REPORT ON MARKET CONDUCT EXAMINATION
OF
INDEPENDENT HEALTH ASSOCIATION, INC.,
AND
INDEPENDENT HEALTH BENEFITS CORPORATION
AS OF

DECEMBER 31, 2020

EXAMINER: **GAIL A. ROSS**

DATE OF REPORT: **MAY 25, 2023**

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May 25, 2023

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

Madam:

Pursuant to the requirements of the New York Insurance Law and acting in accordance with the instructions contained in Appointment Numbers 32300 and 32302, dated September 15, 2021, annexed hereto, I have made an examination into the affairs of Independent Health Association, Inc., a not-for-profit health maintenance organization certified pursuant to the provisions of Article 44 of the New York Public Health Law, and its wholly-owned subsidiary, Independent Health Benefits Corporation, 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, 2020, and respectfully submit the following report thereon.

Due to the COVID-19 Pandemic, the examination was conducted offsite.

Wherever the designations "IHA" or the "HMO" appear herein, without qualification, they should be understood to indicate Independent Health Association, Inc.

Wherever the designations “IHBC” or the “Plan” appear herein, without qualification, they should be understood to indicate Independent Health Benefits Corporation.

Wherever the designations “IHA Companies” or the “Companies” appear herein, without qualification, they should be understood to indicate Independent Health Association, Inc. and Independent Health Benefits Corporation, collectively.

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 prior examination of the IHA Companies was conducted as of December 31, 2015. This market conduct examination of the IHA Companies covers the five-year period January 1, 2016, through December 31, 2020. Market conduct activities occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

This report on examination is confined to comments on those matters which involve departures from laws, regulations or rules, or which are deemed to require explanation or description.

A review was also made to ascertain what actions were taken by IHA Companies regarding the comments and recommendations related to the market conduct items contained in the prior report on examination. The results of the examiner's review are contained in Item No. 4 of this report.

Concurrent risk-focused examinations regarding the financial condition of the IHA Companies were conducted as of December 31, 2020. Separate financial reports on examination for the IHA companies have respectively been submitted thereon.

2. DESCRIPTION OF THE COMPANIES

Independent Health Association, Inc.

Independent Health Association, Inc., is a not-for-profit corporation that was incorporated in the State of New York on March 11, 1977. On February 9, 1980, IHA received authorization to operate as a health maintenance organization ("HMO") under Title XIII, Health Maintenance

Organization Act of 1973, PL-93-222, as amended, to provide hospital and other health care benefits to its subscribers. IHA received a certificate of authority from New York State Department of Health ("DOH") pursuant to Article 44 of the New York Public Health Law on February 11, 1980. IHA commenced its HMO business in the State of New York on February 11, 1980. The HMO is exempt from Federal income taxes pursuant to Section 501(c)(4) of the Internal Revenue Code. The HMO is also exempt from New York State income taxes.

IHA provides the following health insurance products: Commercial Insurance products under Article 44 of the New York Public Health Law, Medicaid Managed Care products as administered by New York State, including Child Health Plus (CHP), Health and Recovery Plans ("HARP"), the Essential Plan, and Medicare Managed Care products as administered by Centers for Medicare and Medicaid Services.

Independent Health Benefits Corporation

Independent Health Benefits Corporation is a not-for-profit health service corporation that was formed on October 26, 1994, under the name Integrated Benefits Corporation ("IBC"). IBC was licensed by the Department effective June 20, 1995, pursuant to Article 43 of the New York Insurance Law and commenced writing business on December 6, 1995. Subsequently, IBC changed its corporate name to Independent Health Benefits Corporation, effective, May 10, 2001. IHBC is a taxable entity for Federal income tax purposes. IHBC is a 100% controlled subsidiary of Independent Health Association, Inc.

IHBC provides Point-of-Service, Indemnity, Medicare Advantage, Healthy New York, and Preferred Provider Organization medical benefits to its members.

3. CLAIMS REVIEW

A. Standards For Prompt, Fair and Equitable Settlement of Claims for Health Care and Payments for Health Care Services ("Prompt Pay Law")

Section 3224-a of the New York Insurance Law, "Standards for prompt, fair and equitable settlement of claims for health care and payments for health care services" ("Prompt Pay Law"), requires all insurers to pay undisputed claims within 30 days of receipt that are transmitted via the internet or electronic mail, and within 45 days of receipt for a claim submitted by other means such as paper or facsimile. If such undisputed claims are not paid within the respective 30 or 45 days of receipt, interest may be payable.

A review of the IHA Companies' compliance with Section 3224-a was conducted during the examination. Although there were instances of certain claims being paid beyond 30 or 45 days of receipt, such instances in total were immaterial.

B. Tobacco Use Counseling And Interventions

The Affordable Care Act ("ACA") Implementation FAQs (Part XIX), guidance dated May 2, 2014, states, in part:

> "a) the United State Preventive Services Task Force (USPST recommends that clinicians ask all adults about tobacco use, advise them to stop using tobacco, and provide behavioral interventions and FDA-approved pharmacotherapy for cessation to adults who use tobacco products.
>
> b) HHS will consider a health plan to be in compliance with the requirement to cover tobacco use counseling and interventions, if, for example, the health plan covers without cost-sharing:
>
> 1. Screening for tobacco use; and,
> 2. For those who use tobacco products, at least two tobacco cessation attempts per year…

> For this purpose, covering a cessation attempt includes coverage for:
>
> - Four tobacco cessation counseling sessions of at least 10 minutes each (including telephone counseling, group counseling and individual counseling) without prior authorization; and
> - All Food and Drug Administration (FDA)-approved tobacco cessation medications (including both prescription and over-the-counter medications) for a 90-day treatment regimen when prescribed by a health care provider without prior authorization.

The examiner noted that IHBC had 11 out of 29,581 preventive care claims for FDA - approved tobacco cessation medications, where a copay was charged, in violation of Section 2713 of the Public Health Service Act ("PHS Act") and the ACA Implementation FAQs (Part XIX) May 2, 2014.

It is recommended that IHBC comply with Section 2713 of the Public Health Service Act and the ACA Implementation FAQs (Part XIX) dated May 2, 2014, and not impose cost-sharing to FDA-approved tobacco cessation medications.

C. Coverage of FDA-Approved Contraceptive

The ACA Implementation FAQs (Part 31), guidance dated April 20, 2016, states, in part:

> "The HRSA Guidelines include a recommendation for all FDA-approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity, as prescribed by a health care provider. On February 20, 2013, the Departments issued an FAQ stating that the HRSA Guidelines ensure women's access to the full range of FDA approved contraceptive methods including, but not limited to, barrier methods, hormonal methods, and implanted devices, as well as patient education and counseling, as prescribed by a health care provider. The FAQ further clarified that plans and issuers may use reasonable medical management techniques to control costs and promote efficient delivery of care, such as covering a generic drug without cost sharing and imposing cost sharing for equivalent branded drugs…
>
> On May 11, 2015, the Departments issued an FAQ clarifying that plans and issuers must cover without cost sharing at least one form of

> contraception in each of the methods (currently 18) identified for women by the FDA. The FAQ further clarified that to the extent plans and issuers use reasonable medical management techniques within a specified method of contraception, plans and issuers must have an easily accessible, transparent, and sufficiently expedient exceptions process that is not unduly burdensome on the individual or provider (or other individual acting as a patient's authorized representative, including a provider) to ensure coverage without cost sharing of any service or FDA-approved item within the specified method of contraception."

The examiner noted that IHBC had 13 out of 29,581 preventive care claims for contraceptive generic drug where cost-sharing was imposed, in violation of Section 2713 of the Public Health Service Act and the ACA Implementation FAQs guidance dated April 20, 2016.

It is recommended that IHBC comply with Section 2713 of the Public Health Service Act and the ACA Implementation FAQs guidance, dated April 20, 2016, and not impose cost-sharing on contraceptive generic drug.

4. COMPLIANCE WITH PRIOR REPORTS ON EXAMINATION

The prior market conduct report on examination included eleven (11) recommendations detailed as follows (page number refers to the prior reports on examination):

ITEM NO.		PAGE NO.
	ACA Out-of-Network Provider Directory	
1.	It was recommended that the IHA Companies comply with Sections 4324(a)(17) of the New York Insurance Law and 4408.1(r) of the New York Public Health Law by including information relative to network physicians' affiliations with the participating hospitals listed in IHA's and IHBC's Participating Provider Directory website. *The Companies have complied with this recommendation*.	5
	Fraud Warning Statement	
2.	It was recommended that the IHA Companies comply with Section 403(d) of the New York Insurance Law and Insurance Regulation No. 95 (11 NYCRR 86) by updating their general claim form to include the requisite fraud warning statement. *The Companies have complied with this recommendation*.	6
	Grievances and Utilization Review Reporting	
3.	It was recommended that the IHA Companies comply with 29 C.F.R Section 2560.503-1(g)(1)(iv) by including in their adverse determination notices the statement of the insured's/enrollee's right to bring a civil action under section 502(a) ERISA. *The Companies have complied with this recommendation*.	8

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ITEM NO. **PAGE NO.**

5. SUMMARY OF COMMENTS AND RECOMMENDATIONS

ITEM		PAGE NO.
	Claims Review	
A.	It is recommended that IHBC comply with Section 2713 of the Public Health Service Act and the ACA Implementation FAQs (Part XIX) dated May 2, 2014, and not impose cost-sharing to FDA-approved tobacco cessation medications.	6
B.	It is recommended that IHBC comply with Section 2713 of the Public Health Service Act and the ACA Implementation FAQs guidance, dated April 20, 2016, and not impose cost-sharing on contraceptive generic drug.	7

Respectfully submitted,

_____
Gail A Ross
Financial Services Examiner 2

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

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

_____
Gail A Ross

Subscribed and sworn to before me
This ____ day of _____ 2023

APPOINTMENT NO. **32300**

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, ***Adrienne A. Harris****, Acting 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:*

Gail Ross

as a proper person to examine the affairs of

Independent Health Association, Inc.

and to make a report on organization to me in writing of the condition of said

HMO

with such other information as she 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 15th day of September, 2021

Adrienne A. Harris,
Acting Superintendent of Financial Services

By: Alice W. McKenney

Alice McKenney
Deputy Bureau Chief
Health Bureau

APPOINTMENT NO. **32302**

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, ***Adrienne A. Harris****, Acting 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:*

Gail Ross

as a proper person to examine the affairs of

Independent Health Benefits Corporation

and to make a report on organization to me in writing of the condition of said

Plan

with such other information as she 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 15th day of September, 2021

Adrienne A. Harris,
Acting Superintendent of Financial Services

By: Alice W. McKenney

Alice McKenney
Deputy Bureau Chief
Health Bureau