Order No. E14- 124

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of Banking And Insurance to Fine Freelancers Consumer Operated and Oriented Program of New Jersey, Inc.	)))	CONSENT ORDER

TO: Freelancers Consumer Operated and Oriented Program of New Jersey, Inc.
Attention: James Martin, President
570 Broadway, Suite 1100
Newark, NJ 07102

This matter having been opened by the Commissioner of the Department of Banking and Insurance ("Commissioner"), State of New Jersey, upon information that Freelancers Consumer Operated and Oriented Program of New Jersey, Inc. ("Freelancers"), doing business as Health Republic Insurance Company of New Jersey, may have violated provisions of the laws of the State of New Jersey; and

WHEREAS, Freelancers is a domestic insurance company authorized to transact business in New Jersey pursuant to N.J.S.A. 17B:18-42 since May 1, 2013; and

WHEREAS, N.J.S.A. 17B:27A-4b requires carriers operating in the individual market to offer at least three individual health benefits plans established by the Board of the Individual Health Coverage Program ("IHC"); and

WHEREAS, N.J.S.A. 17B:27A-7 provides that the Commissioner shall approve the policy and contract forms and benefit levels established by the IHC Board pursuant to N.J.S.A. 17B:27A-4; and

WHEREAS, N.J.S.A. 17B:27A-7 further provides that, after the IHC Board's establishment of individual health benefits plans, and notwithstanding any law to the contrary, a carrier shall file the policy or contract forms with the Commissioner and certify to the Commissioner that the health benefits plans to be used by the carrier are in substantial compliance with the provisions in the corresponding approved plans; and

WHEREAS, N.J.A.C. 11:20-3.1 (a) provides that the standard health benefits plans established by the IHC Board are Plan A/50, Plan B, Plan C and Plan D for carriers that are insurance companies, and the HMO Plan for carriers that are health maintenance organizations ("HMOs"), and that copies of these plans are contained in the Appendix Exhibits A and B; and

WHEREAS, N.J.A.C. 11:20-3A.2 (a) provides that before marketing, issuing or renewing any of the standard IHC policy forms, members shall file with the Department, the Certificate of Compliance set forth in the Appendix as Exhibit E; and

WHEREAS, the Exhibit E Certification of Compliance with Individual Health Coverage Plans, requires that carriers certify, among other things, that Plans A/50, B, C, and D fully comply with the IHC's Board's individual health benefits plan forms and Explanation of Brackets set forth at Exhibits A and C of the Appendix to N.J.A.C. 11:20; and

WHEREAS, N.J.S.A. 17B:27A-19a requires carriers operating in the small employer market to offer at least three of the health benefits plans established by the Board of the Small Employer Health Benefits Program ("SEH"); and

WHEREAS, N.J.A.C. 11:21-3.1 (a) provides that the standard health benefits plans established by the SEH Board are Plan B, Plan C, Plan D, Plan E and Plan F for carriers that are insurance companies, and the HMO Plan and the HMO-POS Plan for carriers that are HMOs, and that copies of these plans are contained in the Appendix Exhibits F, G, W, Y, HH and II; and

WHEREAS, N.J.A.C. 11:21-4.1 provides that carriers shall use the standard policy forms set forth in the Appendix and "shall not make any changes to the text of the standard policy forms"; and

WHEREAS, N.J.A.C. 11:21-4.2 provides that a carrier shall complete the Certification of Compliance forms set forth in Exhibit BB of the Appendix to N.J.A.C. 11:21 upon entering the small employer market; and

WHEREAS, the Exhibit BB Certification of Compliance with Small Employer Health Benefits Plans, requires that carriers certify, among other things, that Plans A, B, C, D, and E (both policies and certificates) comply fully with the SEH Board's small employer health benefits plans forms and Explanation of Brackets set forth at Exhibits F, W, and K of the Appendix to N.J.A.C. 11:21; and

WHEREAS, N.J.S.A. 26:2S-4 provides that a carrier shall disclose in writing to a subscriber, at the time of enrollment, among other things, a description of the covered services and benefits to which the subscriber or other covered person is entitled, the restrictions or limitations on covered services and benefits, the financial responsibility of the covered person, including copayment and deductibles, prior authorization and any other review requirements with respect to accessing covered services, where and in what manner covered services may be obtained, the covered person's right to appeal and the procedure for initiating an appeal of a utilization management decision made by or on behalf of the carrier with respect to the denial, reduction or termination of a health care benefit or the denial of payment for a health care service, and the procedure to initiate an appeal through the Independent Health Care Appeals Program; and

WHEREAS, N.J.A.C. 11:24A-2.3 provides that carriers shall provide to each subscriber within no more than 30 days following the effective date of coverage, through a handbook, certificate or other evidence of coverage, information describing, among other things, the covered services under the policy or contract including all exclusions, limitations, restrictions on accessing covered services such as prior authorization, preadmission certification and periodic review of ongoing treatment, a full and clear description of the carrier's policies and procedures for the provision of emergency and urgent care services, all dollar, day, visit or procedure limits and the method of exchanging inpatient for outpatient services, the responsibility of the covered person to pay deductibles, coinsurance or copayment as appropriate, and where and in what manner covered services can be obtained; and

WHEREAS, N.J.S.A. 17B:30-3 provides that no person shall make, issue, circulate or cause to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued; and

WHEREAS, N.J.S.A. 17B:30-4 provides that no person shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of insurance, which is untrue, deceptive or misleading; and

WHEREAS, N.J.S.A. 17B:30-13.1a provides that an unfair claims settlement practice includes misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue; and

WHEREAS, pursuant to N.J.A.C. 11:2-11.1 (e), an advertisement includes material disseminated through electronic means and descriptive literature issued by an insurer for presentation to members of the public; and

WHEREAS, N.J.A.C. 11:2-11.2 provides that advertisements shall be truthful and not misleading in fact or in implication; and

WHEREAS, N.J.A.C. 11:2-11.3 (b) provides that an advertisement relating to any policy benefit payable, loss covered or premium payable shall be sufficiently complete and clear as to avoid deception or the capacity and tendency to deceive; and

WHEREAS, N.J.S.A. 17B:26-9.1 d (1) provides, in pertinent part, that a health insurer or its agent shall remit payment for every insured claim submitted by a covered person or health care provider, no later than the 30th calendar day following receipt of a claim by a payer of the claim if the claim is submitted by electronic means, and no later than the 40th calendar day following receipt of the claim if the claim is submitted by other than electronic means, if the health care provider is eligible on the date of service, the person who received the health care service was covered on the date of service, the claim is for a service or supply covered under the health benefits plan, the claim is submitted with all the information requested by the payer on the claim form or in other instructions that were distributed in advance to the provider or covered person in accordance with N.J.S.A. 17B:30-51, and the payer has no reason to believe that the claim was submitted fraudulently; and

WHEREAS, N.J.S.A. 17B:26-6 and Exhibits A and C of the Appendix to N.J.A.C. 11:20 require that carriers issuing individual health benefit plans provide a grace period of 31 days for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force; and

WHEREAS, N.J.S.A. 17B:27A-55 provides that an insurance company authorized to issue health benefits plans in this State shall not issue a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to 26 U.S.C. 223, unless the application for the policy or contract is accompanied by a written notice, approved by the Commissioner, identifying and containing a one page, double-sided declaration of understanding that explains, among other things, covered services, applicable deductibles, the responsibility of the contract holder or policyholder and any other covered persons for applicable deductibles, and claims processing; and

WHEREAS, Freelancers is a participant in the FFM for individual coverage in New Jersey and has been receiving applications for individual coverage through the FFM since on or about October 1, 2013; and

WHEREAS, Freelancers also issues individual coverage in New Jersey to persons who apply to it directly, i.e. off-FFM; and

WHEREAS, as of March 31, 2014, Freelancers had in force 1,659 individual contracts through the FFM covering 2,523 persons and 324 contracts issued off-FFM covering 485 persons; and

WHEREAS, Freelancers is a participant in the Small Business Health Options Program ("SHOP") for small employer coverage in New Jersey and also issues small employer coverage in New Jersey to employers who apply to it directly, i.e. outside of the SHOP; and

WHEREAS, as of March 31, 2014, Freelancers had in force eleven small employer contracts covering thirty four employees and nineteen dependents and had no in force small employer contracts issued through the SHOP; and

IT APPEARING, that in response to a complaint filed against Freelancers, the Department discovered that Freelancers had provided contracts to persons covered by individual health benefits plans through posting of said contracts on its member portal; and

IT FURTHER APPEARING, that said contracts did not contain the text of the standard IHC plans found in the Appendix Exhibits A and C to N.J.A.C. 11:20; and

IT FURTHER APPEARING, that the contracts Freelancers provided contained inaccurate text that failed to include the legal name of the company, contained incorrect definitions, incorrect benefit information, incorrect cost sharing information and incorrect information on how a member can appeal an adverse benefit determination; and

IT FURTHER APPEARING, that upon discovery of these errors the Department directed Freelancers on April 8, 2014 to draft compliant contracts and to issue said compliant contracts by mailing a paper version to members who had been provided access to non-compliant contracts, as well as to members who had not been provided access to any contracts; and

IT FURTHER APPEARING, that compliant contracts were not issued until on or about August 25, 2014 even though coverage was issued with effective dates as early as January 1, 2014, contrary to N.J.S.A. 17B:27A-4b and 17B:27A-7; and

IT FURTHER APPEARING, that Freelancers' provision of non-compliant individual health benefits plans through posting on a member portal of individual contracts containing inaccurate text is contrary to N.J.S.A. 17B:30-3 and 17B:30-13.1a; and

IT FURTHER APPEARING, that the Department has discovered that the group contracts and certificates Freelancers provided to small employers did not contain the text of the standard SEH group contracts and certificates found in Exhibits F and W of the Appendix to N.J.A.C. 11:21; and

IT FURTHER APPEARING, that the group contracts and certificate forms Freelancers provided contained inaccurate text that failed to include the legal name of the company, contained inaccurate definitions, incorrect benefit information, incorrect cost sharing information and incorrect information on how a member can appeal an adverse benefit determination; and

IT FURTHER APPEARING, that Freelancers has not issued compliant group contracts or certificates to any small employers in New Jersey, contrary to N.J.S.A. 17B:27A-19a and N.J.A.C. 11:21-4.1; and

IT FURTHER APPEARING, that Freelancers' provision of non-compliant small employer group contracts and certificates that included inaccurate text is contrary to N.J.S.A. 17B:30-3 and 17B:30-13.1a; and

IT FURTHER APPEARING, that on or about March 11, 2014, Freelancers submitted a Certification of Compliance with Individual Health Coverage Plans to the Executive Director of the IHC Program, erroneously stating that its Plans A/50, B, C, and D comply fully with the IHC's Board's individual health benefits plan forms and Explanation of Brackets set forth at Exhibit A of the Appendix to N.J.A.C. 11:20, contrary to N.J.S.A. 17B:30-3 and 17B:30-13.1 a; and

IT FURTHER APPEARING, that on or about March 11, 2014 Freelancers submitted a Certification of Compliance with Small Employer Health Benefits Plans to the Executive Director of the SEH Program, erroneously stating that its Plans A, B, C, D and E policies and certificates fully comply with the SEH Board's small employer health benefits forms and Explanation of Brackets set forth at Exhibits F, W and K, respectively, of the Appendix to N.J.A.C. 11:21, contrary to N.J.S.A. 17B:30-3 and 17B:30-13.1a; and

IT FURTHER APPEARING, that Freelancers failed to issue the standard IHC contracts from January 1, 2014 through August 25, 2014 and otherwise failed to provide detailed disclosures to covered persons regarding, among other things, benefits including emergency and urgent care, cost sharing, exclusions, restrictions and limitations on covered services, prior authorization and appeal rights contrary to N.J.S.A. 26:2S-4 and N.J.A.C. 11:24A-2.3; and

IT FURTHER APPEARING, that Freelancers failed to issue the standard SEH contracts and certificates and otherwise failed to provide detailed disclosures to covered persons regarding among other things, benefits including emergency and urgent care, cost sharing, exclusions, restrictions and limitations on covered services, prior authorization and appeal rights contrary to N.J.S.A. 26:2S-4 and N.J.A.C. 11:24A-2.3; and

IT FURTHER APPEARING, that since on or before October 1, 2013 Freelancers had posted nine Summary of Benefits and Coverage ("SBC") forms on its website for use by consumers in shopping for individual coverage, all of which contain inaccurate information with respect to its plans; and

IT FURTHER APPEARING, that the errors include: (1) statements that generic, preferred brand, non-preferred brand and specialty drugs are covered up to a 30-day supply at a retail pharmacy and a 31-90 day supply at a mail order pharmacy, when in fact a 90-day supply of all of these drugs is available from both a retail pharmacy and a mail order pharmacy; (2) statements that coverage is provided for adult hearing aids, routine adult eye care and long-term care, when such services are not covered; and (3) coverage examples that show the covered person paying $800 in deductible when the plan has a $750 per person deductible (Core Platinum SBC), the covered person paying $1,800 in deductible when the plan has a $1,750 per person

deductible (Solid Gold), and the covered person paying $6,400 in deductible when the plan has a $6,350 per person deductible (Catastrophic); and

IT FURTHER APPEARING, that the posting and other dissemination of SBCs with inaccurate information is contrary to N.J.S.A. 17B:30-3, 17B:30-4, 17B:30-13.1 a and N.J.A.C. 11:2-11.2 and 11:2-11.3 (b); and

IT FURTHER APPEARING, the Freelancers stated in its premium invoices to individual policyholders that "[i]f payment is not received by the due date your coverage may be suspended (payment of claims is put on hold) or terminated", and

IT FURTHER APPEARING, that beginning January 1, 2014, with respect to members who did not receive an advance premium tax credit, Freelancers suspended claim payments and advised providers who inquired about enrollment that the member was suspended if the member's premium was not received by the seventh or tenth day after the due date, even though the grace period had not expired; and

IT FURTHER APPEARING, that such conduct constituted failure to provide a grace period for the payment of premium contrary to N.J.S.A. 17B:26-6 and Exhibits A and C to the Appendix of N.J.A.C. 11:20 and a failure to promptly pay claims contrary to N.J.S.A. 17B:26-9.1 (d) 1;

IT FURTHER APPEARING, that Freelancers did not submit a declaration of understanding for use with a high deductible health plan to the Department for approval until August 8, 2014; and

IT FURTHER APPEARING, that the Department advised Freelancers on August 11, 2014 that the declaration of understanding requires significant revision and has not approved a declaration of understanding for use by the Freelancers; and

IT FURTHER APPEARING, that as of March 31, 2014 Freelancers had issued 138 high deductible health plans through the FFM and 24 high deductible health plans off-FFM; and

IT FURTHER APPEARING, that none of the applications for high deductible health plans were accompanied by a declaration of understanding approved by the Commissioner, contrary to N.J.S.A. 17B:27A-55; and

IT FURTHER APPEARING, that Freelancers has cooperated with the Department in responding to inquiries and resolving compliance-related concerns; and

IT FURTHER APPEARING, that Freelancers has demonstrated to the satisfaction of the Department that the alleged errors set forth above were not intentional or intended to mislead the Department or the public; and

IT FURTHER APPEARING, that this Consent Order is entered into by the parties for settlement purposes only to avoid the cost, inconvenience and risk of a formal proceeding; and

IT FURTHER APPEARING, that this matter should be resolved upon the consent of the parties to these proceedings without resort to a formal hearing, and further good cause appearing;

NOW, THEREFORE, IT IS on the 20TH Sixteenth day of October, 2014

ORDERED AND AGREED, that Freelancers acknowledges the violations described herein and agrees to develop and submit to the Department, within fifteen days of the date of this Consent Order, a plan to rectify such errors, which plan shall be subject to the prior approval of the Department; and

IT IS FURTHER ORDERED AND AGREED, that within thirty days of the date of this Consent Order, Freelancers shall retain one or more consultants with extensive experience in

New Jersey commercial health insurance regulation and compliance, including knowledge of the operation of the IHC and SEH markets, and such retention shall be subject to the prior approval of the Department; and

IT IS FURTHER ORDERED AND AGREED, that Freelancers will pay a fine in the amount of four hundred thousand dollars ($400,000). The payment shall be made through a certified check, attorney trust account check, money order or electronic funds transfer made payment of "State of New Jersey – General Treasury", with an initial payment of $100,000 due and payable immediately upon execution of this Consent Order by Respondent, and with three subsequent monthly payments of $100,000, each due and payable on or before the 15th day of each month thereafter; and

IT IS FURTHER ORDERED AND AGREED, that the signed Consent Order together with the initial payment of $100,000 and each subsequent monthly installment payment shall be sent to Gale Simon, Assistant Commissioner, Department of Banking and Insurance, 20 West State Street, P. O. Box 329, Trenton, NJ 08625-0329; and

IT IS FURTHER ORDERED AND AGREED, that Freelancers will continue to institute measures and monitor operations in order to obtain and/or maintain compliance with all Department statutes and regulations; and

IT IS FURTHER ORDERED AND AGREED, that in the event full payment of the fine is not made in accordance with this Order, the Commissioner may exercise any and all remedies available by law, including but not limited to recovery of any unpaid penalties in summary proceedings, in accordance with the penalty enforcement law, N.J.S.A. 2A:58-10 et seq.; and

IT IS FURTHER ORDERED AND AGREED, that the provisions of this Consent Order represent a final agency decision and constitute a full and final resolution of the matters addressed herein.

Peter L. Hartt
Acting Director of Insurance

Consented as to Form, Content and Entry:

Freelancers Consumer Operated and Oriented Program of New Jersey, Inc.

Oct. 16, 2014
Date