State of New Hampshire
Insurance Department

Health Management Advisors, LLC and HM Life Insurance Company

Docket No: INS No. 09-026-EP

Order to Show Cause

Now Comes the New Hampshire Insurance Department (hereinafter "department") and orders Health Management Advisors, LLC (hereinafter HMA Direct) and HM Life Insurance Company (hereinafter HM Life) to show cause as to why the New Hampshire Insurance Commissioner (hereinafter "Commissioner") should not revoke the New Hampshire insurance producer and third party administrator licenses held by HMA Direct, suspend HM Life Insurance Company's license to do business in New Hampshire for a period of one year, impose a fine in the amount of $90,000 against HMA Direct for its violations of New Hampshire insurance law, and impose a fine of $25,000 against HM Life for its violations of New Hampshire law. The violations enumerated herein are subject to administrative fines and license suspension or revocation under New Hampshire insurance law.

Background

1. HM Life Insurance Company is a licensed insurance carrier that sells stop loss insurance in New Hampshire.
2. HMA Direct is the parent company to a group of companies that act together to provide full service employee benefits consulting. The HMA Direct group consists of four subsidiary companies that include: 1) New England Custom Health Plan Administrators, LLC (NECHPA), a licensed producer that provides benefit consulting services to employers and is the dedicated marketing and distribution subsidiary for the HMA self-funded small group plans; 2) HMA MGU, LLC (MGU), a managing general underwriter that has entered into an agreement with HM Life to perform underwriting and rating of policies and to issue stop loss policies for HM Life that are underwritten by HM Life; 3) HMA Administrators, LLC (TPA), a third party administrator that provides enrollment, claims processing and COBRA administration for self-funded small group plans; and 4) HMA Captive Insurance Company, a "captive insurance company" that shares premium and risk with HM Life Insurance through a "quota share

agreement." Under the "quota share agreement" HMA Captive Insurance Company retains 80% of the premium and HM Life Insurance receives 20% of the premium. The risk is underwritten by HM Life Insurance Company. All HMA Direct companies do business under the name "HMA Direct."

3. The business of HMA Direct is to provide self-funded plans to small employers in states that have adopted small group insurance reform laws that prohibit health status underwriting in the small group market. The reason for targeting small employers in states with small group insurance reform laws is that the success of HMA Direct's business plan depends in large part on its ability to segment the risk in a small employer group and transfer the high risk, high cost members away from the employer to the insured community rated market.
4. The HMA Direct small group employer plans are designed to mimic a fully insured small group product insurance while at the same time transferring risk and cost from the employer to the fully insured market. HMA markets the plans to small employers by comparing the costs and benefits of those plans to fully insured plans and by guaranteeing employers that their liability under the self-insured plan will be limited to a single monthly premium payment that is made to HMA Direct.
5. HM Life underwrites the specific and aggregate stop loss for the plans pursuant to a Managing General Underwriter and Claims Services Administration Agreement with HMA Direct. This agreement became effective on December 1, 2006.
6. The Managing General Underwriter and Claims Services Administration Agreement between HM Life and HMA Direct gives HMA Direct authority to write specific and aggregate excess loss insurance policies to groups of between 5 to 99 lives when the producer is NECHPA and the third party administrator is HMA Administrators, LLC. HMA Direct is required to issue a minimum of 5 million dollars of stop loss coverage on an annual basis, and is not authorized to write more than 10 million dollars of coverage annually. HMA Direct retains 80% of the premium for the stop loss coverage under its "quota share agreement" with HM Life.

The Business Plan

7. The Managing General Underwriter Agreement between HM Life Insurance and HMA Direct authorizes HMA Direct to promote, market, and deliver a final proposal for self-insurance to small employer groups. Generally, self-funding is not considered an option for employers having fewer than 50 employees due to administrative and cost issues, including the financial burden of funding large claims that occur early in the policy year, and potential liability issues, such as the run out of claims after the end of the policy year.
8. HMA Direct and HM Life Insurance, through its contractual relationship with HMA Direct, developed a business plan targeted at small group employers that "pioneered" a new approach to marketing self-insurance to small employers. Under this business plan, account representatives of NECHPA prepared materials

that showed comparisons of the cost of a self-funding arrangement to a fully-insured arrangement and demonstrated, in the case of every employer, significant cost savings in favor of the self-funded plan. NECHPA assured employers that they would never pay more than a monthly premium payment.

9. The cost comparisons developed by HMA Direct showed cost savings for the self-insured plan by understating the amount of the small employer's projected claims for the claims reserve account. According to marketing material developed by HMA Direct and approved by HM Life, an employer would pay a monthly "premium" of which approximately 50% of the premium would be placed in claim reserve fund and 50% would be used to pay fixed costs, including the premium for the stop loss policy.
10. This projected cost breakdown is achievable only by violating New Hampshire law that prohibit a stop loss carrier from issuing a stop loss policy that has a minimum aggregate attachment point of less than $4,000 per covered life to a small employer group. *See* RSA 415-H:3 Essentially, to comply with this law, a small employer that elects to self-fund an employee benefit plan must pay a minimum amount of $4,000 into a claim reserve fund for each member or covered person who receives benefits under the self-funded arrangement.
11. To show cost savings for small employer group self-insured plans, the marketing materials and business plan developed jointly by HMA Direct and HM Life Insurance ignored this requirement. Had HM Life and HMA Direct complied with New Hampshire law in developing their marketing materials and business plan, the up front cost to the employer of self-funding in every instance would have been greater than the cost of an insured plan and self-insurance would not have been a financially attractive option.
12. Under their joint business arrangement, HM Life Insurance and HMA Direct marketed and sold specific and aggregate stop loss policies to at least 8 small employer groups in New Hampshire and one large employer group. HMA Direct, the large employer group, split into two small employer groups for the purpose of segmenting the risk.
13. HMA Direct also unsuccessfully used this same business model to market a self-funding arrangement to at least 25 other small employer groups in New Hampshire. In no case, would 50% of the premium be placed in a claims reserve fund and 50% applied to fixed costs. Rather, had HMA Direct and HM Life complied with New Hampshire law, the percentage applied to the claims reserve fund would increase to 75% or more.
14. None of the stop loss policies issued by HM Life Insurance to the 8 small employer groups in New Hampshire met the statutorily minimum aggregate deductible amount of $4,000 per covered member required under RSA 415-H:3, I (b) (1) and Ins 4401.04 (b).
15. The minimum claim reserve requirements for policies issued to New Hampshire small employers were under issued by the following amounts: 1) Policy 1: This policy covered 23 members, had a minimum aggregate attachment point of $40,000, and was under issued in the amount of $52,000; 2) Policy 2: This policy

covered 31 members, had a minimum aggregate attachment point of $72,725, and was under issued in the amount of $20,725; 3) Policy 3: This policy covered 25 members, had a minimum aggregate attachment point of $77,335, and was under issued in the amount of $22,665; 4) Policy 4: This policy covered 33 members, had a minimum aggregate attachment point of $72,000, and was under issued in the amount of $60,000; 5) Policy 5: This policy covered 35 members, had a minimum aggregate attachment point of $103,956, and was under issued in the amount of $36,044; 6) Policy 6: This policy covered 60 members, had a minimum aggregate attachment point of $87,613, and was under issued in the amount of $152,387; 7) Policy 7: The policy covered 44 members, had a minimum aggregate attachment point of $68,157, and was under issued in the amount of $107,843; 8) Policies 8 and 9: These policies were written for the same group. One policy covered 30 members, had a minimum aggregate attachment point of $76,000, and was under issued in the amount of $44,000. The other policy covered 23 members, had a minimum aggregate attachment point of $52,000, and was under issued in the amount of $40,000. HMA Direct also collected premium for another stop loss policy covering a New Hampshire employer that was under issued for a significant amount. HM Life did not issue a policy covering this employer and did not accept premium for this policy.

16. On March 14, 2008, Susan Maxwell, an actuary for HM Life Insurance Company submitted an actuarial certification to the department certifying that HM Life Insurance Company had not issued or renewed any stop-loss policy to a small employer New Hampshire group that had an aggregate attachment point of less than $4,000 times the number of covered members. The department's rules, specifically Ins. 4401.04 (b)(1), define the term "covered members" to mean "covered lives."
17. On March 11, 2009, Susan Maxwell, an actuary for HM Life Insurance Company, submitted an actuarial certification to the department certifying that HM Life Insurance Company had not issued or renewed any stop-loss policy to a small employer New Hampshire group that had an aggregate attachment point of less than $4,000 times the number of covered members.

The Marketing Plan

18. To market the proposed self-funding arrangement to small employers in New Hampshire, HMA Direct used a process called RAS, Risk Assessment Survey. The RAS process involved obtaining health questionnaires from all employees and dependents to assess the "eligibility" of the group for self-insurance. In its internal documents, HMA Direct claimed to have "pioneered" this RAS process, which it claimed allowed small employer groups to provide health benefits through a self-funded arrangement.
19. As part of the RAS process, representatives of HMA Direct told employers that the small employer risk pool makes assumptions about all companies being medium to high risk companies. HMA Direct then asked the employer whether

that employers wanted to know whether it could qualify to be rated as a low risk business outside the regulated insurance risk pool.

20. To obtain information about the health status of the employees in the group, HMA Direct represented to the small group employer and the employees that it needed to obtain basic healthcare information in order to provide a life insurance policy as a bonus to the self-insured plan. HMA Direct drafted a letter for the employer that stated as follows: "Since a life insurance policy may be part of the plan as an added bonus to the program, HMA Direct may ask some basic healthcare related questions." HMA Direct did not use or require this information to provide a life insurance policy as a bonus to the plan. Rather, HMA Direct used the healthcare information obtained pursuant to this letter to determine which members in the employer group were unhealthy and who they would have to exclude from the small employer group to make the group a "low risk" group.

21. The process HMA Direct used to determine whether a small group employer qualified for a self-funded arrangement involved reviewing the medical questionnaires and excluding employees or other members who were likely to have substantial health claims from the self-insured group. By using the RAS process, which resulted in "carving" unhealthy employees from the self-insured plan, HMA Direct was able to qualify every employer that it contacted for self-funding as a "low risk" group.

22. In the case of one small group employer in New Hampshire, HMA Direct proposed a self-insured arrangement that removed three employees or members from the employer's self-insured plan. HMA Direct then attempted to transfer the risks and high costs of those members to the fully insured risk pool by applying for individual coverage on their behalf in the fully insured individual market.

23. HMA Direct referred to members or employees who were removed from the self-insured group as "carve outs." By "carving out" members of a group with medical conditions from the self-funded group and placing the medical risk posed by these employees or members in the fully insured market, HMA Direct transferred the anticipated medical claims costs of the sicker people from the employer to the fully insured regulated market.

24. The cost savings that HMA Direct showed the employer for the self-insured plan depended in large part on the ability of HMA Direct to transfer the expected medical claims costs of medium and high risk members from the employer to the regulated insurance market. By "carving-out" this risk and medical claims costs associated with this risk, HMA Direct ensured that its underwritten stop loss business would produce favorable loss ratios for HM Life Insurance Company and for itself through its "quota share agreement" with its captive, while simultaneously reducing the employer's cost of providing medical benefits to most of its employees.

25. By using the RAS process, HMA Direct converted medium and high risk small employer groups into low risk groups with cost savings to the employer and cost benefits to itself and its partner, HM Life. It did this by splitting the group based upon the health of the members and transferring the risk and costs associated with the sicker members of the group to the regulated insurance market.

26. In connection with the "carved-out" members of one New Hampshire small employer group, HMA guaranteed the employer that it would obtain coverage for the "carved out" employees and members in the fully insured individual market. When HMA Direct was unable to obtain coverage for these members and employees in the individual market, a representative of HMA Direct advised the employer that it would seek to enroll those employees or members in the New Hampshire High Risk Pool. During the period of time that these three members and employees did not have any insurance coverage and were not included in the self-insured benefit plan, HMA Direct misrepresented to them that it would cover them under HMA Direct's own benefit plan.

27. The standard "New Group" final sign off sheet used by HMA Direct to finalize the benefit plan with employers confirms that the proposal and rates offered by HMA Direct depended, in many instances, upon the exclusion of one or more employees. According to the sign off sheet, these employees were deemed ineligible to participate in the self-insured plan unless HMA Direct later cleared them through medical underwriting. The standard form final sign off sheet states as follows: "I also understand that if there is an alternate plan in effect for one or more employees at initial enrollment and during the plan year the alternate coverage is terminated for one or more employees and/or if they desire to enroll in the HMA self funded plan, they must be cleared through medical underwriting at that time and I agree that HMA may at that time revise the rates for the group plan, if necessary."

28. In addition to selling and marketing self-funded benefit arrangements, HMA Direct also processed claims as a third party administrator and performed medical underwriting and rating for stop loss policies underwritten by HM Life Insurance. HMA Direct collected and processed the premiums paid by the employers for their medical claims costs as well as their fixed costs, including payment of premiums to HM Life Insurance for the stop loss coverage.

29. With respect to one New Hampshire employer, HMA Direct collected a premium from the employer for a stop loss policy that HM Life never issued or underwrote. When the employer asked to terminate the coverage due to HMA's failure to obtain alternate coverage for employees that had been "carved out" of the self-funded plan, HMA Direct refused to return the premium that the employer had paid for a stop-loss policy from HM Life Insurance and HMA Direct advised the employer that the stop loss premium was non-refundable even though HM Life Insurance Company had never underwritten the risk or issued a stop loss policy to the employer. HMA Direct made this representation with the knowledge that HM Life had never issued a stop loss policy to that employer. Subsequently, after the department commenced its investigation, HMA Direct contacted the employer and agreed to refund the premium if the employer entered into a confidential release agreement with HMA Direct and HM Life Insurance Company.

The Law

30. RSA 420-G:5, VI. provides in relevant part that it shall constitute an unfair trade practice for a third party administrator to refer an individual employee to the high risk pool, or arrange for an individual employee to apply to the high risk pool, for the purpose of separating that employee from group health insurance coverage provided in connection with the employee's employment.
31. RSA 417:4 defines acts that are deemed to be unfair and deceptive in the insurance business. RSA 417:4(f), (g), and (h) specifically prohibit a person from using any device, scheme or artifice to defraud, from obtaining money or property by means of any untrue statement, or engaging in any other transaction, practice, or course of business which operates as a fraud or deceit upon the purchaser, insured, or person with policy ownership rights
32. RSA 417:4, VIII (e) prohibits a person from making any unreasonable distinction or discrimination between persons to the policy, premiums, or rates charges for policies upon the lives or health of such persons.
33. RSA 415-H, the Stop Loss Insurance Act, establishes criteria for the issuance of stop loss insurance in New Hampshire. The law specifically prohibits an insurer from issuing or renewing a stop loss policy or certificate that has an annual specific attachment point of less than $20,000 per person and an annual aggregate attachment for small employer group insurance of less than: 1) the greater of $4,000 times the number of group members, or covered lives; 2) 120 percent of expected claims; or 3) $20,000. Each insurer that writes stop loss coverage to small group employers is required to provide an actuarial certification by March 15th of each year to the commissioner certifying that the carrier is in compliance with the requirements of RSA 415-H.
34. Ins. 4401.04(b) requires that an actuary of the stop loss carrier submit an annual actuarial certification that the insurer has not issued or renewed any stop loss policy to any employer group having 50 or fewer covered employee members with an aggregate attachment point that is less than the greater of the following: 1) $4,000 times the number of covered lives; 2) 120 percent of expected claims; or 3) $20,000.
35. RSA 400-A:15-a, III. states that any person who "knowingly violates any rule, regulation, or order of the commissioner, may, upon hearing, except where other penalty is expressly provided, be subject to such suspension or revocation of certificate of authority or license, or administrative fine not to exceed $2,500.00 in lieu of such suspension or revocation, as may be applicable under this title for violation of the provision to which such rule, regulation or order relates."
36. RSA 417:13 states that "if any person violates a cease and desist order issued by the commissioner pursuant to RSA 417:12, the commissioner may suspend, revoke, or refuse to renew the license of that person. The commissioner in the commissioner's discretion, in addition to or in lieu of such suspension, revocation, or refusal to renew, may impose upon that person an administrative penalty of not more than $2,500 for each method of competition, act, or practice found to be in violation of this chapter pursuant to RSA 417:12. The commissioner shall collect

the amount so imposed and may bring an action in the name of the state to enforce collection."

Findings

37. HM Life violated RSA 400-A:15-a, III by knowingly submitting two actuarial certifications (one on March 14, 2008 and the other on March 11, 2009) that certified that the company has not issued or renewed any stop-loss policy to any employer group having 50 or fewer covered employees members with an aggregate attachment point that is less than the greater of the following: $4,000 times the number of covered members; 120 percent of expected claims; or $20,000 when it fact it had issued stop loss policies in 2007 to at least 2 small group employers and in 2008 to at least 8 small group employers in New Hampshire that violated this requirement.
38. HMA Direct committed an unfair trade practice by advising an employer that it intended to refer individuals who were members of an employee group to the high risk pool for coverage in violation of RSA 420-G:5, VI.
39. HMA Direct and HM Life Insurance Company violated RSA 417:4 (f)(g) and (h) by jointly entering into a business arrangement to provide self-insured coverage to small group employers in New Hampshire and to sell stop loss insurance to those small group employers that violated New Hampshire law in the following respects: 1) the business plan depended upon issuing stop loss policies to small employer groups in New Hampshire that violated the statutory requirement that the aggregate attachment point be set at an amount equal or greater than $4,000 per covered member; 2) the business plan created cost savings for New Hampshire small employers by using the RAS process to illegally discriminate against members of the employer group based on their health conditions and by transferring the medical costs associated with the medium and high risk members to the regulated market; 3) the implementation of the business plan depended upon obtaining medical information from members of the employer group through deceitful and fraudulent means, including the representation that the information was being collected for the purpose of providing a life insurance policy as a bonus for enrolling in the plan; and 4) the self-insured plans proposed by HMA Direct and underwritten by HM Life illegally excluded certain employees from participating in those plans due to their health conditions.
40. HM Life Insurance Company violated RSA 415-H:4 in 2008 and 2009 by submitting actuarial certifications of compliance with New Hampshire's stop loss insurance law when it had issued small group stop loss policies in violation of New Hampshire law.

Order

Wherefore, the Commissioner of Insurance orders HMA Direct and HM Life to appear at hearing on June 24, 2009, at 9:00 a.m. before the Commissioner or his representative to show cause as to why the Commissioner should not take the following actions:

1. Permanently revoke all New Hampshire insurance licenses held by HMA Direct or its subsidiaries, including its license to conduct business in New Hampshire as a producer and its license to conduct business in New Hampshire and as third party administrator.

2. Suspend HM Life Insurance Company's license to write insurance in New Hampshire for a period of one year.

3. Require HMA Direct to pay the New Hampshire Department of Insurance an administrative penalty in the amount of $90,000.

4. Require HM Life Insurance Co. to pay the New Hampshire Department of Insurance an administrative penalty in the amount of $25,000.

NEW HAMPSHIRE INSURANCE DEPARTMENT

Roger A. Sevigny, Commissioner

14 April 2009
Date