MARKET CONDUCT REPORT ON EXAMINATION
OF
SENIOR WHOLE HEALTH OF NEW YORK, INC

As of DECEMBER 31, 2021

EXAMINER: **GAIL A. ROSS**

DATE OF REPORT: **JANUARY 29, 2024**

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January 29, 2024

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

Madam:

Pursuant to the requirements of the New York Insurance Law and New York State Public Health Law, and acting in accordance with the instructions contained in Appointment Number 32437, dated July 28, 2022, attached hereto, I have made an examination into the affairs of Senior Whole Health of New York, Inc., a for profit health maintenance organization certified pursuant to the provisions of Article 44 of the New York State Public Health Law, as of December 31, 2021, and respectfully submit the following report thereon.

The examination was conducted remotely due to restrictions relating to the COVID-19 pandemic.

Wherever the designations "SWH" or the "HMO" appear herein, without qualification, they should be understood to indicate Senior Whole Health of 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 prior examination of the HMO was conducted as of December 31, 2017. This market conduct examination of the HMO was performed to review the manner in which SWH conducts its business practices and fulfills its contractual obligations to policyholders and claimants, and covers the four-year period January 1, 2018, through December 31, 2021. Market conduct activities occurring subsequent to this period 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. 4 of this report.

A concurrent financial examination regarding the financial condition of the HMO was conducted as of December 31, 2021, a separate report on examination was issued thereon.

2. DESCRIPTION OF THE HMO

The HMO is a for-profit stock company that was incorporated in the State of New York on August 1, 2006. The HMO received a Certificate of Authority ("Certificate"), effective August 17, 2006, from the New York State Department of Health ("DOH") to operate as a health maintenance organization pursuant to Article 44 of the New York State Public Health Law. In addition, the Certificate also empowered the HMO to enroll members covered under the Medicare

program. Subsequent to the HMO commencing business on January 1, 2007, DOH granted the HMO an amended Certificate, effective September 15, 2007, which permitted the HMO to participate in New York State's Medicaid Advantage Program.

The HMO provides managed health care services to dual-eligible members who qualify to receive Medicare and Medicaid. The HMO also received authorization from the Centers for Medicare and Medicaid Services to operate as a "Special Needs Plan" ("SNP") to its members. SNPs' were created by the United States Congress within the Medicare Modernization Act of 2003 as a new type of Medicare managed care plan which focus on certain groups of Medicare beneficiaries: the institutionalized, dual-eligible (Medicare and Medicaid) and beneficiaries with severe or disabling chronic conditions. Beginning in October 2012, DOH granted the HMO approval to write Managed Long-Term Care Plan insurance.

The HMO obtained its Certificate from the DOH as a Medicaid Advantage Plan on September 15, 2007. The amended Certificate, as of October 19, 2017, allowed the HMO to offer Medicare and Medicaid Advantage Plus only, in the following six (6) counties in New York City:

Bronx	Nassau	Westchester
Kings	Queens	New York

As of October 19, 2017, the HMO was also approved to offer the Fully Integrated Duals Advantage ("FIDA") product, serving the dually eligible population in the following four (4) counties in New York City:

Bronx	New York	Kings	Queens

As of October 19, 2017, SWHNY was also approved to operate as a partial capitation Managed Long-Term Care Plan serving the Medicaid population in the following five (5) counties in New York City:

Bronx	New York	Westchester	Kings	Queens

3. STANDARDS FOR PROMPT, FAIR AND EQUITABLE SETTLEMENT OF CLAIMS 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.

Section 3224-a(a) of the New York Insurance Law states, in part:

> "Except in a case where the obligation of an insurer or an organization or corporation licensed or certified pursuant to … article forty-four of the public health law to pay a claim submitted by a policyholder or person covered under such policy ("covered person") or make a payment to a health care provider is not reasonable clear, or when there is a reasonable basis supported by specific information available for review by the superintendent that such claim or bill for health care services rendered was submitted fraudulently, such insurer or organization or corporation shall pay the claim to a policyholder or covered person or make a payment to a health care provider within thirty days of receipt of a claim or bill for services rendered that is transmitted via the internet or electronic mail, or forty-five days of receipt of a claim or bill for services rendered that is submitted by other means, such as paper or facsimile."

A review was also performed as to the manner in which the HMO handled the denial of its claims.

Section 3224-a(b) of the New York Insurance Law states, in part:

> (b) In a case where the obligation of an insurer or an organization or corporation licensed or certified pursuant to … article forty-four of the public health law to pay a claim or make a payment for health care services rendered is not reasonably clear due to a good faith dispute regarding the eligibility of a person for coverage, the liability or another insurer or corporation or organization for all or part of the claim, the amount of the claim, the benefits covered under a contract or agreement, or the manner in which services were accessed or provided, an insurer or organization or corporation shall pay any undisputed portion of the claim in accordance with this subsection and notify the policyholder, covered person or health care provider in writing within thirty days of the receipt of the claim …"

To determine compliance with New York's Prompt Pay Law, a population consisting of all non-Medicare medical claims received between January 1, 2021, and December 31, 2021, that were not paid within the time frames prescribed by Section 3224-a of the New York Insurance Law were identified.

There were 133,732 non-Medicare medical claims that were subject to the Prompt Pay Law. The review found that 12,667 (9.5%) of these claims were not paid or denied within the required 30 or 45 days required by New York's Prompt Pay Law.

The HMO was provided with the full list of 12,667 claims that were paid or denied late and acknowledged that a system migration caused the claims to be in violation of Section 3224-a of the New York Insurance Law.

The following chart shows the analysis of noncompliance per Section 3224-a of the New York Insurance Law:

Claims paid over 30 days	Electronic submission	6,724
Claims paid over 45 days	Paper submission	837
Claims denied over 30 days	Electronic / Paper	5,106
Total noncompliance		12,667

It is recommended that the HMO comply with Section 3224-a(a) of the New York Insurance Law by making timely payment of all claims within the time frames prescribed by the aforementioned section of the Insurance Law.

A similar recommendation was made in the prior report on examination.

It is also recommended that the HMO takes step to ensure compliance with Section 3224-a(b) of the New York Insurance Law and deny the claim or request additional information to process the claim within the specified time frame.

A similar recommendation was made in the prior report on examination.

4. COMPLIANCE WITH PRIOR REPORTS ON EXAMINATION

The prior combined (financial and market conduct) report on examination included two (2) market conduct related recommendations detailed as follows (page number refers to the prior report on examination):

ITEM NO.		PAGE NO.
	Record retention	
1.	It is recommended that the HMO comply with Part 243.3(b)(6) of Insurance Regulation No. 152 by maintaining all complaint records for six calendar years after all elements of the complaints are resolved and the file has been closed. *The HMO has complied with this recommendation.*	19
	Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care and Payments for Health Care Services ("Prompt Pay Law")	
2.	It is recommended that the HMO pay, deny or request additional information on claims where its obligation to pay is unclear within the time frame requirements of Section 3224-a(a) and (b) of the New York Insurance Law. *The HMO has not complied with this recommendation*. A similar comment appears in this report	22

5. SUMMARY OF COMMENTS AND RECOMMENDATIONS

Respectfully submitted,

_____
Gail A Ross
Financial Services Examiner 4

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

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

_____
Gail A Ross

Subscribed and sworn to before me
This ____ day of _____ 2024

APPOINTMENT NO. **32437**

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, ***ADRIENNE A. HARRIS****, 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

Senior Whole Health of New York, Inc.

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

HMO

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 28th day of July, 2022

Adrienne A. Harris
Superintendent of Financial Services

By: Alice W. McKenney

Alice McKenney
Deputy Bureau Chief
Health Bureau