THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION
MARKET INVESTIGATIONS

TARGET MARKET CONDUCT FINAL EXAMINATION REPORT

OF

HUMANA MEDICAL PLAN, INC.
NAIC COMPANY CODE: 95270

AND

HUMANA ADVANTAGECARE PLAN, INC.
NAIC COMPANY CODE: 10126

ISSUED ON

October 30, 2015

NAIC GROUP CODE: 0119

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EXECUTIVE SUMMARY

A target market conduct examination of Humana Medical Plan, Inc. and Humana AdvantageCare Plan, Inc. (Humana) was performed after receiving notification of and complaints associated with the cancellation of Florida Cancer Specialists & Research Institute's provider contracts in Collier and Lee counties. Florida Cancer Specialists & Research Institute states it is the largest independent medical oncology/hematology practice in the United States and has operated in Florida for 30 years. Specific details are found in each section of the report.

Humana was not forthcoming with nor did it timely provide pertinent documents requested by the Office of Insurance Regulation (Office) in connection with this examination, asserting claims of confidentiality or privilege. This does not constitute making records "freely available" to the Office as provided in Sections 624.318(2) and 641.27(1), Florida Statutes.

PURPOSE AND SCOPE OF EXAMINATION

The Office's Market Investigations unit conducted a target market conduct examination of Humana Medical Plan, Inc. and Humana AdvantageCare Plan, Inc. pursuant to Section 624.3161, Florida Statutes. The examination was performed by Tsali Consulting, LLC. The scope period of the examination was January 1, 2012, through February 1, 2014. The onsite examination began February 11, 2014, and ended April 18, 2014.

The purpose of the examination was to review Humana's termination of Florida Cancer Specialists & Research Institute's (FCS) provider contracts in Collier and Lee counties to determine compliance with Florida Statutes and the Florida Administrative Code. The examiner reviewed:

- Board minutes, emails, complaint/grievance logs, and other internal documents;
- Humana's process for establishing and maintaining network adequacy in the affected and surrounding counties;
- Policyholder notifications regarding changes in or the availability of network cancer specialists; and
- Provider contract cancellations.

The examiner's review concluded that the cancellation of FCS' contracts in Collier and Lee counties also affected policyholders insured by parent company, Humana Inc. affiliates, as follows:

- CarePlus Health Plans, Inc.[1]; and
- Humana Health Insurance Company of Florida, Inc.

Additional information concerning each of these Companies is included in this report.
This Final Report is based upon information from the examiner's draft report, additional research conducted by the Office, and additional information provided by the Company. Procedures and

[1] CarePlus is not licensed in Collier or Lee Counties and sells no plans in those counties. CarePlus contracted with FCS to provide services to its members in other areas of the State outside of Collier and Lee counties.

conduct of the examination were in accordance with the *Market Regulation Handbook* produced by the National Association of Insurance Commissioners.

COMPANY OPERATIONS

Humana Medical Plan, Inc. is a domestic health maintenance organization licensed to conduct business in the State of Florida on June 1, 1987. The Company writes Small Group, Medicare, Medicaid, and Federal Employee Health Benefits Program coverage.

Total Direct Premiums Written in Florida was as follows:

Total Written Premiums In Florida (Per Schedule T of the Annual Statement)			
Year	Accident & Health	Medicare	Medicaid
2012	$629,672,795	$4,206,767,949	$186,167,828
2013	$624,947,036	$4,240,459,905	$225,031,591

Human AdvantageCare Plan, Inc. is a domestic health maintenance organization licensed to conduct business in the State of Florida on April 22, 2005. The Company writes Medicare coverage.

Total Direct Premiums Written in Florida was as follows:

Total Written Premiums In Florida (Per Schedule T of the Annual Statement)	
Year	Medicare
2012	$115,360,449
2013	$116,675,923

CarePlus Health Plans, Inc. is a domestic health maintenance organization licensed to conduct business in the State of Florida on July 3, 2002. The Company writes Medicare coverage.

Total Direct Premiums Written in Florida was as follows:

Total Written Premiums In Florida (Per Schedule T of the Annual Statement)	
Year	Medicare
2012	$1,186,385,813
2013	$1,204,252,637

Humana Health Insurance Company of Florida, Inc. is a domestic life and health insurer licensed to conduct business in the State of Florida on February 8, 1984. The Company writes Individual, Small Group, Medicare, and Federal Employee Health Benefits Program coverage.

Total Direct Premiums Written in Florida was as follows:

Total Written Premiums In Florida (Per Schedule T of the Annual Statement)		
Year	Accident & Health	Medicare
2012	$189,536,292	$138,891,845
2013	$160,827,618	$152,874,206

FLORIDA CANCER SPECIALISTS & RESEARCH INSTITUTE

FCS states it employs more than 170 physicians, 110 nurse practitioners and physician assistants in 80 clinical sites located throughout Florida. FCS serves patients from Naples to Tampa Bay, Tallahassee, Central Florida, and Palm Beach County and, states it has served over 12,000 Humana subscribers.

CONTRACT TERMINATIONS

On September 10, 2013, Humana Inc. provided Dr. William Harwin, President of FCS, with 180 days notice of its intent to terminate all contract agreements without cause effective March 15, 2014. The agreements were as follows:

- Commercial Health Maintenance Organization (HMO) Fee-For Service (FFS) Medical Group Participation Agreement between Humana Medical Plan, Inc. and its affiliates, and Florida Cancer Specialists dated June 15, 2006. The Agreement was terminated pursuant to Section 6.2, as amended on September 15, 2011;

- Preferred Provider Organization (PPO) Medical Group Participation Agreement between Humana Insurance Company, Humana Health Insurance Company of Florida, Inc. and their affiliates, and Florida Cancer Specialists dated January 1, 2006. This Agreement was terminated pursuant to Section 6.2, as amended on September 11, 2011;

- Physician Participation Agreement between Human Insurance Company, Humana Health Insurance Company of Florida, Inc., Humana Medical Plan, Inc. and their affiliates, and Florida Cancer Specialists dated December 1, 2009. This Agreement was terminated pursuant to Section 6.2; and

- Group Participation Agreement between Health Value Management, Inc. d/b/a ChoiceCare Network, and Florida Cancer Specialists dated January 1, 2006. This Agreement was terminated pursuant to Section 5.2.

The reason cited in the termination notice was:

"*...due to the existence of a change in Humana's business needs and conflicting views relevant to Humana's policy and procedures between the parties.*"

On September 15, 2013, CarePlus Health Plans, Inc. (CarePlus) provided Dr. Harwin with 180 days notice of its intent to terminate all contract agreements without cause effective March 14, 2014.

The reason cited in the termination notice was:

"*Due to the termination of Specialty Provider's contractual relationship with Humana Medical Plan, Inc., Humana Insurance Company, Humana Health Insurance Company of Florida, Inc. and their Affiliates and Health Value Management, Inc. d/b/a ChoiceCare Network (collectively "Humana") and because the Plan is a wholly owned subsidiary of Humana, the Plan has also decided to terminate its Agreement with Specialty Provider.*"

APPEALS

Federal regulation 42 C.F.R. Section 422.202, provides FCS with the right to appeal the terminations to a Physician Review Panel for Medicare Advantage business. The regulations require written requests to be submitted within 30 calendar days of the date of the termination notice or rights to the review are waived. On October 9, 2013, and October 14, 2013, respectively, FCS submitted written requests for hearing panel reviews of the terminations.

The requests provided the following arguments for rescinding the terminations:

- FCS served Humana subscribers for over 30 years;
- The terminations limited patient access to oncology and hematology treatment by flooding the local market with approximately 12,000 commercial, Medicare, Medicaid, and non-Humana patients.
- Other oncology practices were forced to absorb the influx of patients.

The Humana Physician Review Panel convened on December 9, 2013, and the CarePlus Physician Review Panel convened on December 19, 2013, to review FCS' requests to rescind the terminations. Each panel consisted of three physicians who were participating providers in a Humana Inc. and/or CarePlus network. During the review, Humana Inc. and CarePlus presented the panel with copies of the termination notices, the appeal requests submitted by FCS, contract excerpts, policy language, email communications, and other materials.

FCS presented a brief with arguments to support their requests to rescind the terminations as follows:

- "*Humana's vague reason for termination did not meet federal regulatory requirements under 42 C.F.R. section 422(d)(1); such that Humana did not identify the specific change in its "business needs." FCS complied with all policies and procedures required pursuant to the Agreements and Humana's provider manual, and knew of no dispute with Humana on that topic. Humana offered no substantive reason for the termination or any criteria that would allow FCS to objectively assess and understand the basis for the termination.*"

- *"The American Medical Association (AMA) opposes the use of termination without cause provisions in health care payor contracts with physicians, particularly if the contracted physicians are not afforded a fair hearing prior to the termination."*

- *"Although the Florida Supreme Court has not examined the propriety of termination without cause provisions in provider contracting, other states have done so. See e.g. Potvin v. Metropolitan Life Insurance Co., 997 P.2d 1152(2000). In Potvin, the California Supreme Court held that health insurers cannot arbitrarily terminate their provider contracts and remove physicians from the payor network without the just cause of a fair hearing. A majority of the Supreme Court agreed with Dr. Potvin's contention that in the managed care environment, physicians and their patients are at the mercy of managed care organizations, which not only control the ability of physicians to practice their profession, but have the power to interfere with the public's interest in preserving and protecting patient relationships."*

The Physician Review Panels unanimously upheld both terminations.

SUBSCRIBER NOTICES OF PROVIDER TERMINATION

On September 12, 2013, and September 20, 2013, respectively, Humana Inc. and CarePlus mailed provider termination notices to subscribers advising them that FCS would not be a network provider effective March 15, 2014. The notices were mailed to subscribers that began receiving treatment from FCS as of September 2012.

Subscribers were notified they may qualify to receive continued care beyond the provider termination date with FCS at in–network benefit levels with their current provider as follows:

- Commercial subscribers received the lesser of six months of continued care or continued care until treatment was completed; and

- Medicare subscribers received the lesser of three months of continued care or continued care until treatment was completed.

Subscribers were required to obtain authorization prior to receiving medically necessary continued care from FCS. After the initial six or three month time period elapsed, Humana subscribers that were still in treatment could seek authorization for extended continuity of care. In addition to providing written notices to Humana's subscribers about requesting continuity of care, Humana's clinical program nurses and Health Planning and Support personnel contacted affected subscribers via telephone to assist with the process.

Medicare provides subscribers with an enrollment period to apply for or change Medicare Advantage and/or Medicare Part D plans, or return to traditional Medicare, annually. Subscribers who desired to change plans could do so during Medicare's subsequent open enrollment period which began on October 15, 2013, and ended December 7, 2013. The re-enrollment rates of Humana subscribers affected by the FCS contract termination were as follows:

Humana Inc. Medicare HMO: 85% of affected subscribers re-enrolled;
Humana Inc. Medicare PPO: 81% of affected subscribers re-enrolled; and
CarePlus Medicare HMO: 75% of affected subscribers re-enrolled.

TERMINATION PROCESS REVIEW

A review of Humana Inc.'s internal correspondence and documentation pertaining to FCS during the scope period was conducted. Because Humana failed to provide access to these documents, the examiner interviewed key employees regarding their knowledge of the FCS terminations. All interviews were conducted with a Humana attorney present.

An internal email dated September 4, 2013, stated Humana's reasons for the termination as:

"*This is a without cause termination that we are choosing to invoke. It has nothing to do with a renewal. It is due to concerns over quality of care, providing the right treatment protocols and financial gaming of the system.*"

Contract Concerns

Humana subcontracts oncology protocol and treatment plan reviews with Oncology Analytics (OA). FCS was concerned with OA's "*...cumbersome authorization and registration system, excessive and disruptive peer/medical director reviews, uncorrected and unresolved bonus report errors, limited and restrictive regimens, and general concerns that OA's program did not add value to patient care or the clinical decision making process.*" FCS asserted that OA's program "*distracted its physicians and staff from focusing on treating and serving patients.*" Humana's internal documents and correspondence do not reflect the same concerns expressed by FCS or Dr. Harwin as contributing factors to the decision to terminate the contract.

On December 4, 2012, a meeting was held between Humana, OA, and FCS to discuss these concerns. FCS' meeting minutes state FCS was not satisfied with its contract structure. FCS considered terminating its contract with Humana if issues were not satisfactorily or timely resolved. The minutes reflect that FCS and OA agreed to revise and implement changes. In an email to Humana dated February 15, 2013, Dr. Harwin indicated he was considering contract termination options, and FCS would move quickly to meet the contract's termination date unless another meeting occurred.

An internal email dated July 12, 2013, indicates a Humana medical director recommended terminating the contract based on FCS' uncooperative behavior with OA, FCS' desire for increased fees, and FCS' aggressive growth of oncology providers.

Patient Quality of Care

Interviews with key staff and the review of internal documents indicate Humana was concerned that FCS withheld treatment to an oncology patient while waiting for approval for a contract price adjustment increase to administer the drug Fusilev. OA denied the use of Fusilev in favor of a less expensive drug, Leucovorin. Humana expressed concern that FCS withheld patient treatment while waiting to obtain approval to use Fusilev. FCS denied and OA confirmed this did not occur. When FCS stated Leucovorin was in short supply, Humana verified that Leucovorin

was listed on the Federal Drug Administration's (FDA) short supply list but OA stated FCS had sources to obtain it.

Interviews with two Humana medical directors indicate the reason for terminating FCS' contracts was a business decision and not a clinical or patient care decision. Both confirmed that the relationship between FCS and OA was strained.

Treatment Protocols

An internal OA email dated August 21, 2012, documented friction between FCS and OA. It stated that after a year of data collection, non-FCS oncologists adapted to, but FCS oncologists resisted, OA's system. OA stated it would employ strategies to encourage FCS to employ its level data and guidelines.
An email from Dr. Harwin to Humana dated May 8, 2013, documents OA would not approve use of the drug Fusilev but directed the use of FOLFIRI. OA later approved the use of FOLFIRI with Fusilev allowing the patient to be treated as the oncologist originally recommended.

Cost Savings Plans

Humana has large scale cost savings and network reshaping plans to reduce costs across all markets and for all areas of health care. Humana's objective is to secure and streamline its national and Florida oncology networks.

NETWORK ADEQUACY REVIEW

The FCS contract terminations required Humana to locate additional oncologists in order to adhere to the Center for Medicaid and Medicare Service's (CMS) guidelines for its Medicare lines of business. Humana identified oncology network adequacy gaps in Flagler, Volusia, Collier, Lee, and Sarasota counties in August 2013. Humana added oncologists to these counties but did not meet CMS guidelines which vary by county and population. Humana was required to self-report network adequacy issues to CMS with a corrective action plan.

By March 1, 2014, Humana added four oncology groups and CarePlus added seven oncology groups. By April 1, 2014, Humana added one additional oncology group in Collier County resolving the network adequacy gap. Humana states it meets CMS network adequacy guidelines for all counties in Florida.

DIVIDEND DISTRIBUTIONS

On March 29, 2013, the Office received advance notification of Humana Inc.'s future dividend distributions. A subsequent notification was made on April 16, 2013. The distributions were paid as follows:

- Humana Medical Plan, Inc. - $460,000,000 ordinary dividend distribution to its parent company, Humana Inc. on or about April 30, 2013;

- CarePlus Health Plans, Inc. - $107,900,000 ordinary dividend distribution to its parent company, Humana Inc. on or about April 30, 2013; and $29,100,000 ordinary dividend distribution to its parent company, Humana Inc. on or about June 15, 2013;

- Humana Health Insurance Company of Florida, Inc. - $50,000,000 extraordinary dividend distribution to its parent company, Humana Inc. on or about April 30, 2013;

- Humana AdvantageCare Plan, Inc. - $10,000,000 extraordinary dividend distribution to its parent company, Humana Medical Plan, Inc. on or about April 30, 2013.

On April 8, 2014, the Office received advance notification of Humana Inc.'s future dividend distributions. The distributions were paid on or about April 30, 2014, as follows:

- Humana Medical Plan, Inc. - $300,000,000 ordinary dividend distribution to its parent company, Humana Inc.;

- CarePlus Health Plans, Inc. - $55,000,000 ordinary dividend distribution through its sole shareholder, CPHP Holdings, Inc., to its parent company, Humana Inc.;

- Humana Health Insurance Company of Florida, Inc. - $5,000,000 extraordinary dividend distribution to its parent company, Humana Inc.;

- CompBenefits Company - $1,000,000 ordinary dividend distribution through its sole shareholder, Humana Dental Company, through its sole shareholder CompBenefits Corporation, to its parent company, Humana Inc.; and

- Humana AdvantageCare Plan, Inc. - $15,000,000 extraordinary dividend distribution to its parent company, Humana Medical Plan, Inc.

On April 16, 2014, Humana notified the Office of the withdrawal and cancellation of the $15,000,000 extraordinary dividend distribution for Humana AdvantageCare Plans, Inc.

APPROVED RATE FILINGS

The following rate filings were made and approved during the scope period.

Humana Medical Plan, Inc.

Filing Number	Date Approved	Percentage Approved/ Increase or Decrease	Individual/ Small Group	Comments
12-03868	4/16/2012	3.4% decrease	Small Group	Average annual premium reduced from $7,433 to $7,178 for 19,010 consumers.
13-10497	07/05/2013	0.00	Small Group	The Company dropped the employee level application as part

				of its underwriting. No change in the average annual premium of $7,015 for 18,065 consumers.
13-15444	10/1/2013	0.0%	Small Group	Modified rating system from family tier to per-member rating. No change in average annual premium of $8,952 for 2,400 consumers.
13-21467	12/10/2013	0.0%	Small Group	Re-added PBA rider. Average annual premium increased from $8,952 to $9,843 for 2,400 consumers.

Humana Health Insurance Company of Florida, Inc.

Filing Number	Date Approved	Percentage Approved/ Increase or Decrease	Individual/ Small Group	Comments
12-03870	04/16/2012	3.4% decrease	Small Group	Average annual premium reduced from $13,599 to $13,123 for 942 consumers.
12-11803	10/29/2012	0.1% increase	Individual	Average annual premium increased from $3,755 to $3,759 due to the Comparative Effectiveness Research Tax Fund. Change affected 28,900 consumers.
13-05858	05/10/2013	1.5% decrease	Small Group	Average annual premium reduced from $16,359 to $16,114 affecting 544 consumers.
13-10498	07/05/2013	0.0%	Small Group	The Company dropped the employee level application as part of its underwriting. No change in the average annual premium of $16,114 for 544 consumers.
13-15443	10/01/2013	0.0%	Small Group	Modified rating system from family tier to per-member rating. Also removed PBA rider due to system constraints and ACA. No change in average annual premium of $17,187 for 383 consumers.
13-17549	10/11/2013	2.3% increase	Individual	Company originally requested 4.8% but recommended rate level met the loss ratio tests per the actuary. Average annual premium increased from $2,003 to $2,099 for 2,641 consumers.

13-21468	12/10/2013	9.95% increase	Small Group	Re-added PBA rider. Average annual premium increased from $17,187 to $18,897 for 383 consumers.

Rate filings were not made by Humana AdvantageCare Plan, Inc. or CarePlus Health Plans, Inc. as Medicare rates are not approved by the Office.

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 Humana.

Humana

Humana Inc.
3501 SW 160th Ave.
Miramar, FL 33027
Humana.com

November 10, 2015

Received by the
Office of Insurance Regulation

NOV 12 2015

Bureau of Market Investigations

VIA OVERNIGHT DELIVERY

Mr. Scott A. Woods
Investigation Manager
Office of Insurance Regulation
200 East Gaines Street
Tallahassee, FL 32399

RE: Florida Target Market Conduct Examination #26291 and 26292
Scope of Examination: January 1, 2012, through February 1, 2014

Dear Mr. Woods:

Humana Medical Plan, Inc. and Humana AdvantageCare Plan, Inc. (hereinafter referred to as "Humana") are in receipt of the 2015 Market Conduct Final Examination Report dated October 30, 2015 ("October 30 Report") and Form 118 to be executed pursuant to Section 624.319(5) of the Florida Statutes.

Upon review of the October 30 Report, Humana identified inconsistencies that do not conform to the final draft version of the report agreed upon by OIR and Humana on August 22, 2014. Specifically, the October 30 Report contains new and materially different conclusions, as well as some other alterations, that are not found in either the initial draft report sent to Humana on June 18, 2014, or the final draft report sent to Humana on August 18, 2014, and agreed to by OIR and Humana on August 22, 2014.

Below is a list of those inconsistencies for your reference. Humana respectfully requests that any changes that do not conform with the language agreed upon between the parties in August 2014 be removed from the October 30 Report before it is filed with the Department.

1. As to the Executive Summary section, additional language was included:

   "Humana was not forthcoming with nor did it timely provide pertinent documents requested by the Office of Insurance Regulation (Office) in connection with this examination, asserting claims of confidentiality or privilege. This does not constitute making records 'freely available' to the Office as provided in Sections 624.318(2) and 641.27(1), Florida Statutes."

2. As to the Termination Process Review section, the following language was deleted and replaced by additional language.

The information transmitted is intended only for the person or entity to which it is addressed and may contain CONFIDENTIAL material. If you receive this material/information in error, please contact the sender and delete or destroy the material.

DELETED TEXT:

"Beginning February 11, 2014, the examiner concluded that Humana was not forthcoming or timely with providing hundreds of pertinent documents claiming privileged or confidential information. As a result,"

ADDITIONAL LANGUAGE:

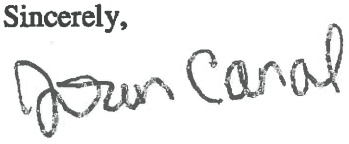
"Because Humana failed to provide access to these documents,"

These alternations, as well as the process by which OIR made the changes, are at odds with Rule 69N-121.066 of the Florida Administrative Code and Section 624.319(1) of the Florida Statutes. Accordingly, Humana does not believe that the October 30 Report can properly be considered a "Final Report" under Florida law.

Not only were the new and modified conclusions absent from both of OIR's draft reports, but OIR's substantive changes also seem to conflict with the examiner's statements in OIR's original draft report. *See* June 18, 2014, Draft Market Conduct Examination Report at 13 ("The courtesy and cooperation of the officers and employees of Humana Inc. during the examination are acknowledged and appreciated."). Humana, moreover, disagrees with the changes in the October 30 Report, and would note that Humana went to great lengths to quickly produce to OIR approximately 35,000 pages of responsive email for examination. Finally, the new conclusions in the October 30 Report are particularly curious because they were inserted more than one and a half years after the examiner completed her examination and more than fifteen months after Humana and OIR agreed to a different final draft examination report.

Please forward a corrected Final Report and upon receipt of the same, Humana will execute and return Form 118 pursuant to Section 624.319. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Joan C. Canal
Assistant General Counsel

cc: Richard N. Sox, Esq.