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NYS DEPARTMENT OF
FINANCIAL SERVICES



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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In the Matter of

Oscar Insurance Corporation

No. 2021-0109-S

Respondent.
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CONSENT ORDER

WHEREAS, the Department of Financial Services (hereinafter "Department") conducted a review of submissions by Oscar Insurance Corporation (hereinafter "Respondent") required by section 343 of the New York State Insurance Law reporting Respondent's compliance with federal and state mental health and substance use disorder parity laws ("parity laws") for health insurance policies issued in New York; and

WHEREAS, the Department concluded that Respondent's report for the calendar year 2018 shows instances of non-compliance with parity laws; and

WHEREAS, the Department and Respondent are willing to resolve the matters cited herein in lieu of proceeding by notice and hearing.

NOW, THEREFORE, this Consent Order contains the Department's findings and the relief agreed to by the Department and Respondent.

BACKGROUND

1. Respondent is a domestic insurance company authorized by Article 42 of the New York Insurance Law to issue accident and health insurance policies in New York State. Respondent sold comprehensive health insurance policies in New York State in 2017 and 2018.
2. The federal Mental Health Parity and Addiction Equity Act and its implementing regulations ("MHPAEA") requires insurers to provide mental health and substance use disorder ("MH/SUD") benefits in parity with medical and surgical ("med/surg") benefits. An insurer may not apply any quantitative treatment limitation ("QTL") to MH/SUD benefits in any benefit classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all med/surg benefits in the same classification per 42 U.S.C §§ 300gg-26, and 45 C.F.R § 146.136(c)(2)(i).
3. New York Insurance Law §§ 3216(i) and 3221(l) prohibit insurers from applying financial requirements or treatment limitations to substance use disorder benefits that are more restrictive than the predominant financial requirements and treatment limitations applied to substantially all med/surg benefits covered by the policy.
4. Federal regulation 45 C.F.R. § 146.136(h) prohibits the sale of a health insurance coverage that does not comply with MHPAEA.
5. New York Insurance Law § 343 requires insurers to submit information ("343 Reports") about the cost-sharing requirements for policies offered in the individual, small and large group markets, including but not limited to co-pays and coinsurance, for med/surg benefits, and MH/SUD benefits.
6. Respondent submitted 343 Reports for calendar years 2017 and 2018. Based on the information provided by Respondent for calendar year 2018, the Department required Respondent to complete a worksheet for identified policies demonstrating that the financial requirements imposed on MH/SUD benefits complied with MHPAEA and New York Insurance Law. The completed worksheets demonstrated that in calendar year 2018, Respondent sold policies that

either imposed cost-sharing on MH/SUD benefits that was more restrictive than the predominant level imposed on med/surg benefits or imposed a type of cost-sharing on MH/SUD benefits in the outpatient in-network office subclassification that was not imposed on substantially all of the med/surg benefits. Further, Respondent sold policies that imposed a type of cost-sharing on MH/SUD benefits in the outpatient in-network other subclassification that was not imposed on substantially all of the med/surg benefits. In total, twenty-four thousand one hundred and eighty-two (24,182) violations were found on six (6) separate policies, impacting eleven thousand two hundred and forty-two (11,242) insureds, in contravention of 45 CFR § 146.136(h), and New York Insurance Law §§ 3216(i), 3221(l).

FINDINGS

7. Respondent, for calendar year 2018, violated New York State Insurance Law and MHPAEA by selling policies that required insureds to either pay a type of cost share for MH/SUD benefits that was not applied to substantially all med/surg benefits, or pay an amount of cost share for MH/SUD benefits that was not the predominant level of cost share applied to med/surg benefits in the same classification.

VIOLATIONS

8. By reason of the foregoing, Respondent violated New York Insurance Law §§ 3216(i), and 3221(l) and 45 CFR § 146.136(c)(2) and (h).

AGREEMENT

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

9. Respondent shall take all necessary steps to comply with parity laws in the future.

10. No later than thirty (30) days from the date of this Order, Respondent shall submit to the Department a written plan that identifies all insureds impacted by Respondent's violations cited above, the process by which it will determine how much, if any, restitution is owed, including interest to insureds calculated according to New York Insurance Law § 3224-a(c), and a reasonable timeline for reprocessing the claims and refunding any amounts due to its insureds. Thereafter, Respondent shall submit a written report on a monthly basis demonstrating significant progress in identifying and refunding amounts due to impacted insureds. Each report shall include the number of insureds impacted, the number of claims involved, the amount of restitution for each identified insured, and the number of insureds for whom Respondent has provided refunds at the time of the report.
11. For all policies containing violations in calendar year 2018 cited above that were offered in calendar year 2017, Respondent must complete the worksheet referenced in paragraph 6. Respondent shall follow the processes set forth in paragraph 10 for any instances of non-compliance with parity laws for calendar year 2017.

MONETARY PENALTY

12. Within seven (7) days of the execution of this Consent Order, Respondent shall pay a civil penalty of one million dollars (\$1,000,000.00). Respondent 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 Consent Order.
13. The above referenced payment shall be payable to the New York State Department of Financial Services account at JP Morgan Chase Bank, N.A. via electronic transfer in accordance with the Department's instructions.

BREACH OF THE CONSENT ORDER

14. In the event that the Department believes Respondent to be materially in breach of this Consent Order ("Breach"), the Department will provide written notice of such Breach to Respondent and Respondent 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 Department's contention that a Breach has occurred and, to the extent pertinent, to demonstrate that any such Breach is not material or has been cured.

15. Respondent understands and agrees that Respondent's failure to appear before the Department to make the required demonstration within the specified period as set forth herein is presumptive evidence of Respondent's Breach. Upon a finding of Breach, the Department has all the remedies available to it under New York or other applicable laws and may use any and all evidence available to the Department for all ensuing examinations, hearings, notices, orders, and other remedies that may be available under New York or other applicable laws.

OTHER PROVISIONS

16. If Respondent defaults on any of its obligations under this Consent Order, the Department may terminate this Consent Order, at its sole discretion, upon ten (10) days' written notice to Respondent. In the event of such termination, Respondent 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, however denominated, related to the Consent Order, against Respondent or from using in any way the statements, documents, or other materials produced or provided by Respondent prior to or after the date of this Consent Order, including, without limitation, such statements, documents, or other materials, if any, provided for purposes of settlement negotiations.
17. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by Respondent and the Department's own factual examination. To the extent that representations made by Respondent are later found to be materially incomplete or inaccurate, this Consent Order or certain provisions thereof are voidable by the Department in its sole discretion.
18. Upon the request of the Department, Respondent shall provide all documentation and information necessary for the Department to verify compliance with this Consent Order.

19. All notices, reports, requests, certifications, and other communications to the Department regarding 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, 19th Floor
New York, NY 10004-1511
Attention: My Chi To, Executive Deputy Superintendent for Insurance
Email: Mentalhealthparity@dfs.ny.gov


If to the Company:

Oscar Insurance Corporation
75 Varick Street
5th Floor
New York, NY 10013
Attn: Hank Greenberg, General Counsel
Email: legal@hioscar.com


20. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
21. Respondent waives its right to further notice and hearing in this matter as to any allegations of past violations up to and including the Effective Date and agrees that no provision of the Consent Order is subject to review in any court or tribunal outside the Department.
22. This Consent Order may not be amended except by an instrument in writing signed on behalf of all parties to this Consent Order.
23. This Consent Order constitutes the entire agreement between the Department and Respondent relating to the violations identified herein and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order. No 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. 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.
25. Upon execution by the parties to this Consent Order, no further action will be taken by the Department against Respondent for the conduct set forth in this Consent Order, subject to the terms of this Consent Order.
26. 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 So Ordered by the Superintendent of Financial Services.

Oscar Insurance Corporation

By:  Dated: 8/2/21
Dorian Needham
VP, Compliance and Regulatory Affairs

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By:  Dated: 12/7/21
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Executive Deputy Superintendent for Insurance

THE FOREGOING CONSENT ORDER IS HEREBY APPROVED.

By:  Dated: 12/7/21
Adrienne A. Harris
Acting Superintendent of Financial Services