



**MARKET CONDUCT REPORT ON EXAMINATION
OF
HEALTHNOW NEW YORK INC.
AS OF**

DECEMBER 31, 2018

EXAMINER:

OCTOBER 3, 2022

DATE OF REPORT:

TOMMY KONG, CPCU, CFE, PIR

TABLE OF CONTENTS

<u>ITEM NO.</u>		<u>PAGE NO.</u>
1.	Scope of the examination	2
2.	Description of the Plan	3
3.	Advertising	4
4.	Disaster recovery and business continuity plans	4
5.	Early Intervention Program	5
6.	Preventive services	6
7.	Subsequent events	6
8.	Compliance with prior report on examination	8
9.	Summary of comments and recommendations	10

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

June 30, 2022

Honorable Adrienne A. Harris
Superintendent of Financial Services
Albany, New York 12257

Madam:

Pursuant to the provisions of the New York Insurance Law, and acting in accordance with the instructions contained in Appointment Number 32046, dated February 20, 2020, attached hereto, I have made an examination into the affairs of HealthNow New York Inc., a not-for-profit health service corporation licensed pursuant to the provisions of Article 43 of the New York Insurance Law, as of December 31, 2018, and submit the following report thereon.

The examination was conducted remotely, rather than at the home office of HealthNow New York Inc. located at 257 West Genesee Street, Buffalo, New York.

Wherever the designation "HealthNow" or the "Plan" appears herein, without qualification, they should be understood to indicate HealthNow New York Inc.

Wherever the designation the "Department" appears herein, without qualification, it should be understood to indicate the New York State Department of Financial Services

1. SCOPE OF THE EXAMINATION

The previous market conduct examination of HealthNow New York Inc. was conducted as of December 31, 2013. This market conduct examination of the Plan was performed to review the manner in which HealthNow conducts its business practices and fulfills its contractual obligations to policyholders and claimants, and covers the five-year period January 1, 2014, through December 31, 2018. Transactions occurring subsequent to December 31, 2018, were reviewed where deemed appropriate by the examiner.

This report on examination contains the significant findings of the examination and is confined to comments on those matters which involve departures from laws, regulations, or rules, or which are deemed to require an explanation or description. The examiner reviewed the corrective actions taken by the Plan with respect to the recommendations contained in the prior market conduct report on examination. The results of the examiner's review are contained in Item No. 8 of this report.

A separate examination of the financial condition of HealthNow New York Inc., as of December 31, 2018, was performed. A separate financial report on examination for HealthNow was submitted thereon. As of the date of this report on examination, the Plan's separate financial report on examination was submitted and is currently in review.

2. DESCRIPTION OF THE PLAN

HealthNow New York Inc. is a not-for-profit health service corporation organized under the provisions of the Membership Corporation Law of the State of New York and Article 43 of the New York Insurance Law. HealthNow was incorporated in the State of New York on September 9, 1939 and commenced business on March 15, 1940. The Plan is a 100% controlled subsidiary of HealthNow Systems, Inc. (“HNS”), a New York non-profit corporation and a non-operating holding company. HNS is the sole member of the Plan.

HealthNow also established operations in the Albany, New York area as a separate division pursuant to its merger with Whole Health Insurance Network Inc. on December 30, 1992. Concurrent with the date of the merger through May 1, 1996, the Plan operated under the corporate name, Blue Cross and Blue Shield of Western New York, Inc. The Plan subsequently effectuated name changes to New York Care Plus Insurance Company and then its present name of HealthNow New York Inc. on May 2, 1996, and October 1, 1998, respectively.

As of December 31, 2018, the Plan operated under the names of Blue Cross and Blue Shield of Western New York within its Western New York division, HealthNow New York Inc. within its Central New York division, and Blue Shield of Northeastern New York within its Eastern New York division. On August 1, 1985, the Plan began the operations of Community Blue, a health maintenance organization authorized pursuant to Article 44 of the New York Public Health Law. Community Blue, an independent practice association model health maintenance organization, functions as a line-of-business of the Plan. The Plan’s health maintenance operations are marketed under the name “Community Blue” in the Buffalo, New York area and under the name “HealthNow” in the Albany, New York area.

3. ADVERTISING

Part 215.12(a) of Insurance Regulation No. 34 (11 NYCRR 215.12(a)) states:

“An advertisement which is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond those limits.”

HealthNow’s website was reviewed for compliance with Insurance Regulation No. 34 (11 NYCRR 215.12(a)). It was noted from the review that the Plan’s website provided no indication, of the jurisdictions where its advertised products are approved.

It is recommended that HealthNow comply with Part 215.12(a) of Insurance Regulation No. 34 (11 NYCRR 215.12(a)) by identifying, on its website, the geographic limits of the jurisdiction where the advertised products are approved.

4. DISASTER RECOVERY AND BUSINESS CONTINUITY PLANS

HealthNow’s disaster recovery and business continuity plans were reviewed to determine whether the plans were adequate and kept up to date. It was noted from the review that HealthNow does not have, as a potential risk, the effects of pandemics on its business operations and detail procedural responses to such risk.

It is recommended that HealthNow update its disaster recovery and business continuity plans by incorporating the development of detailed procedural responses to the effects of pandemics on its business operations.

5. EARLY INTERVENTION PROGRAM

The early intervention claims data, relative to claims adjudicated between January 1, 2018, to December 31, 2018, consisted of a population of 74,302 claims was reviewed for wrongfully denied, duplicate payments, and adjustments to the claims data.

It was noted from the analysis of the above population of 74,302 claims that there were 193 claims that were potentially overpaid. Of the 193 claims, it was discovered that 167 of those claims were overpaid. Of the 167 claims, 50 of those claims were paid at a higher rate to providers due to the claims system being programmed with incorrect type-of-service codes. The remaining 117 claims out of the 167 claims were overpaid due to various internal reasons.

Section 2559(3)(a)(iii) of the New York Public Health Law states:

“Providers shall utilize the department’s fiscal agent and data system for claiming payment for evaluations and services rendered under the early intervention program.”

It was also noted that there were 63 duplicate paid claims between HealthNow and the New York Department of Health’s fiscal agent from the analysis of the above population of 74,302 claims.

It is recommended that HealthNow comply with Section 2559(3)(a)(iii) of the New York Public Health Law by informing its providers to submit their early intervention claims to the New York Department of Health’s fiscal agent when claiming payments for evaluations and services rendered.

It is also recommended that HealthNow follow the guidance established by the New York Department of Health for the Early Intervention Program.

6. PREVENTIVE SERVICES

A random sample of large group contracts was selected and reviewed to determine whether the contracts were in compliance with the preventive health service requirements mandated by the Federal Affordable Care Act (“ACA”).

It was noted that not all contracts in the sample contained the preventive health services model language from the ACA. According to HealthNow, legacy contracts (prior to the ACA) do not have the ACA model language, instead a preventive services rider was issued for legacy contracts, as the schedule of benefits accompanying the legacy contracts was not updated with the preventive health services coverages mandated by ACA. However, it was noted from the sample review that, for legacy contracts, the Plan failed to show that such rider was provided to insureds and attached to their legacy contracts.

It is recommended that HealthNow provide its insureds with legacy contracts the preventive services rider or an updated schedule of benefits with the preventive services coverages mandated by the Federal Affordable Care Act.

7. SUBSEQUENT EVENTS

On June 19, 2020, Highmark Inc., a Pennsylvania not-for-profit corporation, and Highmark Health, a Pennsylvania not-for-profit corporation (collectively, “Highmark”) filed an application with the Department and the New York State Department of Health (“DOH”) for approval of Acquisition of Control of HealthNow New York Inc., d/b/a Blue Cross Blue Shield of Western New York, Community Blue, and Blue Shield of Northeastern New York, pursuant to Section

1506 of the New York Insurance Law and Part 98-1.9 (10 NYCRR 98-1.9) of the Department of Health, respectively.

The proposed affiliation allows Highmark to become the sole member of HealthNow. HealthNow will continue operating as a separate New York not-for-profit corporation, subject to regulation by the Department, as well as the New York Department of Health. Highmark Health will become the primary Blue Cross and Blue Shield licensee for Blue Cross Blue Shield of Western New York and the primary Blue Shield licensee for Blue Shield of Northeastern New York.

On June 12, 2020, Highmark and HealthNow entered into a Business Affiliation Agreement. The proposed affiliation requires restating the Certificate of Incorporation and amending the bylaws of HealthNow to that Highmark Inc. is the sole member and have certain reserved rights and powers, including the power and authority to elect directors of HealthNow.

After the proposed affiliation, HealthNow changed its legal name to Highmark Western and Northeastern New York Inc. The Department approved the legal name change on January 26, 2021. HealthNow also changed its assumed or d/b/a names to Highmark Blue Cross Blue Shield of Western New York and Highmark Blue Shield of Northeastern New York. The Department approved the assumed name change on February 5, 2021. The New York State Department of Health reissued the Certificate of Authority on March 8, 2021 to reflect the aforementioned legal and assumed name changes.

The Acquisition of Control of HealthNow by Highmark was approved by the Department and by the DOH, respectively on February 24, 2021.

8. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior market conduct report on examination, as of December 31, 2013, contained the following twelve (12) comments and recommendations (page number refers to the prior market conduct report on examination):

<u>ITEM NO.</u>	<u>PAGE NO.</u>
<u>Agents and Brokers</u>	
1. It is recommended that HealthNow comply with Part 243.2 of Insurance Regulation No. 152 (11 NYCRR 243.2) by maintaining a copy of its producers' license, in instances where the producers' licensure status does not appear on the Department's website. <i>The Plan has complied with this recommendation.</i>	4
2. It is recommended that HealthNow comply with Section 2112(a) of the New York Insurance Law by issuing a certificate of appointment for all appointed producers. <i>The Plan has complied with this recommendation.</i>	5
3. It is also recommended that HealthNow ensure that certificates of appointment are filed with the Department within the time frame prescribed by Section 2112(b) of the New York Insurance Law. <i>The Plan has complied with this recommendation.</i>	5
4. It is recommended that HealthNow provide, within fifteen (15) days after providing notification to the Department, a copy of the statement filed with the Department to the insurance producer's last known address, as required by Section 2112(d) of the New York Insurance Law. <i>The Plan has complied with this recommendation.</i>	6
<u>Complaint Log</u>	
5. It is recommended that HealthNow include all the required elements prescribed by Insurance Circular Letter 11 (1978) in its complaint log. <i>The Plan has complied with this recommendation.</i>	7

ITEM NO.**PAGE NO.**Declination Practices

6. It is recommended that HealthNow maintain its declination files for the time frame prescribed by Part 243.2(b) of Insurance Regulation No. 152 (11 NYCRR 243.2(b)). 8
The Plan has complied with this recommendation.
7. It is also recommended that HealthNow provide applicants with a written specific reason(s) for the declination. 9
The Plan has complied with this recommendation.

Grievances

8. It is recommended that HealthNow prepare its Schedule M, Parts 2 and 3 in accordance with the instructions to the New York Supplement. 9
The Plan has complied with this recommendation.

Utilization Review

9. It is recommended that HealthNow provide a written acknowledgment for all appeal filings within the time frame prescribed by Section 4904(c) of the New York Insurance Law. 10
The Plan has complied with this recommendation.

Prompt Pay Law

10. It is recommended that HealthNow take greater care with regards to the processing of claims. 12
The Plan has complied with this recommendation.
11. It is recommended that HealthNow take greater care when processing the denial of claims. 12
The Plan has complied with this recommendation.

Review of Medical Loss Ratio Reporting Form and Supplemental Healthcare Filing

12. It is recommended that HealthNow develop controls and business processes sufficient to report accurate quality improvement expenses relative to business related to uninsured plans for the purpose of reconciling such amounts reported on its filed Supplemental Healthcare Exhibit with the amounts reported on its MLR filing form, as per the requirements of 45 CFR Part 158. 14
The Plan has not complied with this recommendation. A similar recommendation is included within the separate financial report on examination.

9. **SUMMARY OF COMMENTS AND RECOMMENDATIONS**

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Advertisement</u>	
It is recommended that HealthNow comply with Part 215.12(a) of Insurance Regulation No. 34 (11 NYCRR 215.12(a)) by identifying, on its website, the geographic limits of the jurisdiction of where the advertised products are approved.	4
B. <u>Disaster Recovery and Business Continuity Plans</u>	
It is recommended that HealthNow update its disaster recovery and business continuity plans by incorporating the development of detailed procedural responses to the effects of pandemics on its business operations.	4
C. <u>Early Intervention Program</u>	
i. It is recommended that HealthNow comply with Section 2559(3)(a)(iii) of the New York Public Health Law by informing its providers to submit their early intervention claims to the New York Department of Health’s fiscal agent when claiming payments for evaluations and services rendered.	5
ii. It is also recommended that HealthNow follow the guidance established by the New York Department of Health for the Early Intervention Program.	5
D. <u>Preventive Services</u>	
It is recommended that HealthNow provide its insureds with legacy contracts the preventive services rider or an updated schedule of benefits with the preventive services coverages mandated by the Federal Affordable Care Act.	6

Respectfully submitted,

Tommy Kong, CPCU, CFE, PIR
Financial Services Examiner 2

STATE OF NEW YORK)
)SS.
)
COUNTY OF NEW YORK)

Tommy Kong, being duly sworn, deposes and says that the foregoing report submitted by him is true to the best of his knowledge and belief.

Tommy Kong, CPCU, CFE, PIR

Subscribed and sworn to before me
this _____ day of _____ 2022

NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES

I, LINDA A. LACEWELL, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

Tommy Kong

as a proper person to examine the affairs of the

HealthNow New York Inc.

and to make a report to me in writing of the said

Company

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name
and affixed the official Seal of the Department
at the City of New York

this 20th day of February, 2020

LINDA A. LACEWELL
Superintendent of Financial
Services

By:



Lisette Johnson
Bureau Chief
Health Bureau

