

# **FINANCIAL SERVICES COMMISSION**

**FLORIDA OFFICE OF INSURANCE REGULATION  
MARKET INVESTIGATIONS**

**MARKET CONDUCT FINAL EXAMINATION REPORT**

**OF**

**NEWBN, INCORPORATED**

**AS OF**

**January 13, 2006**



## **TABLE OF CONTENTS**

PURPOSE AND SCOPE OF EXAMINATION .....	1
DESCRIPTION OF COMPANY .....	1
PROVIDER NETWORK AGREEMENT REVIEW .....	1
PROVIDER AGREEMENT REVIEW .....	2
MARKETER AGREEMENT REVIEW .....	3
ACTIVE MEMBERSHIP REVIEW .....	3
Enrollment and Fulfillment Procedures .....	4
Memberships on or after April 1, 2005.....	4
Memberships prior to April 1, 2005 .....	5
FORMS/CHARGES REVIEW.....	5
CANCELLATION REVIEW .....	5
COMPLAINT/GRIEVANCE REVIEW .....	6
WEBSITE REVIEW.....	6
ADVERTISING REVIEW .....	7
AMERICANS FOR BETTER ECONOMIC RESOURCES.....	8
EXAMINATION FINAL REPORT .....	8

## **PURPOSE AND SCOPE OF EXAMINATION**

Under authorization of the Financial Services Commission, Florida Office of Insurance Regulation (Office), Market Investigations, pursuant to Section 636.206, Florida Statutes, a market conduct examination of Newbn, Inc. (Newbn or Company) was performed by Market Examinations, LLC. The scope of this examination was April 1, 2005 through October 31, 2005. The onsite examination began January 10, 2006 and ended January 13, 2006.

The purpose of this examination was to review the Company's compliance with Chapter 636, Part II, Florida Statutes as effective on April 1, 2005. Chapter 636, Part II, Florida Statutes regulates discount medical plan organizations, entities which, in exchange for fees, dues, charges, or other consideration, provide access for plan members to providers of medical services and the right to receive medical services from those providers at a discount.

The Company's records were examined at its offices located at 14240 Proton Road, Addison, TX 75244.

This Final Report is based upon information from the examiner's draft report, additional research conducted by the Office, and additional information and comments provided by the Company in response to the draft report. Procedures and conduct of the examination were in accordance with the Market Regulation Handbook produced by the National Association of Insurance Commissioners.

## **DESCRIPTION OF COMPANY**

This foreign company was licensed as a Discount Medical Plan Organization (DMPO) in Florida on March 17, 2005. Newbn offers a variety of discount medical plans which are primarily sold by entities that market the Newbn plans under a private label.

## **PROVIDER NETWORK AGREEMENT REVIEW**

Newbn maintains and is responsible for two provider networks: Coast to Coast, (CTC), for discount eyewear and vision services; and United Health Services (UHS) for chiropractic services. In addition, the Company has contracted with the following additional provider networks:

1. AETNA Health Management, LLC – dental provider network
2. American WholeHealth Networks, Inc. - complimentary and alternative medicine provider network
3. CHCS Services Inc. – home health care and long-term care provider network
4. Dental Network of America ("DNoA") – dental provider network
5. Galaxy Health Network, Inc. – physicians and hospital network
6. Amerisight, Inc. – vision correction procedures network (Lasik Surgery)

7. APS Healthcare Bethesda, Inc., - telephone Employee Assistance Program services.
8. eDocAmerica (MD Online, LLC)- e-mail correspondence with physicians for medical consultations
9. HealthTracer, Inc., - emergency medical information via a "hot-line."
10. International Fitness Club Network "IFCN" - fitness club access and health related products.
11. IntelliCare, Inc. - call center access to a Licensed Registered Nurse.
12. Liberty Direct Services, Corp., - mail-order medical supplies and testing materials.
13. Cyber Medical Services (Teledoc) - toll-free telephone line to a licensed physician.
14. Work and Family Benefits, Inc. - telephone access to expert counselors for child care, elder care and care for people with disabilities as well as other online resources.
15. Allegro Medical Inc ("AMI"), - medical equipment and supplies.
16. Beltone Managed Care, Inc. ("BMC") – hearing products and services.

The provider network agreements were reviewed to ensure they contained the provisions required by Section 636.214(3), Florida Statutes. The following violations were noted:

- 4 agreements failed to contain language requiring the agreement between the network and its provider contain a description of the services and products to be provided at a discount; and the amount or amounts of the discount or, alternatively, a fee schedule which reflects the provider's discounted rates as required by Section 636.214(3)(a), Florida Statutes;
- 5 agreements failed to contain language requiring that the provider will not charge members more than the discounted rates as required by Section 636.214(3)(a), Florida Statutes; and
- 6 agreements failed to contain language requiring the network to provide an up-to-date list of its contracted providers on a monthly basis to the DMPO as required by Section 636.214(3)(c), Florida Statutes.

**Corrective Action:** The Company should ensure all provider network agreements contain the required provisions.

Providers participating in the network plans are available on <http://www.locateproviders.com>, a searchable online provider directory. The provider directory list of participating providers is updated daily for the CHC Service's and UHS network plans. The provider directory list of providers for the other network plans is updated as it is received from the network plans.

Subsequent to the examination, the Company created an Addendum to Vendor Agreement in order to ensure network agreements contain the required provisions.

### **PROVIDER AGREEMENT REVIEW**

The CTC and UHS networks have 992 and 385 providers, respectively. A sample of 20 agreements (10 from CTC and 10 from UHS) was reviewed for compliance with Section 636.214, Florida Statutes.

The Company was not able to produce a copy of one of the agreements between the provider and UHS as required by Section 636.214(4), Florida Statutes.

**Corrective Action:** The Company should maintain a copy of all provider agreements and should produce all documents requested for review.

The review revealed that 3 provider agreements with UHS and 3 provider agreements with CTC failed to contain a list of the services and products to be provided at a discount; and the amount or amounts of the discount or, alternatively, a fee schedule which reflects the provider's discounted rates as required by Sections 636.214(2)(a) and (b), Florida Statutes.

**Corrective Action:** The Company should ensure that all provider agreements contain the required provisions.

Subsequent to the examination, the Company created an Addendum to Vendor Agreement in order to ensure provider agreements contain the required provisions.

### **MARKETER AGREEMENT REVIEW**

The Company primarily contracts with entities who market the various Newbn discount plans under a private label. (Newbn refers to its marketers as "resellers" and refers to itself as a "wholesaler" of the various discount programs). The various marketers, some of whom are employers, select the discount medical products and services they wish to purchase from Newbn to offer to their clients, membership, or employees.

During the scope period, there were 47 marketers contracted with the Company to package and resell Newbn's discount medical plans. Written agreements between Newbn and 43 of the marketers were reviewed to ensure compliance with Section 636.228, Florida Statutes. No violations were noted.

The Company was unable to produce a copy of 4 marketer agreements as required by Section 636.228(2), Florida Statutes.

**Corrective Action:** Newbn should maintain copies of all marketer agreements and should produce all documents requested for review.

### **ACTIVE MEMBERSHIP REVIEW**

As of October 24, 2005, the Company had 46,144 active memberships, 29,500 of which had enrollment effective dates on or after April 1, 2005.

The membership report provided by the Company revealed that 24 marketers had enrolled members prior to the Office approving forms for the private labels as required by Section 636.216(3), Florida Statutes, and Rule 69O-203.204(1)(a), Florida Administrative Code.

**Corrective Action:** The Company should only enroll members on forms that have been filed with and approved by the Office prior to use.

### **Enrollment and Fulfillment Procedures**

Depending on the marketer, consumer enrollments are completed via paper forms by telephone or electronically over the internet.

Upon approval of the application, fulfillment is handled either by the Company or, in a few instances, by the marketer. Fulfillment includes a membership ID card and a membership agreement/handbook that includes an individualized schedule of benefits.

A review of the fulfillment materials revealed that the membership cards for each of the marketers and their private labels failed to include the internet website address as required by Section 636.226, Florida Statutes. Prior to leaving the exam, the Company had modified its membership cards to include the internet website address to the provider list.

**Corrective Action:** The Company should provide new and existing members with a membership card containing the internet website address.

### **Memberships on or after April 1, 2005**

A random sample of 195 membership files with effective dates of enrollment on or after April 1, 2005 was reviewed. All membership information is stored electronically in Newbn's proprietary system called "Database Edit". Information reviewed included the membership report provided by the Company and the following data contained within Database Edit: enrollment date, termination date, name of marketer, the name of the plan, a note whether or not the plan is in compliance with Florida Statutes, links to customer notes, customer history and marketer information on the plan such as rates and one-time processing fees. The following errors were noted:

- 100 members were enrolled on application forms that had not been filed with and approved by the Office prior to use as required by Section 636.216(3), Florida Statutes; and
- 32 members remitted either a periodic charge and/or a one-time processing fee that differed from the charge that was filed with the Office as required by Section 636.216(1), Florida Statutes.

**Corrective Action:** The Company should cease enrolling members using forms that have not been approved by the Office and should ensure that all private label marketers are using approved charges and enrollment fees as filed with the Office. The Company should also review all memberships on or after April 1, 2005, and refund all members who were overcharged either periodic charges or one-time processing fees.

### **Memberships prior to April 1, 2005**

Members enrolled prior to April 1, 2005, were not required to sign Florida approved enrollment forms or provided Florida approved written agreements.

**Corrective Action:** Members enrolled prior to April 1, 2005 should be provided Florida approved enrollment forms and written agreements upon renewal.

### **FORMS/CHARGES REVIEW**

As of October 31, 2005, the Office had approved form filings for 47 marketers. In addition, Newbn had filed forms for a discount medical plan under the Newbn/New Benefits, Inc. name, which the Office also approved.

The membership handbook for one marketer contained language advising members that in order to take advantage of the hospital discount, payment in full for the estimated hospital costs had to first be made to the marketer. Section 636.210(2), Florida Statutes, prohibits a discount medical plan organization from collecting or accepting money from a member for payment to a provider for specific medical services furnished or to be furnished to the member unless the organization has an active certificate of authority from the office to act as an administrator. The marketer is acting as an administrator on behalf of the discount medical plan organization. The discount medical plan organization is bound by the acts of its marketers as stated in Section 636.228(2), Florida Statutes.

**Corrective Action:** The prohibited language should be removed from the membership handbook and the revised handbook should be filed with the Office.

Discounts and rates in the membership handbooks were compared to those in the provider agreements and provider network agreements. The amount of discounts or rates in 5 provider agreements and provider network agreements was inconsistent with those listed in the membership handbooks as required by Rule 69O-203.202(1)(h), Florida Administrative Code.

**Corrective Action:** The Company should ensure that its membership handbooks, provider agreements, and provider network agreements are consistent and accurately reflect the benefits to be provided.

### **CANCELLATION REVIEW**

During the scope period, the Company reported 25,501 members cancelled their memberships within the first 30 days after the effective date of enrollment. Section 636.208(2), Florida Statutes, requires a full refund of the membership fee if the member cancels within 30 days and returns the membership card.

A sample of 123 membership files was requested for review. The Company did not produce 25 of the files requested as required by Section 636.206(1), Florida Statutes.

A review of the remaining 98 files revealed one member did not receive a refund as required by Section 636.208(2), Florida Statutes.

**Corrective Action:** The Company should maintain a copy of all membership files for review. The Company should review all cancellations to ensure that all members who cancel their membership within 30 days after the effective date of enrollment receive a refund.

Subsequent to the examination, the Company indicated it refunded the member who had not previously received a refund.

## **COMPLAINT/GRIEVANCE REVIEW**

The Company provided 27 complaints that were received and handled during the exam period for its marketers.

The majority of the complaints, 23 out of 27, involved members reporting they had not received the appropriate discount. The Company was able to secure the correct discounts for 13 of the 23; the remaining 10 failed to submit a copy of their bill as requested by the Company, therefore, the Company was unable to resolve the complaint.

The remaining 4 complaints involved members who either went to a provider that was not part of the network or who tried to get a discount for services that were rendered prior to their membership effective date. The 27 complaints were distributed among 15 different marketers.

Policies and procedures are in place to facilitate the resolution of member grievances and complaints as required by Section 636.205(1)(d), Florida Statutes.

## **WEBSITE REVIEW**

As a condition of licensure, a discount medical plan is required to establish an Internet website page on which it is to maintain an up-to-date list of the names and addresses of its providers in compliance with Section 636.226, Florida Statutes. A review of the website [www.newbenefits.com](http://www.newbenefits.com) was conducted, prior to the onsite examination, which revealed the following violations:

The main page of the website did not contain all of the required disclosures as required by Section 636.212(1)-(5), Florida Statutes, and the disclosures are not in 12-point type as required by Section 636.212, Florida Statutes.

**Corrective Action:** The Company should ensure its website contains all of the required disclosures and that the disclosures are printed in not less than 12-point type.

Prior to the onsite examination, a review was also conducted of 18 marketer websites. The following violations were noted:



- An up-to-date list of contracted providers was not maintained as required by Section 636.226, Florida Statutes;
- The first page did not contain the disclosures as required by Sections 636.212(1)-(5), Florida Statutes;
- Disclosures were not printed in not less than 12-point type as required by Section 636.212, Florida Statutes;
- Forms were used that were not filed with and approved by the Office as required by Section 636.216(3), Florida Statutes;
- The website included prohibited words and misleading terms that should be excluded as required by Sections 636.210(1)(a) and (b), Florida Statutes; and
- Charges were used that were not filed with the Office as required by Section 636.216(1), Florida Statutes.

**Corrective Action:** The Company should ensure that its marketers' websites maintain an up-to-date list of providers, contain all of the required disclosures in not less than 12-point type, only use forms and charges that have been filed with and approved by the Office, and do not use prohibited words and misleading terms.

### **ADVERTISING REVIEW**

Advertising and marketing by the Company and/or its marketers were reviewed to determine compliance with Sections 636.210 and 636.212, Florida Statutes.

Newbn requires that all marketing materials be submitted to and approved by the Company prior to use. All materials are routed through and reviewed by the account representative, the marketing coordinator, the director of Marketing and Creative Services and the compliance officer, who makes final comments and recommendations and ultimately approves or disapproves the submission.

The Company provided advertising materials and internal routing and approval forms for examination. The advertising materials consisted of a variety of brochures, paper inserts, television ads and newspaper ads. The following violations were noted:

- 1 product insert approved by the Company on or about November 10, 2005, did not contain the required disclosures on the first page as required by Sections 636.212(1)-(5), Florida Statutes;
- 2 product inserts, one for vision and one for dental (both with form number NBPPROPOSAL 105), did not contain the disclosures in not less than 12-point type, as required by Section 636.212, Florida Statutes. In addition, both forms failed to state that the plan was not insurance and failed to contain the name and address of the licensed discount medical plan organization as required by Sections 636.212(1) and (5), Florida Statutes;
- Similar versions of these two inserts mentioned above are part of a larger document entitled, "Your Answer to Affordable Health Care." This document did not contain any of the disclosures required by Sections 636.212(1)-(5), Florida Statutes; and

- 1 flyer offering free memberships did not contain the disclosures required by Sections 636.212(1)-(5), Florida Statutes.

**Corrective Action:** The Company should ensure that all advertisements and marketing materials contain the required disclosures.

### **AMERICANS FOR BETTER ECONOMIC RESOURCES**

During the scope of the examination, the Company had a contractual relationship with Americans for Better Economic Resources (AFBER). AFBER is an association that offers its members home care services and, for no additional charge, access to Newbn's medical discount plans for dental care, vision care and elder care, among other products and services.

Subsequent to the examination, the Company reported it terminated its contractual relationship with AFBER in July 2006.

### **EXAMINATION FINAL REPORT**

The Office hereby issues this report as the Final Report, based upon information from the examiner's draft report, additional research conducted by the Office, and additional information and comments provided by the Company in response to the draft report.