STATE OF NORTH DAKOTA

BEFORE THE INSURANCE COMMISSIONER

In the Matter of	)	
	)	
Noridian Mutual Insurance Company, d/b/a Blue Cross Blue Shield of North Dakota, a North Dakota Nonprofit Mutual Insurance Company, FEIN 45-0173185,	)	**CONSENT ORDER**
	)	**FILE NO. CO-14-498**
Respondent.	)	

TO: Tim Huckle, President and CEO, Blue Cross Blue Shield of North Dakota, 4510 13th Avenue South, Fargo, ND 58121

Insurance Commissioner Adam Hamm (hereinafter "Commissioner") has determined as follows:

1. The Commissioner has authority in this matter pursuant to North Dakota Century Code Title 26.1.

2. Noridian Mutual Insurance Company d/b/a Blue Cross Blue Shield of North Dakota, FEIN 45-0173185 (hereinafter "Respondent"), is a North Dakota nonprofit mutual insurance company that provides health insurance, is organized and governed by the laws of North Dakota, and has been 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. The North Dakota Insurance Department (hereinafter "Department") recently concluded a targeted market conduct examination (hereinafter "examination") of Respondent. The examination covered the period of March 5, 2010, through May 31, 2013.

COUNT I

5. During the course of the examination, the Department learned that after the Patient Protection and Affordable Care Act [Pub. L. 111-148] (hereinafter "Affordable Care Act") became law, it was Respondent's general business practice to remove dependents under the age of 26 from a parent's group health plan, if the dependents had their own employer-sponsored health coverage available, without considering whether these dependents would still be eligible for coverage under their parents' group health plans based on the provisions of N.D.C.C. § 26.1-36-22 which were more generous than the provisions of the Affordable Care Act.

6. N.D. Cent. Code § 26.1-36-22 provides:

> An individual or group health insurance policy may be extended to insure the individuals, employees, or members with respect to their family members or dependents, including dependents of dependents, or any class or classes thereof, subject to the following:
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> . . .
>
> 3. A policy that provides coverage for a dependent child of an employee or other member of the covered group must provide such coverage up to a limiting age of twenty-two years of age, if the dependent child physically resides with the employee or other member and is chiefly dependent upon the employee or member for support and maintenance.

4. A policy that provides that coverage for a dependent child of an employee or other member of the covered group terminates upon attainment of the limiting age for dependent children specified in the policy does not operate to terminate the coverage of a dependent child while the child is a full-time student and has not attained the age of twenty-six years or while the child is and continues to be both incapable of self-sustaining employment by reason of intellectual disability or physical disability and chiefly dependent upon the employee or member for support and maintenance, provided proof of incapacity and dependency is furnished to the insurer by the employee or member within thirty-one days of the child's attainment of limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

7. Respondent acknowledged during the course of the examination that it was not their practice during the time frame covered by the examination to consider whether dependents under the age of 26 would still be eligible for coverage under their parents' group health plans based on the more generous provisions of N.D.C.C. § 26.1-36-22. Therefore, the Respondent's general business practice concerning this matter violated N.D.C.C. § 26.1-36-22.

8. Pursuant to N.D.C.C. § 26.1-01-03.3, Respondent may be subjected to an administrative penalty for a violation of N.D.C.C. § 26.1-36-22.

COUNT II

9. For individual health plans, enrollment based on health status for dependent children under the age of 19 was not permitted under North Dakota law as of April 4, 2011.

10. N.D. Cent. Code § 26.1-02-29 provides:

> The commissioner shall administer and enforce the provisions of the Patient Protection and Affordable Care Act [Pub. L. 111-148] and the provisions of the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152] to the extent that the provisions apply to insurance companies subject to the commissioner's jurisdiction and to the extent that the provisions are not under the exclusive jurisdiction of any federal agency.

11. On October 13, 2010, the United States Department of Health and Human Services published new information concerning allowable underwriting practices for children under age 19 under the Affordable Care Act. This information stated that an insurer may not medically underwrite and may not decline to enroll children under age 19.

12. During the course of the examination, the examiner in charge requested that the Respondent provide all individuals rejected for health status during the period from April 4, 2011, to May 31, 2013. The examination of these files revealed that the Respondent denied coverage for all 113 dependents under age 19 due to health status where the primary applicant was allowed coverage. Therefore, the Respondent's actions and its practice of denying access to coverage for dependents under age 19 based on their health status violated the provisions of the Affordable Care Act as incorporated by N.D.C.C. § 26.1-02-29.

13. During the course of the examination, Respondent stated it underwrote dependents under age 19, except during the annual open enrollment period of May 1 through May 31. Respondent stated all dependents were accepted and issued coverage without medical underwriting during the annual open enrollment periods.

However, in order to qualify for the annual open enrollment period, Respondent required the application to be signed May 1 through May 31 with a requested coverage effective date of June 1. If either of these dates were not satisfied on the application, Respondent medically underwrote dependents under age 19. The following denials of coverage were noted during the open enrollment period for the files tested above: in May 2011, four dependents were declined; in May 2012, five dependents were declined; and in May 2013, seven dependents were declined.

14. Respondent also provided listings of members for its open enrollment periods. Testing determined there were 11 dependents allowed coverage during the open enrollment periods as true open enrollees. However, the open enrollment listings also included additional dependents declined coverage during the May open enrollment periods. There were two dependents declined coverage during the month of May 2011, none during May 2012, and five during May 2013. Although some of the above-identified dependents under age 19 eventually received the desired coverage by submitting a second application with the Respondent's required signature and requested effective dates, Respondent did not clearly and consistently provide applicants with the specific application requirements of the open enrollment period. Therefore, Respondent provided misrepresentations by omission which comprise an unfair and deceptive act in violation of N.D.C.C. § 26.1-04-03(2).

15. Pursuant to N.D.C.C. § 26.1-01-03.3, Respondent may be subjected to an administrative penalty for a violation of N.D.C.C. §§ 26.1-02-29 and 26.1-04-03(2).

COUNT III

16. On March 9, 2012, Respondent signed a contract with a life and disability carrier ("L&D Carrier") for the marketing of the L&D Carrier's products by the Respondent's affiliate, Noridian Insurance Services, Inc. ("NISI"). A marketing letter issued by NISI and Respondent dated April 30, 2012, and a marketing letter issued only by NISI, dated March 5, 2012, stated all employers were guaranteed a 10% discount on their existing Lincoln Mutual Life group life, short term disability, and long term disability plans. The April 30th letter also guaranteed these discounted premiums for a period of two years.

17. During the course of the examination, the Department discovered that neither the advertised 10% discount nor the period of the discounted premiums advertised (two years) were guaranteed to employer groups under Respondent's contract with the L&D Carrier.

18. During the course of the examination, the Department learned a total of 21 employer groups did not receive the advertised 10% premium discount over the two-year period as advertised by the Respondent's April 30, 2012, marketing materials. Respondent has taken corrective action by crediting the affected groups with the advertised premium discount.

19. N.D. Cent. Code § 26.1-04-03 provides in relevant part:

> The following are unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:
>
> 1. Misrepresentations and false advertising of policy contracts. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison

> misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby. . . .

20. N.D. Admin. Code § 45-06-04-05(1) states:

> No advertisement may omit information or use words, phrases, statements, references, or illustrations if the omission of such information or use of such words, phrases, statements, references, or illustrations has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, or premium payable. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale of an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements.

21. Respondent's April 30, 2012, marketing materials provided misrepresentations and false advertising of the terms of its contract with the L&D Carrier and are in violation of N.D.C.C. § 26.1-04-03 and N.D. Admin. Code § 45-06-04-05.

22. Pursuant to N.D.C.C. § 26.1-01-03.3, Respondent may be subjected to an administrative penalty for a violation of N.D.C.C. § 26.1-04-03 and N.D. Admin. Code § 45-06-04-05.

COUNT IV

23. The Commissioner made an inquiry of the Respondent regarding the issues outlined in Count III above on July 10, 2012.

24. N.D. Cent. Code § 26.1-02-03 states:

> The commissioner may address to any insurance company doing or applying for permission to do business in this state any inquiries in relation to the company's activities, condition, or any other matter connected with the company's transactions. The company shall reply in writing to such an

> inquiry within twenty days of receipt of the inquiry unless within that twenty days the company requests and the commissioner grants an extension of time. It is a violation of this title for a person to knowingly supply the commissioner with false, misleading, or incomplete information.

25. During the course of the examination, it was discovered by the Department that in three instances the Respondent answered a Commissioner inquiry in a manner that knowingly supplied the Commissioner with incomplete information in violation of N.D.C.C. § 26.1-02-03.

26. Pursuant to N.D.C.C. § 26.1-01-03.3, Respondent may be subjected to an administrative penalty for a violation of N.D.C.C. § 26.1-02-03.

COUNT V

27. During the course of the examination, the examiner in charge tested three applicable files involving coordination of health benefit claims with no fault automobile insurance coverage.

28. N.D. Cent. Code § 26.1-41-13 states:

> 1. A basic no-fault insurer has the primary obligation to make payment for economic loss because of accidental bodily injury arising out of the operation of a motor vehicle; provided, that the amount of all benefits a claimant recovered or is entitled to recover for the same elements of loss under any workforce safety and insurance law must be subtracted from the basic no-fault benefits otherwise payable for the injury.
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> . . .
>
> 3. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, authorized to do business in this state may coordinate any benefits it is obligated to pay for economic loss incurred as a result of accidental bodily injury, with the first ten thousand

> dollars of basic no-fault benefits. A basic no-fault insurer authorized to do business in this state may coordinate any benefits it is obligated to pay for medical expenses incurred as a result of accidental bodily injury in excess of ten thousand dollars. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, may not coordinate benefits unless it provides those persons who purchase benefits from it with an equitable reduction or savings in the direct or indirect cost of purchased benefits. The commissioner shall approve any coordination of benefits plan.

29. N.D. Admin. Code § 45-08-01.2-05 states:

> In determining the amount to be paid by the secondary plan on a claim, should the plan wish to coordinate benefits, the secondary plan shall calculate the benefits it would have paid on the claim in the absence of other health care coverage and apply that calculated amount to any allowable expense under its plan that is unpaid by the primary plan. The secondary plan may reduce its payment by the amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim do not exceed one hundred percent of the total allowable expense for that claim. In addition, the secondary plan shall credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

30. Testing of the three files revealed that Respondent failed to provide appropriate credit for deductibles and coinsurance in accordance with state law.

31. Testing of the three files also determined that Respondent failed to apply calculated amounts to allowable expenses that were unpaid by the primary plan as required by state law.

32. Respondent acknowledged during the course of the examination that it was their general business practice to apply state coordination of benefits laws in the same manner in which Respondent applied the law to the three files examined.

33. Respondent's practice of failing to provide appropriate credit for deductibles and coinsurance and failing to appropriately apply calculated amounts to allowable expenses that were unpaid by the primary plan illustrate the Respondent failed to correctly coordinate benefits with no-fault automobile insurance carriers and constitute violations of N.D.C.C. §§ 26.1-04-03(9) and 26.1-41-13 and N.D. Admin. Code § 45-08-01.2-05.

34. Pursuant to N.D.C.C. § 26.1-01-03.3, Respondent may be subjected to an administrative penalty for a violation of N.D.C.C. §§ 26.1-04-03 and 26.1-41-13 and N.D. Admin. Code § 45-08-01.2-05.

COUNT VI

35. During the course of the examination, the Department tested 167 denied preauthorization mental health and substance abuse services files to determine accuracy of claims payments, specifically to determine if claims were handled in compliance with medical necessity, utilization review guidelines, the member's certificate, and North Dakota law.

36. N.D. Cent. Code § 26.1-04-03 provides:

> The following are unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:
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> . . .
>
> 7. Unfair discrimination.
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> . . .
>
> b. Making or permitting any unfair discrimination, including consideration of an individual's history or status as a subject of domestic abuse, between individuals of the same class and of

> essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatsoever.

. . .

9. Unfair claims settlement practices.

. . .

c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

37. Testing of these files revealed that 63 of the files contained a claim or claims that failed to be paid or denied properly in compliance with the Respondent's utilization review guidelines, medical necessity guidelines, and/or its contracts, and North Dakota law. Therefore, the Respondent's practices and procedures concerning payments and denials of mental health and substance abuse claims after preauthorization violated N.D.C.C. § 26.1-04-03(7)(b) and (9)(c).

38. Pursuant to N.D.C.C. § 26.1-01-03.3, Respondent may be subjected to an administrative penalty for a violation of N.D.C.C. § 26.1-04-03(7)(b) and (9)(c).

39. Respondent has agreed to an informal disposition of this matter, without a hearing, as provided under N.D.C.C. § 28-32-22.

40. For purposes of resolving this matter, without further administrative proceedings, Respondent and the Commissioner have agreed to enter into the following Order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent is assessed and shall pay an administrative penalty in the amount of $10,000 per count, for a total of $60,000, which shall be paid within 30 days of the execution of this Order. Payment must be mailed to: North Dakota Insurance Department, 600 East Boulevard Avenue, Dept. 401, Bismarck, ND 58505.

2. The use of this Consent Order for competitive purposes by an insurance producer or agency holding a license in the State of North Dakota, or by any company holding a Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of said license or authority.

DATED at Bismarck, North Dakota, this 9th day of December, 2014.

Adam Hamm
Commissioner of Insurance
State of North Dakota

CONSENT TO ENTRY OF ORDER

The undersigned, **Tim Huckle, on behalf of Noridian Mutual Insurance Company**, states that he has read the foregoing Consent Order, that he knows and fully understands its contents and effect; that he has been advised of his right to be represented by legal counsel, his right to a hearing in this matter, his right to present evidence and arguments to the Commissioner, and his right to appeal from an adverse determination after hearing; and that by the signing of this Consent to Entry of Order he knowingly and voluntarily waives those rights in their entirety, and consents to entry of this Order by the Commissioner of Insurance. 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 1st day of December, 2014.

Noridian Mutual Insurance Company

By: _____

Tim Huckle
President and CEO

State of North Dakota

County of Cass

Subscribed and sworn to before me this 1st day of December, 2014.

_____
Notary Public

My commission expires:

DALE R. SHOOK
Notary Public
State of North Dakota
My Commission Expires April 10, 2019