000. The current examination was conducted by the State of North Dakota without participation from any other states. Pursuant to N.D. Cent. Code § 26.1-03-19.4, the examiner has presented to the Commissioner of Insurance a written report of examination. A copy of this report of examination and Notice were mailed to the Respondent on September 6, 2001. The Respondent was given 30 days to make written submission or rebuttal with respect to any matters in the examination report prior to release of a final report by the Commissioner. Respondent requested and received an extension to comment until December 6, 2001. In a letter dated December 6, 2001, Respondent submitted its comments to the market conduct examination report. On

January 8, 2002, Respondent submitted a rebuttal to the revised market conduct examination report, a copy of which is attached to this Order.

The Commissioner of Insurance, having fully considered and reviewed the examiner's report, enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Commissioner specifically adopts as his findings herein the market conduct examination report filed by the examiner as modified subsequent to its filing, a copy of which is attached hereto and by this reference incorporated herein.

CONCLUSIONS OF LAW

Except as otherwise noted in the market conduct examination report, Respondent is in compliance with all North Dakota laws relative to its market conduct activities.

ORDER

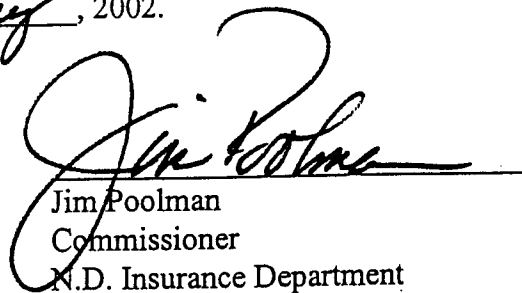
NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that the market conduct examination report herein incorporated by reference is adopted.

It is further ordered that Noridian Mutual Insurance Company dba Blue Cross Blue Shield of North Dakota shall comply with all of the examiner's recommendations listed in the examination report insofar as they relate to a specific statutory requirement.

The examination report incorporated herein by reference shall remain private and confidential information for a period of 15 days from the date of this Order, except as otherwise provided under N.D. Cent. Code § 26.1-03-19.4, and thereafter shall become open for public inspection so long as no court of competent jurisdiction has stayed its publication.

The use of this Order for competitive purposes by an insurance agent or agency holding a license in the State of North Dakota, or by any company holding a Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of said license or authority.

DATED this 5th day of February, 2002.



Jim Poolman
Commissioner
N.D. Insurance Department
600 East Boulevard
Bismarck, ND 58505
(701) 328-2440

BlueCross BlueShield
of North Dakota

NORIDIAN™
Mutual Insurance Company*



4510 13th Avenue S.W.
Fargo, North Dakota 58121-0001

DANIEL E. SCHWANDT
Vice President and
General Counsel

(701) 282-1103
FAX (701) 282-1554
E-mail: dan.schwandt@bcbsnd.com

January 8, 2002

Honorable Jim Poolman
Commissioner of Insurance
North Dakota Department of Insurance
600 East Boulevard Avenue, Dept. 401
Bismarck, North Dakota 58505

SENT VIA FAX AND FIRST CLASS MAIL

RECEIVED

JAN - 9 2002

Commissioner of Insurance
State of North Dakota

Dear Commissioner Poolman:

Noridian Mutual Insurance Company, dba Blue Cross Blue Shield of North Dakota (hereafter "Company") respectfully submits this further rebuttal to the Market Conduct Examination Report – Chiropractic Benefits as of December 31, 2000 (hereafter "MCER"). **Please note that the Company's rebuttal is intended to be confidential and is not subject to public disclosure.**

The Company has studied the revised MCER that was forwarded under cover of Deputy Commissioner Holloway's letter of December 19, 2001, and greatly appreciates the fact that the Department has taken many of the Company's earlier comments into consideration. The Company hopes that this additional submission will be of assistance to the Department in the preparation of a final report that will be acceptable to the Department and to the Company.

To the extent possible, the Company will avoid repeating the objections set forth in its letter of December 6, 2001. The Company intends to preserve each of those objections and incorporates them by reference into this submission.

General comments:

The chart that appears on p. 4 of the MCER is proprietary, and the Company renews its request that it be removed from the MCER.

The revised discussion at pp. 4-5 of the MCER remains misleading. For example, p. 4 implies that only 5.5 annual visits are allowed in the case of acute conditions. In fact, 5.5 happens to be an overall average that includes all patients. Acute conditions may well have more visits that would be medically necessary and would be paid.

At p. 5 of the MCER, there is a comparison between the Lewin Group study showing a national average of 10.6 services to the Company's 5.5 average visits. Because some visits involve multiple services, the comparison is not valid.

The Company is concerned about the Department's comments at p. 17 of the MCER under the heading "ChiroChoice and JRY, Ltd." The Department's comments about similar names are

well intended, but are offered with the benefit of hindsight and also are beyond the scope of the examination. If comments such as the Company "should have distanced itself" and "might have warned" remain in the MCER, third parties will attempt to exploit them in litigation or otherwise.

The section headed "Conflicts of Interest" on p. 18 of the MCER is flawed. The Department fails to support its allegation that the Peer Review Committee members have a conflict as a result of their membership in the PPO. In addition, the second and third paragraphs on p. 18 should be deleted because the bid was never accepted. The fifth paragraph is unfair to the Company because the sources are anonymous and there is no support offered for the "concerns" or "feel[ings]"

On p. 19 of the MCER, the Department cites to N.D. Cent. Code § 26.1-04-03(17). The Company requests that the entire paragraph containing this reference be stricken from the MCER. The Company does not compensate members of the Peer Review Committee based on any quotas, formulas, or other method to limit utilization. Moreover, the Company does not agree that the section relied upon by the Department would apply even if the Peer Review Committee had some financial incentive, because the statute appears to address direct arrangements with a provider in the treatment of his or her own patients.

On p. 26 of the MCER, the Department comments as to how the Company "appeared" to be using profiling. The observations by the Department are not supported by evidence and should be stricken from the MCER.

The section of the MCER at pp. 29-30 under the heading "Educational vs. Punitive Process" should be stricken. The heading itself is improperly judgmental. More importantly, given the pending lawsuit, it is inappropriate for the Department to quote unnamed providers who believe there has been a "restraint of trade" or that they have been "subjected to humiliating scoldings." Those allegations are being vigorously contested in the litigation, and their inclusion in a report that will be made public would be highly prejudicial to the Company.

At p. 44 of the MCER, the Department states that "[t]his finding suggests that the JRY partners may be receiving more favorable treatment than most chiropractors and much more favorable treatment than chiropractors on watch." At p. 81 of the MCER, it is stated that "[t]he peer reviewers should reasonably experience average rates of denials, which they do not. It appears they are receiving favorable treatment." The analysis performed by the examiner does not support these accusations, and they should be stricken. It is equally probable that the JRY partners had minimal claims denied or held because they are intimately familiar with proper documentation and coding and they are providing services that are medically necessary.

SPECIFIC RESPONSES TO THE DEPARTMENT'S RECOMMENDATIONS¹

Recommendation No. 1: For services conducted within the scope of practice of chiropractors, the Company must not discriminate against chiropractic treatment by reimbursing services of

¹ For the sake of convenience, each of the revised recommendations is set out in full using the new numbers before providing the Company's response.

certain professionals while denying similar services provided by chiropractors, or by reimbursing similar services at different levels.

Response of the Company: The Company is concerned that Recommendation No. 1 implies that there has been discrimination by the Company. No evidence supports such an implication. As previously noted by the Company, the examples at p. 12 of the MCER are flawed, and the Department's revisions that simply note the patient "believed" claims were not being paid do not remedy the problem. The Company therefore objects to the recommendation.

If the Department does not strike the recommendation, at a minimum it should word it more neutrally. Without waiving its objection to the recommendation, the Company respectfully suggests the following rewording of the recommendation: "For services that are within the scope of practice of chiropractors, the Company should not reimburse services of certain professionals while denying similar services provided by chiropractors, nor should it reimburse similar services at different levels."

Recommendation No. 2: The Company should consider removing the chart signature requirement from its guidelines for providers with electronically stored medical records and explore the possibility of electronic signatures for those providers.

Response of the Company: The Company will consider this recommendation and explore its feasibility. The Company requests the removal of the observation at p. 14 of the MCER that "it appears unreasonable that 'all chart notes must either be signed or initialed by the individual who performed the services.'" The Company is concerned that the observation might be taken out of context and interpreted as a finding by the Department.

Recommendation No. 3: The Company should promptly respond in writing to all providers and patients who request explanations of denied services under N.D. Cent. Code § 26.1-04-03(10). Letters of explanation and final decisions should be sent to all appealing parties.

Response of the Company: The Company notes that the example in the first full paragraph on p. 16 of the MCER is not valid because this claim had been paid. The example should be removed from the MCER. The Company also requests that the language "[t]his was not a singular incident" be removed from p. 16 of the MCER. If these changes are made to the MCER, the Company will agree with this recommendation.

Recommendation No. 4: The Company should change chiropractic consultants and Peer Review Committee members immediately due to the perception of conflicts of interest and possible favoritism. The Company should regularly rotate members of the Committee as intended by its guidelines and accept names for appointment from the NDCA. At least two alternate members should be appointed to deal with situations in which a conflict of interest is present for the regular voting members.

Response of the Company: The Company objects to this recommendation for the reasons previously stated in response to former Recommendation No. 5. As previously noted, the example at the top of p. 19 of the MCER is flawed and does not support the recommendation.

The Company also notes that the Department does not have the statutory power to insist on any particular composition of the Peer Review Committee. Finally, the Company requests that the last sentence on p. 16 of the MCER be stricken because in each case the person appointed was among those recommended by the NDCA.

Recommendation No. 5: The Company should adhere to its contractual appeals provisions and the URAC standards. Peer Review Committee members should meet no less than monthly to decide appeals from denied claims or services. The Company should also reconcile its contract language and chiropractic guidelines to reflect the procedures certified to URAC specifying a 30-day turnaround time on appeals.

Response of the Company: The Company agrees with this recommendation.

Recommendation No. 6: The individual members of the Peer Review Committee should exercise judgment independent of the consultant.

Response of the Company: The Company agrees that Recommendation No. 6 states a worthwhile principle, but strongly objects to any implication that the Peer Review Committee members have failed to exercise independent judgment. The Company also objects to the comment by the Department that the Committee "functions as an adjunct of the consultant and not as an independent review board." MCER at 20-21. This statement is not supported by the evidence.

Recommendation No. 7: To the extent meeting minutes purport to place patients on maintenance, Peer Review Committee members should not allow maintenance care for some patients that is not contractually obligated.

Response of the Company: Because there is no evidence that patients have been approved for maintenance care, this recommendation should be stricken. The MCER also should be revised to remove any reference to maintenance care being allowed when it was in fact supportive care. For example, the sentence on pp. 73-74 alleging a discriminatory practice should be stricken.

Recommendation No. 8: Written notification to every patient placed on a schedule of care by the Company's consultant or Peer Review Committee should be sent within two days. Letters should also be copied to the patient's last treating provider. The schedule of care should be fully disclosed.

Response of the Company: The Company continues to be concerned about patient privacy issues that might be implicated if copies of correspondence are sent to the last treating provider, especially in view of the HIPAA regulations that will go into effect in 2003. The Company will continue to study the privacy issues. Unless the Company is able to confirm that there are no privacy issues, the Company objects to the recommendation that a copy be sent to the patient's last treating provider.

Recommendation No. 9: The Company should study other state's statutes for peer review standards, [and] consider adopting similar guidelines for its own peer reviews.

Response of the Company: The Company objects to this Recommendation. North Dakota has no statutory peer review standards, and it is up to the legislature to enact statutory standards if it wishes to do so.

Recommendation No. 10: The Company should consider revising its descriptions of supportive and maintenance care to more closely resemble the ACA definitions.

Response of the Company: The Company agrees with this recommendation.

Recommendation No. 11: The Company should bring its watch procedures into compliance with N.D. Cent. Code § 26.1-04-03(9)(c) by sending claimants notice that their claim is being held pending receipt of more information and not summarily denying claims without conducting a reasonable investigation.

Response of the Company: The Company objects to this recommendation. It is in compliance with N.D. Cent. Code § 26.1-04-03(9)(c). If a claim is not properly documented, the burden does not shift to the Company, and the Company is within its rights to deny the claim. The Company therefore requests that the portion of the MCER at p. 27 that refers to a potential violation of the Code be stricken.

Recommendation No. 12: The Company should establish written guidelines for placing chiropractors under focused review and communicate those guidelines, once formulated, to each chiropractor. If the Company distinguishes between full and partial watch, it should define each category and criteria for placing a provider within each. Target goals for utilization should be communicated to all providers if they are incorporated into watch status. These guidelines should be published in the Company's Quality Management Plan.

Response of the Company: The Company agrees with this recommendation.

Recommendation No. 13: The Company, within 30 days of this report, should bring its profiling data into compliance with N.D. Cent. Code Chapter 26.1-36-41 and disclose statistical profiles to all providers who have requested them. All future requests for profiling data should be complied with in a timely manner.

Response of the Company: The Company agrees with this recommendation.

Recommendation No. 14: The Company should adopt procedures for conducting audits of providers and for outlining the circumstances that will lead to an audit.

Response of the Company: The Company agrees with this recommendation.

Recommendation No. 15: The Company must ensure that it is not treating patients of providers who belong to ChiroChoice differently than patients of chiropractors who do not belong to the PPO. The Unfair Claims Settlement Practices Act prohibits reviewers from injecting personal or professional biases or preferences into any claims reviews.

Response of the Company: The Company objects to this recommendation and to the implication that it is treating patients of providers who belong to ChiroChoice differently from patients of chiropractors who do not belong to the PPO. In addition, the statement at p. 42 of the MCER that the "isolated instances . . . suggest unfair claims handling practices and a system of favoritism" should be stricken. The evidence does not support any such findings, and the suggestion of illegality based on isolated instances is not appropriate for a market conduct report.

Recommendation No. 16: The Company should review these claims and assign the appropriate denial codes and make refunds if the services should have been allowed. The Company should maintain records that accurately reflect the reason for denial.

Response of the Company: The Company objects to this recommendation because it is vague and does not specify what is meant by "these claims." The Company intends to gather documentation demonstrating that the problems noted by the examiner have been resolved appropriately. The Company also notes that its records accurately reflect the reasons for denials.

Conclusion

In closing, the Company requests further modifications to the MCER as noted above. The Company would be pleased to discuss any of these issues with a representative of the Department. If these open issues cannot be resolved, the Company will request a hearing and insist that the Department prove the disputed allegations by competent evidence.

Thank you very much for considering this additional submission.

Sincerely,



Daniel E. Schwandt

cc: Honorable Douglas L. Holloway
Lou McPhail, Esq.

BlueCross BlueShield
of North Dakota

NORIDIANSM
Mutual Insurance Company*



4510 13th Avenue S.W.
Fargo, North Dakota 58121-0001

DANIEL E. SCHWANDT
Vice President and
General Counsel

(701) 282-1103
FAX (701) 282-1554
E-mail: dan.schwandt@bcbsnd.com

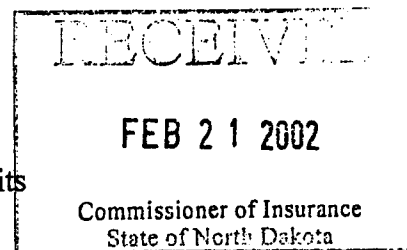
February 20, 2002

Honorable Jim Poolman
Commissioner
North Dakota Insurance Department
600 East Boulevard Avenue
Bismarck, North Dakota 58505

SENT VIA FAX AND FIRST CLASS MAIL

Re: Rebuttal to Market Conduct Examination Report-Chiropractic Benefits

Dear Commissioner Poolman:



This letter is sent to correct the various page numbers referenced throughout Noridian Mutual Insurance Company's rebuttal letter dated January 8, 2002.

Noridian Mutual Insurance Company, dba Blue Cross Blue Shield of North Dakota (hereafter "Company") respectfully submits this further rebuttal to the Market Conduct Examination Report - Chiropractic Benefits as of December 31, 2000 (hereafter "MCER"). **Please note that the Company's rebuttal is intended to be confidential and is not subject to public disclosure.**

The Company has studied the revised MCER that was forwarded under cover of Deputy Commissioner Holloway's letter of December 19, 2001, and greatly appreciates the fact that the Department has taken many of the Company's earlier comments into consideration. The Company hopes that this additional submission will be of assistance to the Department in the preparation of a final report that will be acceptable to the Department and to the Company.

To the extent possible, the Company will avoid repeating the objections set forth in its letter of December 6, 2001. The Company intends to preserve each of those objections and incorporates them by reference into this submission.

General comments:

The chart that appears on p. 4 of the MCER is proprietary, and the Company renews its request that it be removed from the MCER.

The revised discussion at pp. 4-5 of the MCER remains misleading. For example, p. 4 implies that only 5.5 annual visits are allowed in the case of acute conditions. In fact, 5.5 happens to be an overall average that includes all patients. Acute conditions may well have more visits that would be medically necessary and would be paid.

At p. 5 of the MCER, there is a comparison between the Lewin Group study showing a national average of 10.6 services to the Company's 5.5 average visits. Because some visits involve multiple services, the comparison is not valid.

The Company is concerned about the Department's comments at p. 15 of the MCER under the heading "ChiroChoice and JRY, Ltd." The Department's comments about similar names are well intended, but are offered with the benefit of hindsight and also are beyond the scope of the examination. If comments such as the Company "should have distanced itself" and "might have warned" remain in the MCER, third parties will attempt to exploit them in litigation or otherwise.

The section headed "Conflicts of Interest" on p. 15 of the MCER is flawed. The Department fails to support its allegation that the peer review committee members have a conflict as a result of their membership in the PPO. In addition, the second and third paragraphs on p. 16 should be deleted because the bid was never accepted. The fifth paragraph is unfair to the Company because the sources are anonymous and there is no support offered for the "concerns" or "feel[ings]"

On p. 17 of the MCER, the Department cites to N.D. Cent. Code § 26.1-04-03(17). The Company requests that the entire paragraph containing this reference be stricken from the MCER. The Company does not compensate members of the Peer Review Committee based on any quotas, formulas, or other method to limit utilization. Moreover, the Company does not agree that the section relied upon by the Department would apply even if the Peer Review Committee had some financial incentive, because the statute appears to address direct arrangements with a provider in the treatment of his or her own patients.

On p. 23 of the MCER, the Department comments as to how the Company "appeared" to be using profiling. The observations by the Department are not supported by evidence and should be stricken from the MCER.

The section of the MCER at pp. 26-27 under the heading "Educational vs. Punitive Process" should be stricken. The heading itself is improperly judgmental. More importantly, given the pending lawsuit, it is inappropriate for the Department to quote unnamed providers who believe there has been a "restraint of trade" or that they have been "subjected to humiliating scoldings." Those allegations are being vigorously contested in the litigation, and their inclusion in a report that will be made public would be highly prejudicial to the Company.

At p. 37 of the MCER, the Department states that "[t]his finding suggests that the JRY partners may be receiving more favorable treatment than most chiropractors and much more favorable treatment than chiropractors on watch." At p. 72 of the MCER, it is stated that "[t]he peer reviewers should reasonably experience average rates of denials, which they do not. It appears they are receiving favorable treatment." The analysis performed by the examiner does not support these accusations, and they should be stricken. It is equally probable that the JRY partners had minimal claims denied or held because they are intimately familiar with proper documentation and coding and they are providing services that are medically necessary.

SPECIFIC RESPONSES TO THE DEPARTMENT'S RECOMMENDATIONS¹

¹ For the sake of convenience, each of the revised recommendations is set out in full using the new numbers before providing the Company's response.

Recommendation No. 1: For services conducted within the scope of practice of chiropractors, the Company must not discriminate against chiropractic treatment by reimbursing services of certain professionals while denying similar services provided by chiropractors, or by reimbursing similar services at different levels.

Response of the Company: The Company is concerned that Recommendation No. 1 implies that there has been discrimination by the Company. No evidence supports such an implication. As previously noted by the Company, the examples at p. 11 of the MCER are flawed, and the Department's revisions that simply note the patient "believed" claims were not being paid do not remedy the problem. The Company therefore objects to the recommendation.

If the Department does not strike the recommendation, at a minimum it should word it more neutrally. Without waiving its objection to the recommendation, the Company respectfully suggests the following rewording of the recommendation: "For services that are within the scope of practice of chiropractors, the Company should not reimburse services of certain professionals while denying similar services provided by chiropractors, nor should it reimburse similar services at different levels."

Recommendation No. 2: The Company should consider removing the chart signature requirement from its guidelines for providers with electronically stored medical records and explore the possibility of electronic signatures for those providers.

Response of the Company: The Company will consider this recommendation and explore its feasibility. The Company requests the removal of the observation at p. 12 of the MCER that "it appears unreasonable that 'all chart notes must either be signed or initialed by the individual who performed the services.'" The Company is concerned that the observation might be taken out of context and interpreted as a finding by the Department.

Recommendation No. 3: The Company should promptly respond in writing to all providers and patients who request explanations of denied services under N.D. Cent. Code § 26.1-04-03(10). Letters of explanation and final decisions should be sent to all appealing parties.

Response of the Company: The Company notes that the example in the first full paragraph on p. 14 of the MCER is not valid because this claim had been paid. The example should be removed from the MCER. The Company also requests that the language "[t]his was not a singular incident" be removed from p. 14 of the MCER. If these changes are made to the MCER, the Company will agree with this recommendation.

Recommendation No. 4: The Company should change chiropractic consultants and Peer Review Committee members immediately due to the perception of conflicts of interest and possible favoritism. The Company should regularly rotate members of the Committee as intended by its guidelines and accept names for appointment from the NDCA. At least two alternate members should be appointed to deal with situations in which a conflict of interest is present for the regular voting members.

Response of the Company: The Company objects to this recommendation for the reasons previously stated in response to former Recommendation No. 5. As previously noted, the example at the bottom of p. 16 of the MCER is flawed and does not support the recommendation. The Company also notes that the Department does not have the statutory power to insist on any particular composition of the Peer Review Committee. Finally, the Company requests that the last sentence under the heading "Committee Membership" on p. 14 of the MCER be stricken because in each case the person appointed was among those recommended by the NDCA.

Recommendation No. 5: The Company should adhere to its contractual appeals provisions and the URAC standards. Peer Review Committee members should meet no less than monthly to decide appeals from denied claims or services. The Company should also reconcile its contract language and chiropractic guidelines to reflect the procedures certified to URAC specifying a 30-day turnaround time on appeals.

Response of the Company: The Company agrees with this recommendation.

Recommendation No. 6: The individual members of the Peer Review Committee should exercise judgment independent of the consultant.

Response of the Company: The Company agrees that Recommendation No. 6 states a worthwhile principle, but strongly objects to any implication that the Peer Review Committee members have failed to exercise independent judgment. The Company also objects to the comment by the Department that the Committee "functions as an adjunct of the consultant and not as an independent review board." MCER at 18. This statement is not supported by the evidence.

Recommendation No. 7: To the extent meeting minutes purport to place patients on maintenance, Peer Review Committee members should not allow maintenance care for some patients that is not contractually obligated.

Response of the Company: Because there is no evidence that patients have been approved for maintenance care, this recommendation should be stricken. The MCER also should be revised to remove any reference to maintenance care being allowed when it was in fact supportive care. For example, the sentence on pp. 64 alleging a discriminatory practice should be stricken.

Recommendation No. 8: Written notification to every patient placed on a schedule of care by the Company's consultant or Peer Review Committee should be sent within two days. Letters should also be copied to the patient's last treating provider. The schedule of care should be fully disclosed.

Response of the Company: The Company continues to be concerned about patient privacy issues that might be implicated if copies of correspondence are sent to the last treating provider, especially in view of the HIPAA regulations that will go into effect in 2003. The Company will continue to study the privacy issues. Unless the Company is able to confirm that there are no

privacy issues, the Company objects to the recommendation that a copy be sent to the patient's last treating provider.

Recommendation No. 9: The Company should study other state's statutes for peer review standards, [and] consider adopting similar guidelines for its own peer reviews.

Response of the Company: The Company objects to this Recommendation. North Dakota has no statutory peer review standards, and it is up to the legislature to enact statutory standards if it wishes to do so.

Recommendation No. 10: The Company should consider revising its descriptions of supportive and maintenance care to more closely resemble the ACA definitions.

Response of the Company: The Company agrees with this recommendation.

Recommendation No. 11: The Company should bring its watch procedures into compliance with N.D. Cent. Code § 26.1-04-03(9)(c) by sending claimants notice that their claim is being held pending receipt of more information and not summarily denying claims without conducting a reasonable investigation.

Response of the Company: The Company objects to this recommendation. It is in compliance with N.D. Cent. Code § 26.1-04-03(9)(c). If a claim is not properly documented, the burden does not shift to the Company, and the Company is within its rights to deny the claim. The Company therefore requests that the portion of the MCER at p. 24 that refers to a potential violation of the Code be stricken.

Recommendation No. 12: The Company should establish written guidelines for placing chiropractors under focused review and communicate those guidelines, once formulated, to each chiropractor. If the Company distinguishes between full and partial watch, it should define each category and criteria for placing a provider within each. Target goals for utilization should be communicated to all providers if they are incorporated into watch status. These guidelines should be published in the Company's Quality Management Plan.

Response of the Company: The Company agrees with this recommendation.

Recommendation No. 13: The Company, within 30 days of this report, should bring its profiling data into compliance with N.D. Cent. Code Chapter 26.1-36-41 and disclose statistical profiles to all providers who have requested them. All future requests for profiling data should be complied with in a timely manner.

Response of the Company: The Company agrees with this recommendation.

Recommendation No. 14: The Company should adopt procedures for conducting audits of providers and for outlining the circumstances that will lead to an audit.

Response of the Company: The Company agrees with this recommendation.

Recommendation No. 15: The Company must ensure that it is not treating patients of providers who belong to ChiroChoice differently than patients of chiropractors who do not belong to the PPO. The Unfair Claims Settlement Practices Act prohibits reviewers from injecting personal or professional biases or preferences into any claims reviews.

Response of the Company: The Company objects to this recommendation and to the implication that it is treating patients of providers who belong to ChiroChoice differently from patients of chiropractors who do not belong to the PPO. In addition, the statement at p. 36 of the MCER that the "isolated instances . . . suggest unfair claims handling practices and a system of favoritism" should be stricken. The evidence does not support any such findings, and the suggestion of illegality based on isolated instances is not appropriate for a market conduct report.

Recommendation No. 16: The Company should review these claims and assign the appropriate denial codes and make refunds if the services should have been allowed. The Company should maintain records that accurately reflect the reason for denial.

Response of the Company: The Company objects to this recommendation because it is vague and does not specify what is meant by "these claims." The Company intends to gather documentation demonstrating that the problems noted by the examiner have been resolved appropriately. The Company also notes that its records accurately reflect the reasons for denials.

Conclusion

In closing, the Company requests further modifications to the MCER as noted above. The Company would be pleased to discuss any of these issues with a representative of the Department. If these open issues cannot be resolved, the Company will request a hearing and insist that the Department prove the disputed allegations by competent evidence.

Thank you very much for considering this additional submission.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel E. Schwandt", with a stylized flourish at the end.

Daniel E. Schwandt

cc: Honorable Douglas L. Holloway
Lou McPhail, Esq.