



# **THE STATE OF FLORIDA**

## **OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS**

### **TARGET MARKET CONDUCT FINAL EXAMINATION REPORT**

#### **OF THE**

### **FLORIDA HEALTH MAINTENANCE ORGANIZATION CONSUMER ASSISTANCE PLAN**

**November 21, 2013**

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## **EXECUTIVE SUMMARY**

An operational review of current systems and controls was performed including evaluation of processes for corporate records, general operations, accounting, general claims, investments, legislative changes and pending litigation. The following represent general findings, however, specific details are found in each section of the report.

<b><u>TABLE OF VIOLATIONS</u></b>			
Statute/Rule	Description	Files Reviewed	Number of Violations
631.820	Failure to Obtain Conflict of Interest Statements from Board members in violation of the approved Plan of Operation.	43	9

## **PURPOSE AND SCOPE OF EXAMINATION**

The Florida Office of Insurance Regulation (Office), Market Investigations, conducted a target market conduct examination of the Florida Health Maintenance Organization Consumer Assistance Plan (the Plan or FLHMOCAP) pursuant to Section 624.3161, Florida Statutes. The examination was performed by Examination Resources, LLC. The scope period of this examination was January 1, 2009 through December 31, 2012. The onsite examination began November 18, 2013 and ended November 21, 2013.

The purpose of this market conduct examination was to determine the FLHMOCAP compliance with Florida Statutes, the Florida Administrative Code, its plan of operation, and its internal operational procedures. The operational review of current systems and controls included the evaluation of the Plan's processes for corporate records, general operations, accounting, general claims, investments, legislative changes and pending litigation.

FLHMOCAP records were examined at the home office of the Plan Administrator, Akerman Senterfitt, and P.A., located at 106 East College Avenue, Tallahassee, Florida. Documentation utilized in this report was provided by the Plan Administrator, the independent auditors, and other external sources.

The Report is based upon information obtained during the examination, additional research conducted by the Office, and additional information provided by the Plan. Each finding by the Office was provided to the FLHMOCAP. Procedures and conduct of the examination were in accordance with the *Market Regulation Examiners Handbook*, produced by the National Association of Insurance Commissioners.

## **OPERATIONS REVIEW**

### **CORPORATE RECORDS**

The Florida Health Maintenance Organization Consumer Assistance Plan (the Plan or FLHMOCAP) is a nonprofit legal entity formed pursuant to Section 631.815, Florida Statutes, for the purpose of protecting subscribers of Florida Health Maintenance Organizations (HMOs), subject to certain limitations, against the failure of the HMO to perform its contractual obligations due to insolvency. The Plan provides coverage up to six months or up to \$300,000 in covered benefits for the subscriber from the date of an HMO's insolvency. All HMOs in the state of Florida are required to be members of the Plan as a condition of their authority to transact business as an HMO.

The Plan conducts business as specified in its Plan of Operation and in accordance with Florida Statutes. It exercises its authority through a Board of Directors (the Board). The Office approves the FLHMOCAP Plan of Operation and any amendments. The Plan establishes the procedures for handling assets of the Plan, assessing member HMOs, maintaining the records of all financial transactions of the Plan, its agents, and the Board; it establishes the procedures whereby selections for the board of directors shall be made to the Department of Financial Services (DFS); it establishes the amount and method of reimbursing members of the Board for expenses; establishes regular places and times for meetings of the Board; and contains any other provisions necessary for the execution of the powers and duties of the Plan.

The day-to-day operations of the Plan are supervised by a Plan Manager, who is contracted by the Board. The headquarters of the Plan and its records are maintained in the Tallahassee, Florida offices of the Plan Manager, Akerman Senterfitt, P.A.

The examination testing procedures included reviewing FLHMOCAP:

- Plan of Operation;
- Complaint Handling Procedures;
- Board Meeting Minutes;
- Reports of external audits performed during the scope of the examination;
- FLHMOCAP's Organizational Structure;
- Conflict of Interest Statements;
- Servicing Agents agreements;
- General Operations;
- Investment Plan, Portfolio, Approved Policies, Procedures and Results; and,
- Following up on prior examination findings.

The prior examination covering the period January 1, 2005 through December 31, 2008, was prepared by Thomas Howell Ferguson, P.A. (THF) on behalf of the Department of

Financial Services (DFS). A review of the FLHMOCAP processes indicates that the Plan has taken action to remediate the prior exam findings.

## **GENERAL OPERATIONS**

### **Assessments**

Section 631.819, Florida Statutes, authorizes the Plan to assess member HMOs for the purpose of funding the operations of the Plan. The statutes provide for two categories of assessments: an assessment of \$25,000 on all HMOs receiving a certificate of authority after July 1, 1989, and an assessment levied against all member HMOs if the funds from the assessment on new HMOs are insufficient to fund operations.

The most recent HMO insolvency to occur in the state of Florida requiring the Plan to provide coverage was Sunstar Health Plan, Inc., in February 2000.

### **Findings:**

During the examination period, the Plan did not levy any assessments due to insufficient operating funds.

### **Service Provider**

In the event of a large insolvency, the Plan would contract with a third-party administrator (TPA) for the processing of claims. As permitted by Article IX, Section 2 of the Plan of Operation, detailed procedures for the handling of claims, as well as recovery activities, are included in the servicing agreement with the TPA. There was no claim activity during the scope period reviewed. The Plan engages the following services from external parties:

- Akerman Senterfitt, P.A., as plan manager and general counsel;
- 3W Studios, for website design and hosting;
- Chris Moran, CPA, as auditor, and additional services as authorized by the Board; and,
- Wells Fargo Bank, as brokerage account manager, and checking and money market account services.

### **Board and Management**

Section 631.816, Florida Statutes, provides that the membership of the Board of Directors (the Board) shall consist of not less than five or more than nine persons serving four year terms. Members may be reappointed. The State of Florida Department of Financial Services approves and appoints to the board persons recommended by the member HMOs. Section 631.816(1), Florida Statutes, stipulates that no member HMO may be represented by more than one member. The Board is governed by Officers consisting of a Chairman, a Vice Chairman, a Secretary/Treasurer, and is by six officers from different insurers. The Board meets on an annual basis and in special meetings, as necessary.

The FLHMOCAP is managed by a board-appointed Plan Manager who serves as the

administrator and is responsible for the Plan's day-to-day operations. The Plan Manager reports directly to the Board.

The Plan internally performs four primary activities as part of its operations: case file maintenance, claims processing, assessment processing, and accounting. The Plan has no employees. While the FLHMOCAP engages an investment consultant, investment decisions are authorized by the Board and management. The FLHMOCAP appears to operate effectively within its current organizational structure.

**Conflict of Interest**

Article XIV of the Plan of Operation and Section 1.8 of the Policy and Procedure Manual require all board members to execute Conflict of Interest Statements (COI) at the time of appointment and yearly thereafter.

**Findings:**

In reviewing COI statements for the scope period under review, nine instances were noted where statements were not obtained. The Plan Manager attempts to obtain the COI from all individuals, but is not always successful.

**1.) Recommendation:**

It is recommended the Plan adopt procedures ensuring Conflict of Interest Statements are obtained from all individuals as required in the Policy and Procedure Manual and in the approved Plan of Operation.

**1a.) Plan Response to Recommendation 1:**

“The Plan Manager has received all current, signed conflict of interest statements and the HMOCAP is in the process of adopting a policy that allows the Board to recommend that the Florida Department of Financial Services remove any Board member who fails to sign a conflict of interest statement within a reasonable time.”

**1b.) Response to Plan Response 1:**

The Plan response is noted.

**Remittances**

The Policy and Procedures Manual Section 2.3(B), states that the Chairman, Vice Chairman, Secretary/Treasurer, and Plan Manager are authorized to sign checks on behalf of the FLHMOCAP. Remittances in amounts greater than \$5,000 require the signatures of two authorized persons. The Plan Manager may sign expense reimbursement checks, including checks payable to the Plan Manager that combine monthly compensation and expenses, in accordance with the contract with the FLHMOCAP. The total of these remittances often exceed the amounts anticipated by the manual. A second signature has not been required.

**Findings:**

No Exceptions were noted.

**2.) Recommendation:**

It is recommend that the Plan amend Section 2.3(B) of the Policy and Procedures Manual to include that all checks over \$5,000, including checks payable to the Plan Administrator, require the signatures of two authorized persons.

**2a.) Plan Response to Recommendation 2:**

“The auditors agreed that no inappropriate payments had been made. However, the auditors recommended issuing two separate checks (one for fees and one for expenses), so that the check amount does not exceed \$5,000. The Plan Manager has implemented that suggestion, and Section 2.3(B) is being amended to implement this recommendation.”

**2b.) Response to Plan Response 2:**

The Plan response is noted.

**COMPLAINT HANDLING**

The FLHMOCAP did not receive any complaints during the scope of the examination. The Plan relies upon the complaint handling procedures of its third-party administrators and those of member insurers when acting as administrators.

**Findings:**

No Exceptions were noted.

**3.) Recommendation:**

It is recommended that the Plan amend its Policy and Procedure Manual by memorializing standards for complaint handling to require third-party administrators provide certification that the TPA complaint handling procedures are in compliance with Florida Statutes.

**3a.) Plan Response to Recommendation to 3:**

“The HMOCAP is amending its Policy and Procedure Manual to require a TPA to follow the complaint or grievance procedures in the HMO member contracts assumed by the HMOCAP, or if those procedures are not in compliance with Florida law, to amend such procedures to bring them into compliance and notify the member of the changes.”

**3b.) Response to Plan Response 3:**

The Plan response is noted.

**ACCOUNTING**

A review of the FLHMOCAP accounting processes and procedures was completed for the period under examination. The testing included verifying:

- Trial balances agreed to the filed Annual Statement at December 30, 2012; and,

- All filings as required by the Office and the State of Florida Department of Financial Services were completed.

The FLHMOCAP had an annual audit completed on its financial statements for the reporting periods ending December 30, 2012, 2011, 2010, and 2009. The CPA issued unqualified opinions for each year audited.

**Findings:**

No exceptions were noted.

**INVESTMENT PLANNING**

A detailed review of the investment processes was completed for the period under review and included reviewing the FLHMOCAP:

- Investment guidelines;
- Investment process and procedures, including verifying:
  - The Board of Governors provides over sight;
  - Investment performance is reviewed;
  - Commissions recorded appear reasonable and are recorded accurately; and,
- Accuracy of investments reported.

The Plan of Operations specifies that the Board may invest in such accounts and in such manner as is consistent with the investment guidelines developed and approved pursuant to Article VII, Section 3, of the Plan. The Board approved Investment Policy establishes the guidelines for investment activity, which includes specifying investment goals, permitted securities, diversification requirements, liquidity and preservation.

FLHMOCAP engages Wells Fargo to provide investment advisory services as part of the brokerage account and does not have a separate agreement for these services. Additionally, the Investment Advisory Committee shall, as described in HMOCAP Plan of Operation Article VII, Section 3, periodically review the needs of the HMOCAP to determine the appropriate amounts to be held in short-term accounts and in certificates of deposit to ensure there is a maximum investment return consistent with required risk minimization. As defined in the investment policy, FLHMOCAP investments are to be made in accordance with the securities permitted by the Board.

The external auditors performed substantive testing of investment balances at each year end under examination. As part of their examination, the total of cash and investments was agreed to the trial balance. Based upon review of the investment process and procedures, FLHMOCAP appears to be overseeing, monitoring and recording investment activity.

Investment internal control testing was not performed by either the FLHMOCAP or its external auditors. As a result, examiners performed independent testing.

**Findings:**

No exceptions were noted.

**INVESTMENTS**

The current investment policy is conservatively structured. The Board has noted challenges finding approved Certificates of Deposit to invest in due to uncertainty in the current economy and in current market conditions.

The FLHMOCAP is essentially invested in two investment vehicles: bank CDs and the Florida Special Purpose Investment Account (SPIA). Laddered CD accounts and the SPIA account make up approximately 88% of invested assets. Below is a breakdown of the current assets:

<b>Account</b>	<b>Amount</b>	<b>% of Assets</b>
<b>1004 · WellsFargo-General Account</b>	25,565.48	0.29%
<b>1012 · WellsFargo Bank - Bus. High MMI</b>	932,095.84	10.40%
<b>1202 · Interest Receivable</b>	16,529.01	0.18%
<b>1006 · Wells Fargo Cert of Deposit</b>	4,325,000.00	48.26%
<b>1010 · Treasurers SPIA</b>	3,539,827.61	39.50%
<b>1013 · Hancock Bank - CD</b>	123,555.52	1.38%
	8,962,573.46	

Responding to the posted balances in Fund accounts, the Board and Plan Manager continually seek other conservative investments. In addition, the Board is considering amending investment policy to allow for new conservative vehicles in which to invest.

**LEGISLATIVE CHANGES**

There have been no legislative provisions adopted into Florida law during the examination period affecting the FLHMOCAP.

**Findings:**

The Plan demonstrated adequate processes and controls to monitor and communicate legislative changes to the Board.

**PENDING LITIGATION**

The FLHMOCAP may be named at various times in legal actions arising in the course of business from claims made under insurance policies and contracts of insolvent insurers. These actions are considered by the Plan in estimating the Loss and LAE reserves.

**Findings:**

There were no pending actions as of the end of the examination.

## **EXAMINATION FINAL REPORT SUBMISSION**

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