

STATE OF NORTH DAKOTA
BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of)	
)	
Noridian Mutual Insurance Company,)	
dba Blue Cross Blue Shield of North)	CONSENT ORDER
Dakota, FEIN 45-0173185,)	
)	
Respondent.)	

Commissioner of Insurance Glenn Pomeroy (hereinafter "Commissioner") has determined as follows:

1. The Commissioner has authority in this matter pursuant to N.D. Cent. Code §§ 26.1-01-03.1 and 28-32-05.1.
2. Noridian Mutual Insurance Company dba Blue Cross Blue Shield of North Dakota, FEIN 45-0173185 (hereinafter "Respondent") is a nonprofit mutual insurance company licensed under N.D. Cent. Code Chapter 26.1-12 and duly authorized to do business in North Dakota since December 31, 1943.
3. The Commissioner has jurisdiction over the Respondent and the subject matter of this Consent Order, and this Consent Order is made in the public interest.
4. Respondent has been duly apprised of all allegations contained herein.

Respondent and the Commissioner have agreed to an informal disposition of this matter, without further administrative proceedings, as provided under N.D. Cent. Code § 28-32-05.1, and enter into the following Consent Order. As such, the Commissioner and Respondent agree as follows:

COUNT I

5. The Department received a complaint against Respondent in December 1999 regarding the manner in which Respondent was applying deductibles and coinsurance copayments to amounts not paid by Medicare when Respondent was a secondary payer to Medicare. In response to this complaint, Respondent advised that it has been applying deductibles and coinsurance to the amount not paid by Medicare for institutional claims. Respondent has not been applying these cost sharing mechanisms as a secondary payer to professional claims.

6. After further discussion, Respondent advised the Department that it has not banked the amount it saved as a secondary payer in an accumulated account when Respondent was a secondary payer to Medicare.

7. N.D. Admin. Code § 45-08-01.1-04(1) states:

When it is determined, pursuant to section 45-08-01.1-03, that this plan is a secondary plan, it may reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period are not more than total allowable expenses. The amount by which the secondary plan's benefits have been reduced must be used by the secondary plan to pay allowable expenses, not otherwise paid, that were incurred during the claim determination period by the person for whom the claim is made. As each claim is submitted, the secondary plan determines its obligation to pay for allowable expenses based on all claims that were submitted up to that point in time during the claim determination period.

8. From 1984 to the present, in correspondence to Respondent, the North Dakota Insurance Department has on several occasions interpreted N.D. Admin. Code § 45-08-01-02.1(2) and subsequent § 45-08-01.1-04 to prevent the application of secondary payer's coinsurance and deductibles on any amount outstanding from the primary payer. A secondary payer is not required to pay more than it would have paid had the secondary payer been

primary. Respondent acknowledges that it has received the Department's interpretations.

9. Since 1993, Respondent has been aware of the Department's position that N.D. Admin. Code § 45-08-01.1-04 requires any accumulated savings be banked for the benefit of the insured when Respondent paid out less than it would have had it been primary.

10. The Department has determined that Respondent's application of deductibles and coinsurance to any amount remaining after Medicare's primary payment and Respondent's failure to bank any proposed savings when secondary to Medicare is in violation of N.D. Admin. Code § 45-08-01.1-04(1).

COUNT II

11. Respondent paid benefits under the terms of the NDPERS Dakota Plan Medicare Carve-Out Policy which provides health care coverage as a secondary payer to Medicare but does not coordinate benefits with Medicare. The Dakota Plan Medicare Carve-Out Policy has not been filed and approved by this Department.

12. N.D. Cent. Code § 26.1-30-19(3) states:

No insurance policy, certificate, contract, or agreement or notice of proposed insurance against loss or expense from the sickness, bodily injury, or death by accident of the insured may be issued for delivery or delivered to any person in this state nor may any application, rider, or endorsement be used in connection therewith until the form thereof and the classification of risks and the premium rates, or in the case of cooperatives or assessment companies the estimated costs pertaining thereto, have been filed with and approved by the commissioner. A form must be disapproved if the benefits provided are unreasonable in relation to the premium charge or if the benefits do not comply with chapters 26.1-36 and 26.1-37.

13. The Department has determined that Respondent's payment of benefits under the terms of the Dakota Plan Medicare Carve-Out Policy without prior approval by the North Dakota Insurance Department is in violation of N.D. Cent. Code § 26.1-30-19(3).

15. N.D. Cent. Code § 26.1-01-03.3 subjects Respondent to an administrative monetary penalty of up to \$10,000 per violation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent shall immediately undertake to refund to subscribers (except NDPERS Dakota Plan Medicare Carve-Out subscribers) the amounts Respondent deducted as coinsurance and deductible on institutional claims when Respondent was a secondary payer to Medicare. The amount overpaid by subscribers shall be deemed due back to the subscribers from Respondent. Refunds must be completed by February 28, 2001. Respondent shall provide an accounting of its findings as soon as reasonably possible to the Commissioner.

2. Respondent shall refund all amounts due back to subscribers pursuant to Paragraph 1. Respondent shall file with the Department for approval a letter of explanation which shall be used in the transmittal of the refund checks mailed to subscribers.

3. Respondent is assessed an administrative monetary penalty of fifty thousand dollars (\$50,000) for the violations set forth above to be paid within fifteen (15) days of the date of this Order.

4. Respondent must file and obtain approval from the Commissioner of the NDPERS Dakota Plus Medicare Carve-Out Policy before NDPERS' 2001 renewal.

5. The use of this Consent Order for competitive purposes by an insurance agent or agency holding a license in this state, or by an insurance company holding a Certificate of Authority, or by anyone on its behalf, shall be deemed unfair competition and be grounds for suspension or revocation of said license or authority.

DATED at Bismarck, North Dakota, this 22 day of December, 2000.

Glenn Pomeroy

Glenn Pomeroy
Commissioner
N.D. Insurance Department
600 East Boulevard Avenue
Bismarck, ND 58505
(701) 328-2440

CONSENT TO ENTRY OF ORDER

Respondent acknowledges that in entering into this Consent Order, it has relied wholly upon its own judgment, belief, and knowledge of the nature and extent of the Commissioner's claims. Respondent's execution of this Consent Order and payment of administrative monetary penalty is in compromise and settlement of a disputed claim and shall not be deemed an admission of any violation of law, and Respondent continues to deny and dispute that any violation of law occurred. It is further expressly understood that this Order constitutes the entire settlement agreement between the parties hereto, there being no other promises or agreements, either expressed or implied.

DATED this 21 day of December, 2000.

Noridian Mutual Insurance Company dba
Blue Cross Blue Shield of North Dakota

By: *Michael B. Walker*

Title: Its President and CEO

Subscribed and sworn to before me this 21 day of December, 2000.

Nola J. Bakke
Notary Public

My Commission Expires:
NOLA J. BAKKE
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires Nov. 19, 2002