

FINAL ORDER

Effective: 02/21/05

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

In the Matter of)
Coventry Health Care of Kansas, Inc.) Docket No. 3426-MC

ORDER

Pursuant to the authority conferred to the Commissioner of Insurance in K.S.A. 40-222, Sandy Praeger, the duly elected, qualified Commissioner of Insurance hereby adopts the Kansas Insurance Department's March 31, 2004 Report of Market Conduct Examination of Coventry Health Care of Kansas, Inc. (attached herein as Attachment A) by incorporating the same in its entirety with specific findings stated as follows:

Findings of Fact

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222.
2. The Kansas Insurance Department (hereinafter "KID") completed a market conduct examination of the Coventry Health Care of Kansas, Inc. (hereinafter "CHC" or "the Company") in March 2004.
3. On or about November 15, 2004, the examiner-in-charge provided CHC with a draft of the written Report of Market Conduct Examination with request of the company's response by December 15, 2004, in written comments, additions, or acceptance as to any and all matters contained in the report.
4. CHC responded with written acceptance of the draft report on December 14, 2004. (*See* Attachment B).
5. The Kansas Commissioner of Insurance has since fully reviewed said Kansas report which is attached herein as Attachment A.

6. In 2 out of the 45 randomly selected files regarding grievance/appeal handled by CHC, the company failed to notify the complainants with written decisions within 5 working days from the conclusion of its investigations as required by the pertinent Kansas insurance statutes.¹
7. In two (2) incidents involving grievance/appeal files handled by CHC, the company failed to acknowledge its receipt of the grievances in writing within 30 working days as required by the pertinent Kansas insurance statutes.²
8. In one of the above-stated files in paragraph 7, the company also failed to complete the investigation within 30 days, and further failed to notify the enrollee every 30 days thereafter of the reason why additional time was needed as required by the pertinent Kansas insurance statutes.³
9. In two (2) incidents involving grievance/appeal files involving overturning decisions to pay claims, CHC failed to pay the claims promptly in compliance with the applicable Kansas insurance statutes.⁴

Applicable Law

10. K.S.A. 40-2,125 states, in pertinent parts:
 - (a) If the commissioner determines after notice and opportunity for a hearing that any person has engaged 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 any one or more of the following:
 - (1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, unless the person knew or

¹ Files # 5118 and #5470 are cited here in reference to K.S.A. 40-3228(c)(3).

² Files # 1571 and #2763 are cited here in reference to K.S.A. 40-3228(c)(1).

³ File # 2763 is cited here in reference to K.S.A. 40-3228(c)(2).

⁴ Files #3217 and 3922 are cited here in reference to K.S.A. 40-2404(9)(f) and K.S.A. 40-2442(d)(2).

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;

11. K.S.A. 40-2403 states:

No person shall engage in this state in any trade practice which is defined in this act as, or determined pursuant to K.S.A. 40-2406 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance

12. K.S.A. 40-2404 states, in pertinent part:

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

...

(9) *Unfair claim settlement practices.* It is an unfair claim settlement practice if any of the following or any rules and regulations pertaining thereto are: (A) Committed flagrantly and in conscious disregard of such provisions, or (B) committed with such frequency as to indicate a general business practice.

...

(f) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

13. K.S.A. 40-2405 states:

The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by K.S.A. 40-2403.

14. K.S.A. 40-2406 states:

(a) Whenever the commissioner has reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice, whether or not defined in K.S.A. 40-2404 and amendments thereto, and that a proceeding by the commissioner in respect thereto would be

in the interest of the public, the commissioner shall issue and serve upon such person a statement of the charges in that respect and conduct a hearing thereon in accordance with the provision of the Kansas administrative procedure act.

(b) If, after such hearing, the commissioner determines that the person charged has engaged in any unfair method of competition or any unfair or deceptive act or practice, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section shall be assessed against such person or the company or companies represented by such person as an agent, broker or adjuster who is a participating party to the matters giving rise to the hearing. As used in this subsection, "costs" shall include witness fees, mileage allowances, any costs associated with reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

15. K.S.A. 40-2442 states, in pertinent part:

...

(d) Within 15 days after receipt of all the requested additional information, an insurer issuing a policy of accident and sickness insurance shall pay a clean claim in accordance with this section or send a written or electronic notice that states:

(1) Such insurer refuses to reimburse all or part of the claim; and

(2) specifies each reason for denial. Any insurer issuing a policy of accident and sickness insurance that fails to comply with this subsection shall pay interest on any amount of the claim that remains unpaid at the rate of 1% per month.

16. K.S.A. 40-3228 states, in pertinent part:

A health maintenance organization shall provide in its certificate of coverage the procedures for resolving enrollee grievances. At a minimum, the certificate of coverage shall include the following provisions:

...

(c) that upon receiving notification of a grievance related for payment of a bill for medical services, the health maintenance organization shall:

(1) Acknowledge receipt of the grievance in writing within 10 working days unless it is resolved within that period of time;

(2) conduct a complete investigation of the grievance within 20 working days after receipt of a grievance, unless the investigation cannot be completed within this period of time. If the investigation cannot be completed within 20 working days after receipt of a grievance, the enrollee shall be notified in writing within 30 working days time, and every 30 working days after that, until the investigation is completed. The notice shall state the reasons for which additional time is needed for the investigation;

(3) have within five working days after the investigation is completed, someone not involved in the circumstances giving rise to the grievance or its investigation decide upon the appropriate resolution of the grievance and notify the enrollee in writing of the decision of the health maintenance organization regarding the grievance and of any right to appeal. The notice shall explain the resolution of the grievance and any right to appeal. The notice shall explain the resolution of the grievance in terms which are clear and specific;

K.S.A. 40-3228(c)

Conclusion

Based upon the Findings of Fact and Applicable Law enumerated in paragraphs #1 through #16 above,

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

- a. The Kansas Insurance Department's March 31, 2004, Report of Market Conduct Examination of Coventry Health Care of Kansas, Inc., (CHC) is herein adopted in its entirety.
- b. CHC's failures to notify the complainants in files #5118 and 5470 with written decisions within 5 working days after completion of its investigations involving the same violate K.S.A. 40-3228(c)(3). Pursuant to K.S.A. 40-2,215, CHC shall pay a monetary penalty, due and payable to Kansas Insurance Commissioner on or before the 14th day from the

date of this order, in the amount of Two Hundred 00/100 Dollars (\$200.00) for violations of K.S.A. 40-3228(c)(3).

- c. CHC's failure to provide written acknowledgement within 10 working days after receiving grievances in its #1571 and #2763 violate K.S.A. 40-3228(c)(1). Pursuant to K.S.A. 40-2,215, CHC shall pay a monetary penalty, due and payable to Kansas Insurance Commissioner on or before the 14th day from the date of this order, in the amount of Two Hundred 00/100 Dollars (\$200.00) for violations of K.S.A. 40-3228(c)(1).
- d. CHC's failure to conduct a complete investigation within 30 days after receiving a grievance in file #2763, and its failure to provide notification stating reasons for which additional time was needed for the investigation violate K.S.A. 40-3228(c)(2). Pursuant to K.S.A. 40-2,215, CHC shall pay a monetary penalty, due and payable to Kansas Insurance Commissioner on or before the 14th day from the date of this order, in the amount of One Hundred 00/100 Dollars (\$100.00) for violations of above-stated statute.
- e. CHC's failure to pay the claim in file #3922 until 58 days after accepting liability violates K.S.A. 40-2404(9)(f). Such a violation further triggers the assessment of statutory interest set forth in K.S.A. 40-2442(d)(2) to be paid in addition to the claimed amount in file #3922. Pursuant to K.S.A. 40-2,125, CHC shall pay a monetary penalty, due and payable to Kansas Insurance Commissioner on or before the 14th day from the date of this order, in the amount of Five Hundred 00/100 Dollars (\$500.00)

for violations of K.S.A. 40-2404(9)(f). CHC shall also pay the interests on the basis of its final payment in file # 3922 at the rate set forth in K.S.A. 40-2442(d)(2) to the interests' rightful recipient on or before the 14th day from the date of this order.

f. CHC's failure to pay the claim in file #3217 until 211 days after accepting liability violates K.S.A. 40-2404(9)(f). Such a violation further triggers the assessment of statutory interest set forth in K.S.A. 40-2442(d)(2) to be paid in addition to the claimed amount in file # 3217. Pursuant to K.S.A. 40-2,125, CHC shall pay a monetary penalty, due and payable to Kansas Insurance Commissioner on or before the 14th day from the date of this order, in the amount of One Thousand 00/100 Dollars (\$1,000.00) for violations of K.S.A. 40-2404(9)(f). CHC shall also pay the interests on the basis of its final payment in file # 3217 at the rate set forth in K.S.A. 40-2442(d)(2) to the interests' rightful recipient on or before the 14th day from the date of this order.

IT IS SO ORDERED THIS 1st DAY OF February, 2005, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance
BY:

/s/ John W. Campbell
John W. Campbell
General Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Order on this 1st day of February , 2005, by causing the same to be deposited in the United States Mail, registered mail with return-receipt requested postage prepaid, addressed to the following:

Mr. Steve Robino, Compliance
Coventry Health Care of Kansas, Inc.
8320 Ward Parkway
Kansas City, MO 64114

 /s/ Hsingkan Chiang
Hsingkan Chiang, Staff Attorney

NOTICE OF RIGHTS

Coventry Health Care of Kansas, Inc. (“CHC”) is entitled to a hearing pursuant to K.S.A. §77-537, the Kansas Administrative Procedure Act. If CHC desires a hearing, the company must file a written request for a hearing with:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

This request must be filed within fifteen (15) days from the date of service of this Order. If CHC requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

If a hearing is not requested in the time and manner stated above, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. §77-613. In the event that CHC files a petition for judicial review, pursuant to K.S.A. §77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Notice of Rights on this 1st day of February , 2005, by causing the same to be deposited in the United States Mail, registered mail with return-receipt requested postage prepaid, addressed to the following:

Mr. Steve Robino, Compliance
Coventry Health Care of Kansas, Inc.
8320 Ward Parkway
Kansas City, MO 64114

 /s/ Hsingkah Chiang _____
Hsingkan Chiang, Staff Attorney