

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

**In the Matter of** )  
)  
**HUMANADENTAL** )  
**INSURANCE COMPANY** )  
)  
**NAIC #70580** )

**Docket No. 4629-MC**

**CONSENT AGREEMENT AND FINAL ORDER**  
**(Pursuant to K.S.A. 40-222, K.S.A. 40-2,125, K.S.A. 77-501 et seq.)**

Now on this \_\_29th\_\_ day of \_\_September\_\_, 2015, the Kansas Insurance Department (“KID”) and HumanaDental Insurance Company (“HumanaDental”) come before the Commissioner for formal disposition of the above captioned matter. The parties submit this proposed Consent Agreement and Final Order for adoption, rejection, or modification pursuant to the provisions of K.S.A. 40-222.

KID and HumanaDental wish to resolve this matter by entering into this Consent Agreement. HumanaDental hereby waives any and all rights to further administrative adjudication or review of this matter, including any and all rights conferred upon it under K.S.A. 77-501 et seq.

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 40-222 and K.S.A. 40-2,125 and in accordance with K.S.A. 77-501 et seq., the Commissioner hereby adopts the Kansas Insurance Department’s Report of Market Conduct Examination of HumanaDental Insurance Company (“HumanaDental”), as of December 31, 2012 (attached herein as Attachment A) by incorporating the same in its entirety with specific findings stated as follows. This proposed Consent Order admonishes and assesses penalties

against HumanaDental for violating applicable provisions of the Kansas Insurance Code and the Kansas Administrative Code. This Order shall become effective as a Final Order, without further notice, when signed by the Commissioner or his designee and filed of record with the KID.

**Findings of Fact**

1. HumanaDental is located at 1100 Employers Boulevard, De Pere, Wisconsin 54115.
2. HumanaDental has been authorized to transact insurance business in the State of Kansas since February 27, 1961.
3. The Kansas Insurance Department (“Department”) completed a targeted market conduct examination of HumanaDental. The period of examination was January 1, 2010 through December 31, 2012.
4. The Department examined HumanaDental’s operations and management with regard to whether (a) the company has an up-to-date, valid internal or external audit program, (b) the company maintains adequate records, (c) the company is licensed for the lines of business that are being written, and (d) the company cooperated on a timely basis with examiners performing the examination.
5. The Department examined HumanaDental’s complaint handling procedures with regard to whether (a) all complaints are recorded in the required format on the company’s complaint register, (b) adequate complaint handling procedures are in place and communicated to policyholders, (c) adequate steps are taken to finalize and dispose of complaints, and (d) responds to complaints in a timely manner.
6. The Department examined HumanaDental’s claim handling practices with regard to whether procedures are in place to process claims in a timely manner and whether proper documentation is retained to accurately reconstruct claim files.

7. The Department examined HumanaDental's underwriting and rating practices with regard to whether policies, riders and endorsements are issued or renewed accurately, timely, and completely.
8. The Examiner-in-Charge provided HumanaDental a draft of the Market Conduct Examination report ("Report") with a request for HumanaDental's response in the form of written comments, additions, or acceptance.
9. HumanaDental responded to the Report with written comments.
10. The Kansas Commissioner of Insurance has since fully reviewed the Report, which is incorporated as Attachment A.
11. There were several instances of late responses to inquiries of the examiners during the examination by the company.
12. HumanaDental admits the finding set forth in paragraph 11 above.
13. Thirty complaints out of 52 were not acknowledged or responded to within ten working days.
14. HumanaDental admits the finding set forth in paragraph 13 above.
15. Five claims out of 82 were not processed within 30 days of receipt.
16. HumanaDental admits the finding set forth in paragraph 15 above.
17. Two claim files out of 82 lacked documentation such that the justification for claim denial could not be reconstructed.
18. HumanaDental admits the finding set forth in paragraph 17 above.
19. One claim file out of 82 did not provide written notice of why the claim was denied.
20. HumanaDental admits the finding set forth in paragraph 19 above.

21. The Company issued 2,030 Dental Value policies (HI215) (“Dental Value”) group certificates to individuals during the examination period.
22. HumanaDental admits the finding set forth in paragraph 21 above.
23. The Dental Value policy did not contain the required renewal conditions, the required notice to read and correct the application, the required notice of right to 10 day return, and the required provisions regarding the time limit on certain defenses, reinstatement, and cancellation by the insured.
24. HumanaDental admits the findings set forth in paragraph 23 above.
25. The Company issued 3,791 Preventive Plus (“PPO”) group certificates to Kansas consumers through People’s Benefit Alliance (“PBA”), for the purpose of issuing a group dental policy during the examination period. The Commissioner takes the position that PBA does not constitute a valid group for the purpose of issuing a group policy within the meaning of K.S.A. 40-2209(f)(5).
26. HumanaDental admits that it issued 3,791 PPO group certificates to Kansas consumers but neither admits nor denies that PBA was an invalid group.
27. The Company marketed the PPO product on its website to individuals, with the requirement that they join PBA. PBA dues were collected with the premiums. The Market Conduct Examination found that Humana had an exclusive contract for marketing PBA. PBA contends that an individual could join the association without purchasing insurance, and the association would bill them directly. Other than that statement, there is no evidence that there was a mechanism in place to enable individuals to join the association directly without the purchase of insurance during the period covered by the

Market Conduct Examination. During the period covered by the Market Conduct Examination, all Kansas members of PBA were insured by HumanaDental.

- 28. HumanaDental neither admits nor denies the allegations set forth in paragraph 27.
- 29. The Preventive Plus (PPO) policy association fee was included with the premium. When a person purchased dental and vision coverage (sold through Humana Insurance Company), the association fee was collected twice. As a result, the premium rates charged were unreasonable in relation to the benefits provided. HumanaDental knew as early as 2011 that it was collecting double association fees from consumers who purchased dental and vision coverage and did nothing to correct the practice.
- 30. HumanaDental admits the findings set forth in paragraph 29 above.

**Applicable Law**

31..K.S.A. 40-222 provides, in pertinent parts:

(a) Whenever the commissioner of insurance deems it necessary but at least once every five years, the commissioner may make, or direct to be made, a financial examination of any insurance company in the process of organization, or applying for admission or doing business in this state. In addition, at the commissioner's discretion the commissioner may make, or direct to be made, a market regulation examination of any insurance company doing business in this state.

...

(c) For the purpose of such examination, the commissioner of insurance or the persons appointed by the commissioner, for the purpose of making such examination shall have free access to the books and papers of any such company that relate to its business and to the books and papers kept by any of its agents and may examine under oath, which the commissioner or the persons appointed by the commissioner are empowered to administer, the directors, officers, agents or employees of any such company in relation to its affairs, transactions and condition.

...

(g) The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the company to engage in insurance or other business subject to the commissioner's jurisdiction. Any such proceedings for suspension, revocation or refusal of any license or authority shall be conducted in accordance with the provisions of the Kansas administrative procedures act.

32. K.S.A. 40- 225 provides, in pertinent part:

The commissioner may also at any time address any proper inquiries to any such insurance company . . . or its officers in relation to its condition or any other matter connected with its transactions. Each company, society or officer addressed shall promptly and truthfully reply in writing to all such inquiries . . .

33. K.A.R. 40-1-34, Section 6(c) provides:

#### Failure to Acknowledge Pertinent Communications

(c) An appropriate reply shall be made within ten working days on all other pertinent communications from claimants which reasonably suggest that a response is expected.

34. K.S.A. 40-2442 (a) provides:

(a) Within 30 days after receipt of any claim, and amendments thereto, any insurer issuing a policy of accident and sickness insurance shall pay a clean claim for reimbursement in accordance with this section or send a written or electronic notice acknowledging receipt of and the status of the claim. Such notice shall include the date such claim was received by the insurer and state that:

(1) The insurer refuses to reimburse all or part of the claim and specify each reason for denial; or

(2) additional information is necessary to determine if all or any part of the claim will be reimbursed and what specific additional information is necessary.

35. K.A.R. 40-1-34, Section 4 provides:

#### File and Record Documentation

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.

36. K.S.A. 40-2404 provides, 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:

(10) Failure to maintain complaint handling procedures. Failure of any person, who is an insurer on an insurance policy, to maintain a complete record of all the complaints which it has received since the date of its last examination under K.S.A. 40-222, and amendments thereto; but no such records shall be required for complaints received prior to the effective date of this act. The record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaints, the date each complaint was originally received by the insurer and the date of final disposition of each complaint. For purposes of this subsection, "complaint" means any written communication primarily expressing a grievance related to the acts and practices set out in this section.

37. K.A.R. 40-4-3 provides, in pertinent part:

(a) When an individual or family policy does not contain either a brief description or separate statement printed on the first page and on the filing back referring to the policy's renewal conditions, a separately captioned provision shall appear on the first page of the policy setting forth the conditions under which the policy may be renewed. The following captions shall be acceptable descriptions of the applicable renewal provisions:

Renewable At Option of Company  
Guaranteed Renewable to Age 65 or Eligibility  
for Medicare - Premium rates may be  
changed on a class basis  
Non-cancellable and Guaranteed Renewable  
To Age 65  
or  
Eligibility for Medicare

Non-cancellable and Guaranteed Renewable to Age ( ) or - while actively or regularly employed to age ( )\* Guaranteed Renewable to Age ( ) or - while actively or regularly employed to age ( ) - Premium rates may be changed on a class basis\*

38. K.A.R. 40-4-12 provides, in pertinent part:

(a) Each individual policy of accident, sickness, or hospitalization insurance shall not be delivered in this state unless the following notice is attached to the policy:

#### IMPORTANT NOTICE

Please read the copy of the application attached to this policy. Carefully check the application and write to \_\_\_ (Company) \_\_\_, \_\_\_ (Address) \_\_\_, within 10 days, if any information shown on it is not correct and complete, or if any past medical history has been left out of the application. This application is a part of the policy and the policy was issued on the basis that answers to all questions and the information shown on the application are correct and complete.

(b) The statement, preferably in the form of a sticker to be placed on the policy, shall be printed in a prominent manner on paper or in ink of a contrasting color. The insurer may, with the approval of the commissioner, substitute similar wording. This rule shall not apply if the application for insurance is not attached to and made a part of the contract.

39. K.A.R. 40-4-22 provides, in pertinent part:

Each individual accident and health policy, except travel accident policies or policies of a similar type, issued for delivery in this state, shall have printed on, or attached to the first page of the policy, a notice stating that the person to whom the policy is issued shall be permitted to return the policy or contract within at least 10 days of its delivery to the purchaser and to have the premium paid refunded if purchaser dissatisfaction exists. The notice shall be printed in not less than 10 point type and shall be printed in bold face type or in some other manner that distinguishes it from the print otherwise appearing in the policy. When a policyholder or purchaser, pursuant to the notice, returns the policy to the company or association at its home or branch office or to the agent through whom it was purchased, the policy shall be void from the beginning and the parties shall be in the same position as if no policy or contract had been issued.

40. K.S.A. 40-2203(A)(13) provides:

(A) Required provisions. Except as provided in paragraph (C) of this section every such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section, but the insurer, at its option, may substitute for



one or more of such provisions corresponding provisions of different wording approved by the commissioner of insurance which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this subsection or at the option of the insurer, by such appropriate individual or group captions or sub captions as the commissioner of insurance may approve.

(13) A provision as follows: "*Cancellation by insured:* The insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt of such notice or on such later date as may be specified in such notice. In the event of cancellation or death of the insured, the insurer will promptly return the unearned portion of any premium paid. The earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation." When approved by the commissioner, the "cancellation" provision appearing in subsection (B)(8) may be substituted for the above.

41. K.S.A. 40-2209(f)(5) provides:

(f) Group accident and health insurance may be offered to a group under the following basis:

(5) A policy issued to an association which has been organized and is maintained for the purposes other than that of obtaining insurance, insuring at least 25 members, employees, or employees of members of the association for the benefit of persons other than the association or its officers. The term "employees" shall include retired employees. The premiums for the policies shall be paid by the policyholder, either wholly from association funds, or funds contributed by the members of such association or by employees of such members or any combination thereof.

42. K.S.A. 40-2215(d)(1) provides:

Any risk classifications, premium rates, rating formulae, and all modifications thereof applicable to Kansas residents shall not establish an unreasonable, excessive or unfairly discriminatory rate or, with respect to group or blanket sickness and accident policies providing hospital, medical or surgical expense benefits issued pursuant to K.S.A. 40-2209 or 40-2210, and amendments thereto, discriminate against any individuals eligible for participation in a group, or establish rating classifications within a group that are based on medical conditions. In no event shall the rates charged to any group to which this subsection applies increase by more than 75% during any annual period unless the insurer can clearly document a material and significant change in the risk characteristics of the group.

43. K.S.A. 40-2,125 provides, in pertinent part:

(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 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;

...

(3) that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the commissioner will carry out the purposes of the violated or potentially violated provision.

#### **Conclusions of Law**

Based upon the Findings of Fact enumerated in Paragraphs #1 through #15 and the applicable law cited above, **THE COMMISSIONER OF INSURANCE MAKES THE FOLLOWING ORDERS:**

44. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222.
45. The Kansas Insurance Department's ("KID") Report of Market Conduct Examination of HumanaDental as of December 31, 2012 is adopted in its entirety.
46. The Commissioner adopts the fact set forth in paragraph 11 and finds that HumanaDental has violated K.S.A. 40-222(c) and (g) and K.S.A. 40-225.
47. The Commissioner adopts the fact set forth in in paragraph 13 and finds that HumanaDental has violated K.A.R. 40-1-34, Section 6(c).

48. The Commissioner adopts the fact set forth in paragraph 15 and finds that HumanaDental has violated K.S.A. 40-2442(a).
49. The Commissioner adopts the fact set forth in paragraph 17 and finds that HumanaDental has violated K.A.R. 40-1-34, Section 4.
50. The Commissioner adopts the fact set forth in paragraph 19 and finds that HumanaDental has violated K.S.A. 40- 2442(a)(1).
51. The Commissioner adopts the facts set forth in paragraphs 21 and 23 and finds that HumanaDental has violated K.A.R. 40-4-3, K.A.R. 40-4-12, and K.A.R. 40-4-22.
52. The Commissioner adopts the facts set forth in paragraph 25 and 27 and finds HumanaDental has violated K.S.A. 40-2209(f)(5).
53. The Commissioner adopts the facts set forth in paragraph #29 and finds that HumanaDental has violated K.S.A. 40-2215(d)(1).

### **Orders**

Based on the Findings of Fact, Applicable law and conclusions cited above and pursuant to K.S.A. 40-2,125(a)(1), **IT IS ORDERED, BY THE COMMISSIONER OF INSURANCE:**

1. HumanaDental shall pay a monetary penalty of \$5,000.00 for violations of K.R.A. 40-1-34, Section 6(c) based on the failure of the company to respond to 30 complaints in a timely manner.
2. HumanaDental shall pay a monetary penalty of \$10,000.00 for the above-stated violations of K.A.R. 40-4-3(a), K.A.R. 40-4-12(a and b), K.A.R. 40-4-22, and K.S.A. 40-2203(A) resulting from issuance of the Dental Value (HI215) group policy to 2,030 individuals.

3. HumanaDental shall pay a monetary penalty of \$30,000.00 for the above-stated violations of K.S.A. 40-2209(f)(5) by issuing a group policy to an invalid group.
4. HumanaDental shall pay a fine of \$20,000.00 for violations of K.S.A. 40-2215(d)(1) by collecting association fees twice from 626 consumers who purchased both dental and vision coverage resulting in premium rates that were unreasonable in relation to the benefits provided and for failing to correct the practice when it discovered it.
5. HumanaDental shall make timely responses to inquiries from the Department or shall contact the Department (prior to the deadline ) to request an extension.
6. HumanaDental shall ensure a reply is sent on claims related communications within ten working days.
7. HumanaDental shall ensure procedures are in place to process claims in a timely manner.
8. HumanaDental shall ensure proper documentation is retained in order to accurately reconstruct a claim file.
9. HumanaDental shall not sell the Dental Value (HI215) policy to individuals and shall file and obtain approval of appropriate individual policy forms before marketing such a product to individuals in the future.
10. HumanaDental shall file rates and administer coverage for current HI215 certificate holders in compliance with insurance laws and regulations affecting individual policies, including but not limited to K.S.A. 40-2203(A)(13).
11. HumanaDental shall not issue PPO certificates under the PBA group policy. Humana ceased issuing certificates to PBA members in Kansas as of March, 2014.
12. Individuals insured under the PBA group policy shall be rolled over to an individual policy on or before April 1, 2016. There shall be no interruption of coverage or

enrollment fees or other fees associated with the transfer to the individual policy. PPO certificate holders shall be given the notice that they have the right to opt out of coverage under the individual policy.

13. HumanaDental or Humana Insurance Company shall file forms and rates and shall administer coverage for current PPO certificate holders in compliance with insurance laws and regulations affecting individual policies, including but not limited to K.S.A. 40-2203(A)(13).
14. HumanaDental shall provide a notice approved by KID to PPO certificate holders on or before January 1, 2016 that advises the coverage will rollover to individual policies as of April 1, 2016 and that as of that same date they are not required to be members of PBA to maintain the PPO insurance.
15. The April 1, 2016 rollover date and the January 1, 2016 notice date are contingent upon KID approving HumanaDental's rates and forms (which were filed with KID on February 20, 2015) by September 14, 2015.
16. HumanaDental shall cease collecting PBA membership fees as of the rollover to individual policies.
17. HumanaDental shall obtain approval from KID before selling a group policy to an association in Kansas.
18. HumanaDental shall cease collecting multiple association dues and provide refunds to individuals who paid the extra amount due to having multiple types of insurance. The Company shall submit proof of such refunds to the Department within 30 days of the date this Order becomes final.

19. The Commissioner shall retain jurisdiction over this matter to issue any orders deemed necessary.

**IT IS SO ORDERED THIS 29th DAY OF September, 2015, IN THE CITY OF**

**TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



/s/ Ken Selzer  
Ken Selzer  
Commissioner of Insurance

BY:

/s/ Diane Minear  
Diane Minear  
General Counsel

By:

/s/ T. Alan Wheatley  
HumanaDental Insurance Company

Title:

Segment President, Retail

**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of the above and foregoing Consent Agreement and Final Order was served on this 29<sup>th</sup> day of September, 2015, by causing the same to be placed in the United States Mail, first class postage prepaid, addressed to the following:

Lowell Pearson  
Husch Blackwell  
235 East High Street  
P.O. Box 1251  
Jefferson City, MO 65102-1115

\_ /s/ Diane Minear \_\_\_\_\_  
Diane Minear  
General Counsel