

FINANCIAL SERVICES COMMISSION

**FLORIDA OFFICE OF INSURANCE REGULATION
MARKET INVESTIGATIONS**

MARKET CONDUCT FINAL EXAMINATION REPORT

OF

PROTECTIVE MARKETING ENTERPRISES, INC.

AS OF

MAY 19, 2006

FLORIDA COMPANY CODE: 56013



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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 Protective Marketing Enterprises, Inc. ("Protective" or "Company") was performed. The scope of this examination was April 22, 2005 through December 31, 2005. The examination began May 15, 2006 and ended May 19, 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 2801 Highway 280 South, Birmingham, AL 35223-2479.

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 April 22, 2005. Protective is also licensed or registered in Illinois, Louisiana, Nevada, Oklahoma, South Dakota, and Utah, and has filed for licensure in Connecticut.

Protective's discount medical plan offers dental, medical, vision, hearing, behavioral health, complimentary alternative medicine, long-term care, nurse and physician hotline, medical records storage, pharmacy, durable medical equipment, diabetic supplies, and chiropractic discounts to members.

Chapter 636, Part II, Florida Statutes does not regulate pharmaceutical supplies, prescriptions, and medical information storage and retrieval services.

PROVIDER NETWORK AGREEMENT REVIEW

The Company has agreements with external network providers for its discount medical plan. Medical services discounts are available through written agreements with the following 6 companies:

- Beltone – hearing;
- CAM Health Partners – complimentary alternative medicine (“CAM”);
- Comprehensive Health Group (CHG) – chiropractic;
- Eye Care International (ECI) – LASIK surgery;
- Health Care Synergies (HIS) – long-term care; and
- Medical Resource, LLC – physician, hospital, and ancillary services.

A review of the provider network agreements was conducted. The following violations were noted:

- 5 agreements did not require the network to provide an up-to-date list of its contract providers on a monthly basis to the discount medical plan organization as required by Section 636.214(3)(c), Florida Statutes;
- 2 agreements did not contain a list of the services and products to be provided at a discount, and the amount or amounts of the discounts or, alternatively, a fee schedule which reflects the provider’s discounted rates as required by Section 636.214(3)(a), Florida Statutes; and
- 6 agreements did not disclose that the provider would not charge members more than the discounted rates as required by Section 636.214(3)(a), Florida Statutes.

Corrective Action: The Company should ensure that all provider network agreements contain terms as required.

PROVIDER AGREEMENT REVIEW

The Company maintains two internal provider networks, dental and vision. These networks have 49,154 providers. A sample of 15 provider agreements (8 dental and 7 vision) was reviewed for compliance with Section 636.214, Florida Statutes. No violations were noted.

MARKETER AGREEMENT REVIEW

Protective has agreements with 37 individual marketers to sell its discount medical plan to Florida residents. A sample of 10 agreements was reviewed for compliance with Section 636.228, Florida Statutes. No violations were noted.

ACTIVE MEMBERSHIP REVIEW

As of December 31, 2005, the Company had 4,930 active memberships, 729 of which had enrollment effective dates on or after April 22, 2005.

Enrollment and Fulfillment Procedures

All consumer enrollments are completed via the telephone. Protective handles fulfillment, billing, and customer service for all members. Once enrolled, Protective sends each member a packet that contains the entire membership agreement, handbook, and membership cards.

Memberships after April 22, 2005

A random sample of 50 membership files with effective dates of enrollment on or after April 22, 2005 was reviewed. The membership files included registration forms, payment history and subscriber notes. Forty (40) membership files evidenced enrollment in the following plans and included charges or used forms that had not been filed with and approved by the Office as required by Section 636.216(1) and (3), Florida Statutes:

- 4 – Sam’s Dental Plan, \$6.95/month, no processing fee;
- 1 – HealthOptions Plus Plan, \$134.95/month, \$100 one-time processing fee;
- 14 – Smarthealth Plus Plan, 104.95/89.95 month, \$100 one-time processing fee; and
- 21 – Smarthealth Premier Plan, \$124.95/\$139.95 month, \$100 one-time processing fee.

Five (5) members were enrolled in Protective Dental Plan and paid a periodic fee that had not been filed with and approved by the Office as required by Section 636.216(1), Florida Statutes. Five (5) members were enrolled in Protective Dental Advantage Plan in which no violations were noted.

Corrective action: The Company should enroll members on forms that have been filed with and approved by the Office and only utilize approved charges and fees.

Memberships prior to April 22, 2005

Between the April 1, 2005 effective date of Chapter 636, Florida Statutes, and the April 22, 2005 date Protective was permitted to operate as a licensed DMPO, 67 members were enrolled. Enrolling members in a discount medical plan without a license violates Section 636.204(1), Florida Statutes.

Corrective Action: Members enrolled prior to April 22, 2005 should be provided Florida approved enrollment forms and written agreements upon renewal.

FORMS/CHARGES REVIEW

A review of the charges, telephone scripts, membership agreements, and membership handbooks for the following plans marketed by the discount medical plan organization was conducted:

- Protective Dental Plan;
- Protective Dental Advantage Plan;
- Protective Medical Savings Card Plan;
- Protective Vision Plan;

- Protective Pharmacy and Hearing Savings Card Plan;
- Protective Chiropractic Savings Card Plan;
- Protective Medical Hotline Plan;
- Protective Alternative Medicine Discount Card Plan;
- Sam's Dental Plan;
- Protective Smarthealth Premier Plan;
- Protective Smarthealth Plus Plan; and
- Protective HealthOptions Plus Plan.

The review revealed the following violations:

- The Company charged a different periodic fee for the Protective Dental Advantage Plan than the periodic fee it had filed with the Office as required by Section 636.216(1), Florida Statutes.
- The disclosures contained in the following forms failed to properly list the Company as the discount medical plan as required by Section 636.212(5), Florida Statutes:
 1. PMSC.1;
 2. Genie.1;
 3. TW712 03/28/05;
 4. Pamd.1;
 5. Pmhl.1;
 6. PVP.1;
 7. Pph.1; and
 8. Ppsc.1.
- Form number TWC5-PME, Part I of the membership agreement for Protective Dental Advantage Plan, fails to state the term of the contract as required by Rule 690-203.202(1)(d), Florida Administrative Code.
- The Company marketed and sold 4 plans in which the forms used were not first filed with and approved by the Office as required by Section 636.216(3), Florida Statutes:
 1. Sam's Dental Plan;
 2. Protective Smarthealth Premier Plan;
 3. Protective Smarthealth Plus Plan; and
 4. Protective HealthOptions Plus Plan.
- The charges for Sam's Dental Plan were not filed with the Office. The charges for the Protective Smarthealth Premier, Protective Smarthealth Plus, and Protective HealthOptions Plus Plans, all exceeded \$30 a month, and had not been filed with and approved by the Office. All charges to members must be filed with the Office and any charge to members greater than \$30.00 per month or \$360.00 per year must be approved by the Office before the charges can be used as required by Section 636.216(1), Florida Statutes.

Corrective action: The Company should only use forms and charges that have been filed with and approved by the Office. The Company should also ensure all disclosures properly state the name and address of the licensed discount medical plan organization and state the proper terms of the membership agreement.

CANCELLATION REVIEW

During the scope of the examination, the Company reported that 385 members cancelled their membership within the first 30 days of their enrollment effective date. A random sample of 50 files, with the membership cancelled within the first 30 days of the enrollment effective date, was reviewed to verify the reimbursement of all periodic charges and any portion of a one-time processing fee that exceeds \$30.00 per year. Of the sample reviewed, 24 files did not show the reimbursement of all periodic charges upon return of the discount card to the discount medical plan organization as required by Section 636.208(2), Florida Statutes. In addition, of the 50 files reviewed, the Company did not reimburse any member for any portion of a one-time processing fee that exceeds \$30.00 per year as required by 636.208(4), Florida Statutes.

Corrective Action: The Company should ensure that it refunds all periodic fees to members who cancel within the first 30 days of their enrollment effective date and return the discount medical card to the discount medical plan organization. The Company should also ensure that it refunds any portion of a one-time processing fee that exceeded \$30.00 per year.

During the scope of the examination, the Company reported that 253 members cancelled their membership more than 30 days after the enrollment effective date. A random sample of 18 files, with membership cancelled more than 30 days after the enrollment effective date, was reviewed to verify a pro rata reimbursement of all periodic charges and any portion of a one-time processing fee that exceeds \$30.00 per year. Of the sample reviewed, 18 files did show members received a pro rata reimbursement of all periodic charges. However, of the 18 files reviewed, the Company did not reimburse any portion of a one-time processing fee in excess of \$30.00 per year to 8 members as required by 636.208(4), Florida Statutes.

Corrective Action: The Company should ensure that it refunds any portion of a one-time processing fee that exceeded \$30.00 per year.

COMPLAINT/GRIEVANCE REVIEW

The Company has recorded 56 consumer complaints related to its discount medical plan since licensure. There were no complaints reported to the Florida Department of Financial Services, Division of Consumer Services, or to the Office, related to this discount medical plan during the scope of the examination.

A review of the 56 complaints demonstrated that the Company is following its policies and procedures that are in place to facilitate the resolution of member grievances and complaints as required by Section 636.205(1)(d), Florida Statutes.

WEBSITE REVIEW

A review of the Company's website, www.protectivedentalplan.com revealed the following violations:

- The first page of the website does not contain the name and address of the licensed discount medical plan organization as required by Section 636.212(5), Florida Statutes.

Corrective Action: The Company should ensure that the first page of its website provides the name and address of the licensed discount medical plan organization.

ADVERTISING REVIEW

The Company produced 7 advertisements used during the scope of the examination. A review of the advertisements was conducted with the following violations noted:

- 2 advertisements contained the required disclosures, but the disclosures were not on the first page of the advertisement and the disclosures, as shown, were not in print of not less than 12-point type as required by Section 636.212, Florida Statutes. The 2 advertisements also included an application form that had not been filed with and approved by the Office as required by Section 636.216(3), Florida Statutes; and
- 5 advertisements failed to include the name and address of the licensed discount medical plan organization as required by Section 636.212(5), Florida Statutes. The 5 advertisements also included an application form that had not been filed with and approved by the Office as required by Section 636.216(3), Florida Statutes.

Corrective Action: The Company should ensure that all advertisements contain the required disclosures and that the disclosures are in print of not less than 12-point type. The Company should also ensure the use of enrollment forms that have been filed with and approved by the Office.

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.