

**STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

**In re:**

**Health Management Advisors, LLC (HMA)**

**And**

**HM Life Insurance Company**

Docket No.: Ins. No. 09-026-EP

**ORDER ON AMENDED ORDER TO SHOW CAUSE**

**Introduction**

The Department's Amended Order to Show Cause came on for hearing before the undersigned hearing officer on January 11, 12, and 14, 2010; several witnesses testified and numerous exhibits were offered, and received, into evidence.<sup>1</sup>

Following the hearing, the parties made additional submissions of requests for findings and rulings, and the Respondent submitted a memorandum.

This order resolves all of the remaining issues, including any that were taken under advisement during the course of the hearing.

**Procedural Rules**

This proceeding is governed by RSA Chapter 541-A, the Administrative Procedure Act, as well as rules adopted by the Department, Ins 200, Practices and Procedures. In particular, RSA 541-A:33, II provides the following:

The rules of evidence shall not apply in adjudicative proceedings. Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence.

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<sup>1</sup> Prior to the hearing, respondent HM Life Insurance Company reached a resolution with the Department.

The evidence received in this proceeding, both testimonial and documentary, has met this standard.

### **The Identity of the Respondent**

The named Respondent in this proceeding is Health Management Advisors, LLC, although it is identified in the introductory paragraph of the Amended Order to Show Cause as “HMA Direct.” The evidence presented, however, more than adequately demonstrates that Health Management Advisors, LLC and, its subsidiaries, New England Custom Health Plan Administrators, LLC, HMA Administrators, LLC, and HMA MGU, LLC, “trade[d] together under the name HMA Direct,” and otherwise held themselves out to the public as a single entity. Under these circumstances, New Hampshire law treats them as one in order to avoid injustice. *See The Norwood Group v. Phillips*, 149 N.H. 722, 724 (2003). Accordingly, they are treated as one for purposes of this proceeding.

### **The Business of Insurance**

The Department alleges, and the Respondent denies, that HMA Direct was engaged in the business of insurance. The relevant statute is RSA 406-B:2, which defines “insurance business” broadly.

Here, HMA MGU, LLC, by agreement with HM Life Insurance Company, underwrote specific and aggregate stop loss insurance policies for HMA Direct’s customers, and thus engaged in the business of insurance in New Hampshire pursuant to, at least, RSA 406-B:2, III and VI.<sup>2</sup> Having done so, HMA Direct must comply with the insurance statutes and rules of New Hampshire.

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<sup>2</sup> Other activities of HMA Direct may constitute “insurance business” as described in paragraphs IV, V, and VIII, but the activities noted above are sufficient to invoke application of New Hampshire’s insurance statutes here.

## Alleged Violations of Insurance Laws

### **“Carving Out” Employees with Pre-existing Conditions from Partially Self-funded Health Plans**

As a part of the sales process to New Hampshire employers, HMA Direct required the eligible participants to answer questions regarding their health history, ostensibly in connection with a life insurance component of the proposed plan. In fact, the health history information was used to identify otherwise eligible individuals that, given the risk their adverse health histories presented, HMA Direct wished to insure in fully-regulated markets.<sup>3</sup> For an individual policy in such market, however, medical underwriting is permissible, RSA 420-G:5, II, and therefore the possibility existed that such individuals might not be eligible for individual coverage. In that situation, the only possible placement for such individuals would be the New Hampshire Health Plan. *See generally* RSA Chapter 404-G.

The sale of a partially self-funded health plan to Amherst Label, Inc. is an example of this process utilized by HMA Direct. The health questionnaire was distributed to eligible employees for completion by them and their families, and this process identified three (3) otherwise eligible individuals whose health history might create significant risks to the plan. A representative of HMA Direct advised the employer, and the affected individuals, that it had already obtained individual policies for them from a carrier in the fully-regulated market, Anthem, and the coverage would be at least as good as the employer’s prior program. In fact, HMA Direct had not obtained

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<sup>3</sup> The Department alleges that (part of) the motivation of HMA Direct was to avoid claims against stop loss coverage placed for such employer groups, given its reinsurance obligation pursuant to a Quota Share Agreement between HMA Life Insurance Company and an affiliate of HMA Direct. It is not necessary to determine the existence (or absence) of such a motivation in order to resolve this issue.

such coverage before the expiration of Amherst Label's prior group policy, and Anthem ultimately denied later-received applications for these individuals.

Another example of this process utilized by HMA Direct is its sale of a partially self-funded health plan to Kimark Specialty Box Co. As originally established, the plan included Mark Chaperon, the Chief Executive Officer. When he was later diagnosed with a serious illness, representatives of HMA Direct coordinated and facilitated his application for coverage with the New Hampshire Health Plan. This Plan ultimately paid benefits for him, but at a time when he otherwise would have been entitled to coverage under the partially self-funded plan.

These actions by HMA Direct violate at least three (3) insurance laws. First, by collecting the health information based on the representation that it was for a life insurance component, when in fact it was to permit an otherwise impermissible inquiry and classification, HMA Direct violated RSA 417:4, I(f, g, h). Second, by creating a distinction between otherwise eligible persons based upon their health, HMA Direct violated RSA 417:4, VIII(c). Finally, by attempting to place an individual with the New Hampshire Health Plan following rejection by the fully-regulated market, HMA Direct violated RSA 420-G:5, VI, as the referral was for the purpose of separating an employee from group health insurance coverage provided by an employer.<sup>4</sup>

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<sup>4</sup> The Department also contends that HMA Direct violated RSA 417:4, I(g) in connection with the refund of certain payments made by Amherst Label after its cancellation of the partially self-funded plan. The evidence in this regard is not as clear as it should be to support such an allegation, and no violation in this regard is found.

In addition, the Department presented some evidence with respect to the establishment of "dual plans" for an employer known as Bronze Craft Corporation, including testimony from a former HMA Direct employee that suggested a strategy involving use of a dormant federal employer identification number to "create" another employer for individuals with adverse health histories. As with the Amherst Label refund, and without testimony from anyone involved in the proposed transaction, the evidence is not sufficiently clear to support a finding of any wrongdoing in this regard.

### **Stop Loss Coverage Attachment Points**

The Department submitted documentary evidence demonstrating that a number of partially self-funded health plans were sold by HMA Direct to New Hampshire employers, and that the stop loss policies procured and issued in connection with those plans did not comply with the requirements of RSA Chapter 415-H and Ins Chapter 4400 regarding minimum attachment points. The evidence supports this allegation, and in that respect, HMA Direct violated RSA 415-H:3.<sup>5</sup>

### **Rulings on Requests**

On the Department's requests:

Granted: 1-44, 53-87 (70, the application date was August 28, 2008; 76, the reference is paragraph VIII(c)), 89-110, 126, 128-131, and 133-135

Denied: 45-52, 88, 111-125, 127, 132, 136, and 137

On the Respondent's requests:

Granted: 1-9, 14, 15, 18, 20, 21, and 28-30

Denied: 10-13, 16, 17, 19, 22-27, and 31-41

On the Respondent's supplemental requests:

Granted: None

Denied: 1-22<sup>6</sup>

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<sup>5</sup> Ins 4401.04(b) requires actuarial certifications of compliance with RSA 415-H:3, but in the absence of those certifications and evidence regarding their filing by HM Life, this allegation is not sustained.

<sup>6</sup> These findings and rulings also constitute a denial of the Respondent's motion to dismiss.

**Sanctions**

The Department has proposed certain sanctions for the violations it asserted. In view of the findings and rulings set forth above, the Department shall submit, on or before March 12, 2010, its proposed sanctions for the violations as found, including its rationale for them and its position as to the applicable standard of review for the hearing officer with respect to the proposed sanctions. The Respondent may submit a response on these issues on or before March 22, 2010.

Date: March 2, 2010

  
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Russell F. Hilliard, Hearing Officer