

**BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS**

In the Matter of the Proposed	)	
Adoption of the Market Conduct	)	
Review Report of UNITED HEALTHCARE	)	Docket No. 3093-MC
OF THE MIDWEST, INC.	)	

**CONSENT ORDER**

NOW COMES on this date for formal disposition the matter of the proposed adoption of the market conduct review report of the United Healthcare of the Midwest, Inc., a Missouri corporation. This matter is brought before the Commissioner of Insurance for adoption, rejection, or modification pursuant to the provisions of Kansas Statutes Annotated (“K.S.A.”) 40-222.

I, Kathleen Sebelius, the duly elected, qualified, and Commissioner of Insurance of the State of Kansas, having fully considered and reviewed the examination report, together with all written submissions, applicable rebuttals, and all relevant portions of the examiner’s work papers, and further being advised on all premises, hereby find:

**Findings of Fact**

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222.
2. A market review of the United Healthcare of the Midwest, Inc. (“United Healthcare”) was undertaken by the Kansas Insurance Department and completed on November 30, 2000.
3. Within thirty (30) days following the completion of the examination, the examiner in charge tendered and filed with the Kansas Insurance Department (“KID”) a verified written report of the market conduct review under oath.

4. Within thirty (30) days following receipt of the report, KID sent a draft of the Market Conduct Report to United Healthcare. The company was asked to review the document and forward any written comments or additions or acceptance of the report to KID.

5. On June 6, 2002, KID received written comments from United Healthcare on the written report.

6. Within thirty (30) days following the written response, the Commissioner of Insurance fully reviewed the report together with any written responses provided by United Healthcare.

7. United Healthcare was formed by the merger of GenCare Health Systems, Inc. and Physicians Health Plan of Greater St. Louis, Inc. in 1995.

8. On August 16, 1999, KID issued a cease and desist order against United Healthcare for failing to certify an agent as the agent of the company within thirty (30) days of appointment of the agent by the company. A fine of \$6,500 was imposed against United Healthcare.

9. In the course of the examination, the examiner found that of 41 agents that were on the appointment list of United Healthcare, 23 were not on the list of KID.

10. In the course of the examination, the examiner found that ten (10) of the 41 agents on the appointment list of United Healthcare wrote business prior to being appointed by United Healthcare with KID.

11. In the course of the examination, the examiner found that four (4) of the ten (10) agents who wrote business prior to being appointed by United Healthcare with KID wrote business after the cease and decess order that was issued in 1999.

12. In the course of the examination, the examiner found that seven (7) contracts with agents and/or agencies that were in effect for more than one year were terminated by the company without documentation of the reason for cancellation.

13. In the course of the examination, the examiner found that 11 of 50 claims for doctors and other providers that were denied after thirty (30) days did not contain all notes and work papers pertaining to that claim in such detail that the events and dates could be reconstructed.

14. In the course of the examination, the examiner found that investigations for 22 of 50 claims denied doctors and other providers were not completed by United Healthcare within thirty (30) days after notification of the claims.

15. In the course of the examination, the examiner found that United Healthcare did not advise first party claimants of the acceptance or denial of the claim within fifteen (15) working days after receipt in 11 of 50 denied claims for doctors and other providers.

16. In the course of the examination, the examiner found that United Healthcare failed to complete its investigation of 29 of 50 paid claims for doctors and other providers within thirty (30) days after notification.

17. In the course of the examination, the examiner found that United Healthcare failed to complete investigations of 22 of 50 doctor or provider claims that were denied within thirty days after notification of claims that could have reasonably been completed within such time.

18. In the course of the examination, the examiner found that United Healthcare failed to properly advise 18 of 50 claimants of denial of doctor and other provider claims within fifteen days after receipt.

19. In the course of the examination, the examiner found that United Healthcare failed to complete investigations of 29 of 50 doctor or provider claims that were approved within thirty days after notification of claims that could have reasonably been completed within such time.

20. In the course of the examination, the examiner found that United Healthcare failed to properly advise 28 of 50 claimants of approval of doctor and other provider claims within fifteen days after receipt by United Healthcare.

### **Applicable Law**

21. K.S.A. 40-241i(a) states, in relevant part:

Any company authorized to transact business in this state may... appoint such agent as the agent of the company under the license in effect for the agent. The appointment shall be made to the commissioner annually on a form prescribed by the commissioner...

22. K.S.A. 40-2,107(a) states, in relevant part:

...Such [insurance] contracts [with independent insurance agents] which have been effective for more than one year shall not be terminated or amended by the company except by mutual agreement or unless 180 days' prior notice has been tendered to the agent...

23. K.S.A. 40-2,125 states, in relevant part:

(a)(1) If the commissioner determines after notice and opportunity for a hearing that any person has engaged in or is engaging in any act or practice constituting a violation of any provision of Kansas insurance statutes or any rule and regulation or order thereunder, the commissioner may in the exercise of discretion, order... payment of a monetary penalty of not more than \$1,000 for each and every act or violation, unless the person knew or reasonably should have known such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder, in which case the penalty shall be not more than \$2,000 for each and every act or violation.

24. Kansas Administrative Regulation ("K.A.R.") 40-1-34 states, in relevant part:

Section 4. The insurer's claim files shall be subject to examination by the (Commissioner) or by his duly appointed designees. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed.

Section 7. Every insurer shall complete investigation of a claim within thirty days after notification of claim, unless such investigation cannot reasonably be completed within such time.

Section 8. (a) Within 15 working days after receipt by the insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer... The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial.

### **Conclusions of Law**

25. Based on the findings of fact set out in paragraphs 1 through 6 above, the market conduct of affairs examination report of United Healthcare of the Midwest, Inc. is adopted.

26. Based on the findings of fact set out in paragraphs 9 through 11 above, the Commissioner finds and concludes that the company is in violation of K.S.A. 40-241, which is the requirement for companies to appoint agents.

27. Based on the findings of fact set out in paragraph 12 above, the Commissioner finds and concludes that the company is in violation of K.S.A. 40-241, which is the requirement for companies to give notice of termination of agencies/agents contracts.

28. Based on the findings of fact set out in paragraphs 14, 16, 17, and 19 above, the Commissioners find and concludes that the company is in violation of K.A.R. 40-1-34, Section 7, which is the requirement for companies to advise claimants of the acceptance or denial of the claim by within 15 working days after receipt by the insurer of properly executed proofs of loss.

29. Based on the findings of fact set out in paragraphs 15, 18, and 20 above, the Commissioner finds and concludes that the company is in violation of K.A.R. 40-1-34, Section 8, which is the requirement for companies to notify claimants of the acceptance or denial of a properly executed proof of loss within 15 working days after receipt.

30. The violations as outlined in paragraphs 25, 26, 27 and 28 above, constitute eleven (11) violations of Kansas law. Under the provisions of K.S.A. 40-2,125, the company is fined \$14,000.

### **Policy Reasons**

31. It is the stated policy reason of the State of Kansas that whenever the Commissioner deems it necessary, an examination of the affairs and financial condition of any insurance company in the process of organization, applying for admission, or doing business in this State can be undertaken. In all cases, such an examination must occur every (5) five years.

Through the examination process the insurance concerning consuming public will be well served and protected.

**IT IS THEREFORE, BY THE COMMISSIONER OF INSURANCE, ORDERED THAT:**

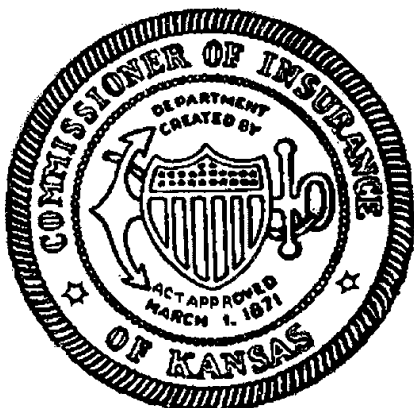
1. The market conduct review of United Healthcare of the Midwest, Inc. is hereby adopted.

2. The Commissioner of Insurance levies fines in the amount of \$2,000 for knowingly committing violations 9 through 11 and \$1,000 for each remaining violation, for a total of \$14,000 in penalties to be remitted within thirty (30) days of the date of this Consent Order.

3. The Commissioner of Insurance retains jurisdiction over this matter to issue any and all further orders deemed appropriate or take further action necessary to dispose of this matter.

4. The Commissioner further orders pursuant to K.S.A. 40-222(k)(3) that the company files written affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

**IT IS SO ORDERED THIS 5<sup>th</sup> DAY OF NOVEMBER, 2002, IN THE CITY OF TOPEKA, SHAWNEE COUNTY, STATE OF KANSAS.**



\_\_\_\_\_/s/ Kathleen Sebelius\_\_\_\_\_

Kathleen Sebelius

Commissioner of Insurance

BY:

\_\_\_\_\_/s/ Kathy Greenlee\_\_\_\_\_

Kathy Greenlee

General Counsel

AS APPROVED:

/s/ William Tracy\_\_\_\_\_

William Tracy, Chief Executive Officer

United Healthcare Kansas

/s/ Deletria Nash\_\_\_\_\_

Deletria Nash, Staff Attorney

Kansas Insurance Department