



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

----- X

In the Matter of

Wellfleet New York Insurance Company

No. 2022-0250-S

Respondent.

----- X

CONSENT ORDER

WHEREAS, the Department of Financial Services (hereinafter “Department”) conducted an investigation of Wellfleet New York Insurance Company (hereinafter “Respondent”) regarding the use of unapproved rates in the student health insurance market.

WHEREAS, the Department concluded that Respondent’s use of unapproved rates constituted a violation of Insurance Law § 3231(d) and 11 NYCRR 52.21(f), which provide that no insurer shall enter into any contract unless and until it has filed premium rates and has obtained the Superintendent’s approval.

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 domiciled in New York and is licensed as a health insurance company in New York. Pursuant to Insurance Law §1113(a)(3), Respondent is authorized to write accident and health insurance in New York. Respondent offers student blanket health insurance policies to institutions of higher education in New York.
2. For the 2019-2020 academic year, Respondent issued student blanket health insurance policies to twenty-five institutions of higher education in New York.
3. For the 2020-2021 academic year, Respondent issued student blanket health insurance policies to twenty-five institutions of higher education in New York
4. As part of the Department's annual review of student health insurers in the New York market, Respondent provided the names of the institutions of higher education to which Respondent issued student blanket health insurance policies, the number of insureds covered under the policies, the annual premium, the premium rate development for each plan, and copies of any brochures advertising the student blanket health insurance delivered to the students.
5. For the 2019-2020 academic year, for nine institutions of higher education, Respondent deviated from the rating factors set forth in Respondent's premium rate manual filed with the Department, including changes to experience year weights factors, credibility factors, plan adjustment factors and improper capping of experience rate increases. Experience year weights are used to assign the relative importance each prior year has in setting the future premium rates. Credibility factors are used to measure the extent to which prior experience of the insured group can be used to set future premium rates. The plan adjustment factor is used to adjust the prior years' experience to reflect a change in plan design such as cost-sharing. In one instance, an extra cap was placed on the formula for the rate increase expected based on experience. In addition, the Respondent miscalculated the Affordable Care Act tax for one policyholder. Respondent's changes to the rating factors resulted in Respondent charging an unapproved premium rate to students covered under the student blanket health insurance policies. Respondent's actions resulted in three institutions of higher education being overcharged. Respondent overcharged two hundred

twenty-six (226) students and dependents for a total of four thousand five hundred and forty-five dollars (\$4,545).

6. For the 2020-2021 academic year, for twenty-three institutions of higher education, Respondent deviated from the rating factors set forth in Respondent's premium rate manual filed with the Department, including changes to the PPO fee, experience year weights, completion factors, credibility factors. The PPO fee is the cost of leasing a provider network. Experience year weights are used to assign the relative importance each prior year has in setting the future premium rates. Completion factors are used to project the total amount of claims that will eventually be paid for a given policy year. Credibility factors are used to measure the extent to which prior experience of the insured group can be used to set future premium rates. In addition, changes were made to commissions, the provider network assumptions, and the ACA Tax for individual cases. Respondent's changes to the rating factors after the rates were filed with the Department, resulted in Respondent charging an unapproved premium rate to students covered under the student blanket health insurance policies. Respondent's actions resulted in eight institutions of higher education being overcharged. Respondent overcharged one thousand seven hundred and forty-eight (1,748) students and dependents for a total of seventy-nine thousand seven hundred and eighty-eight dollars (\$79,788).

FINDINGS

7. Respondent, for the 2019-2020 and 2020-2021 academic years, violated Insurance Law § 3231(d) and 11 NYCRR 52.21(f) by entering into agreements with thirty-two institutions of higher education using premium rates that deviated from the approved methodology and included premium rating factors not on file with the Department. Respondent's actions resulted in Respondent charging an unapproved premium rate to students covered under the student blanket health insurance policies. In addition, Respondent's actions in using unapproved premium rates may have gained Respondent an unfair competitive advantage in the student blanket health insurance market in New York.
8. Respondent's violations during the aforementioned time period contravened New York Insurance Law and Regulation.

VIOLATIONS

9. By reason of the foregoing, Respondent violated Insurance Law § 3231(d) and 11 NYCRR 52.21(f).

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:

10. Respondent shall take all necessary steps to comply with New York Insurance Law with respect to the use of the prior approval process for rates in the student health insurance market.
11. Respondent shall immediately initiate actions to reimburse students who were overcharged premiums and provide quarterly status reports to the Department demonstrating that the two hundred twenty-six (226) students and dependents enrolled in the student blanket health insurance policy for the 2019-2020 academic year have been provided retroactive reimbursement totaling four thousand five hundred and forty-five dollars (\$4,545) and the one thousand seven hundred and forty-eight (1,748) students and dependents enrolled in the student blanket health insurance policy for the 2020-2021 academic year have been provided retroactive reimbursement totaling seventy-nine thousand seven hundred and eighty-eight dollars (\$79,788).

MONETARY PENALTY

12. Within seven (7) days of the execution of this Consent Order, Respondent shall pay a civil penalty of five hundred thousand dollars (\$500,000). 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 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: John F. Finston, Executive Deputy Superintendent for Insurance

If to the Company:

Wellfleet New York Insurance Company
5814 Reed Road
Fort Wayne, IN 46835
Attention: Drew DiGiorgio, Chief Executive Officer

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.

Wellfleet New York Insurance Company

By: /s/ Drew DiGiorgio Dated: March 31, 2023

Drew DiGiorgio
Chief Executive Officer

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By: /s/ John F. Finston Dated: May 4, 2023

John F. Finston
Executive Deputy Superintendent for Insurance

THE FOREGOING CONSENT ORDER IS HEREBY APPROVED.

By: /s/ Adrienne A. Harris Dated: May 10, 2023

Adrienne A. Harris
Superintendent of Financial Services