



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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Notice of Adoption and Filing of Examination Report

Take notice that the proposed report of the market conduct examination of the

PHYSICIANS LIFE INSURANCE COMPANY  
2600 DODGE STREET  
OMAHA NE 68131

dated OCTOBER 24, 2008, and served upon the company on January 27, 2010, has been adopted as the final report, and has been placed on file as an official public record of this Office.

Dated at Madison, Wisconsin, this 9th day of July, 2010.

A handwritten signature in black ink, appearing to read "Sean Dilweg".

Sean Dilweg  
Commissioner of Insurance

**STATE OF WISCONSIN  
OFFICE OF THE COMMISSIONER OF INSURANCE**

**MARKET CONDUCT EXAMINATION  
OF  
PHYSICIANS LIFE INSURANCE COMPANY  
OMAHA, NEBRASKA**

**October 13-24, 2008**

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October 24, 2008

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Honorable Sean Dilweg  
Commissioner of Insurance  
Madison, WI 53702

Commissioner:

Pursuant to your instructions and authorization, a targeted market conduct examination was conducted of:

PHYSICIANS LIFE INSURANCE COMPANY

and the following report of the examination is respectfully submitted.

I. INTRODUCTION

Physicians Life Insurance Company (the company) is part of the Physicians Mutual Group (PMG). The company is organized as a stock company and was licensed in Wisconsin beginning 1971. The company currently writes Medicare supplement, life and annuity policies in Wisconsin.

In 2005, the company's parent company, PMG, determined that it would market Medicare supplement only through Physicians Life Insurance Company and that its subsidiary, Physicians Mutual Insurance Company, would withdraw from the Medicare supplement market. At year end 2007, the company ranked 15th in market share with 6553 policyholders and \$8,474,995 in earned premium. It issued 2813 new policies during 2007.

Wisconsin received a waiver regarding the federal Medicare supplement Plans A to L design requirements. Wisconsin Medicare supplement regulations provide for standardized

benefits under a basic policy with optional riders for the Medicare Part A deductible, Part B deductible, Part B excess expenses, additional home health visits, and foreign travel rider.

The company does not contract with CMS as a plan sponsor to offer Medicare Advantage (Medicare Part C) or Medicare prescription drug plans (Medicare Part D).

In 2006 and 2007 the company reported written premium in all states where it is licensed.

The following table summarizes the total direct national premium written in 2006 and 2007 as compared it to the total direct premium written in Wisconsin.

#### National Direct Business to Wisconsin Direct Business Summary

| <b>2007</b> |                                    |                                   |                                       |                               |
|-------------|------------------------------------|-----------------------------------|---------------------------------------|-------------------------------|
|             | <b>Life Insurance<br/>Premiums</b> | <b>Annuity<br/>Considerations</b> | <b>A&amp;H Insurance<br/>Premiums</b> | <b>Deposit Type<br/>Funds</b> |
| Wisconsin   | \$3,341,008                        | \$1,534,402                       | \$8,980,603                           | \$69,213                      |
| National    | \$163,099,729                      | \$20,236,271                      | \$67,189,880                          | \$2,031,897                   |
| <b>2006</b> |                                    |                                   |                                       |                               |
|             | <b>Life Insurance<br/>Premiums</b> | <b>Annuity<br/>Considerations</b> | <b>A&amp;H Insurance<br/>Premiums</b> | <b>Deposit Type<br/>Funds</b> |
| Wisconsin   | \$3,369,793                        | \$2,801,948                       | \$5,103,230                           | \$337,432                     |
| National    | \$165,686,907                      | \$70,471,123                      | \$54,499,916                          | \$11,637,198                  |

The majority of the premium written by the company in 2006 and 2007 was for life insurance.

The following tables summarize the premium written and benefits paid in Wisconsin for 2006 and 2007

#### Wisconsin Premium and Benefits Paid Summary

| <b>Line of Business</b>           | <b>2006</b>            |                      |
|-----------------------------------|------------------------|----------------------|
|                                   | <b>Premium Written</b> | <b>Benefits Paid</b> |
| Group Policies                    | \$0                    | \$0                  |
| Federal Employees Health Benefits | \$0                    | \$0                  |
| Credit (Group & Individual)       | \$0                    | \$0                  |
| Collectively Renewable Policies   | \$0                    | \$0                  |
| Other Individual Policies         | \$5,103,230            | \$3,145,434          |
| <b>Total</b>                      | <b>\$5,103,230</b>     | <b>\$3,145,434</b>   |
| <b>2007</b>                       |                        |                      |

| <b>Line of Business</b>           | <b>Premium Written</b> | <b>Benefits Paid</b> |
|-----------------------------------|------------------------|----------------------|
| Group Policies                    | \$0                    | \$0                  |
| Federal Employees Health Benefits | \$0                    | \$0                  |
| Credit (Group & Individual)       | \$0                    | \$0                  |
| Collectively Renewable Policies   | \$0                    | \$0                  |
| Other Individual Policies         | \$8,980,603            | \$6,098,620          |
| <b>Total</b>                      | <b>\$8,980,603</b>     | <b>\$6,098,620</b>   |

The following table summarizes the company's Medicare supplement business for the last two years:

#### **Wisconsin Medicare Supplement Summary**

| <b>2007</b>                             |  | <b>Premiums Earned</b> | <b>Amount Incurred Claims</b> | <b>No. of Covered Lives</b> |
|---|--|------------------------|-------------------------------|-----------------------------|
| <b>Classification</b>                   |  |                        |                               |                             |
| <i>Individual Policies</i>              |  |                        |                               |                             |
| Most Current 3 Years                    |  | \$8,474,995            | \$6,532,765                   | 6,553                       |
| All Years Prior to Most Current 3 Years |  | \$0                    | \$0                           |                             |
| <i>Group Policies</i>                   |  | \$0                    | \$0                           |                             |
| Most Current 3 Years                    |  | \$0                    | \$0                           |                             |
| All Years Prior to Most Current 3 Years |  | \$0                    | \$0                           |                             |
| <b>2006</b>                             |  |                        |                               |                             |
| <b>Classification</b>                   |  |                        |                               |                             |
| <i>Individual Policies</i>              |  |                        |                               |                             |
| Most Current 3 Years                    |  | \$4,587,187            | \$3,505,424                   |                             |
| All Years Prior to Most Current 3 Years |  | \$0                    | \$0                           |                             |
| <i>Group Policies</i>                   |  | \$0                    | \$0                           |                             |
| Most Current 3 Years                    |  | \$0                    | \$0                           |                             |
| All Years Prior to Most Current 3 Years |  | \$0                    | \$0                           |                             |

In 2006, the company ranked as the 15th largest writer of Medicare supplement business Wisconsin. In 2007, the company ranked as the 19th largest writer of Medicare business in Wisconsin.

#### **Complaints**

The Office of the Commissioner of Insurance received 12 complaints against the company from January 1, 2007 through June 30, 2008. A complaint is defined as 'a written communication received by the Commissioner's Office that indicates dissatisfaction with an insurance company or agent.' The following table categorizes the complaints received against

the company by type of policy and complaint reason. There may be more than one type of coverage and/or reason for each complaint.

### Complaints Received

| 2008           |               | Reason Type       |          |                  |          |
|----------------|---------------|-------------------|----------|------------------|----------|
| Coverage Type  | Under-writing | Marketing & Sales | Claims   | Plcyhldr Service | Other    |
| Health         | 0             | 4                 | 0        | 0                | 0        |
| Individual A&H | 0             | 0                 | 0        | 0                | 0        |
| Group A&H      | 0             | 0                 | 0        | 0                | 0        |
| Credit A&H     | 0             | 0                 | 0        | 0                | 0        |
| HMO            | 0             | 0                 | 0        | 0                | 0        |
| PPO            | 0             | 0                 | 0        | 0                | 0        |
| LSHO           | 0             | 0                 | 0        | 0                | 0        |
| All Others     | 0             | 1                 | 0        | 1                | 0        |
| <b>Total</b>   | <b>0</b>      | <b>5</b>          | <b>0</b> | <b>1</b>         | <b>0</b> |

| 2007           |               | Reason Type       |          |                  |          |
|----------------|---------------|-------------------|----------|------------------|----------|
| Coverage Type  | Under-writing | Marketing & Sales | Claims   | Plcyhldr Service | Other    |
| Health         | 0             | 0                 | 0        | 1                | 0        |
| Individual A&H | 0             | 0                 | 0        | 0                | 0        |
| Group A&H      | 0             | 0                 | 0        | 0                | 0        |
| Credit A&H     | 0             | 0                 | 0        | 0                | 0        |
| HMO            | 0             | 0                 | 0        | 0                | 0        |
| PPO            | 0             | 0                 | 0        | 0                | 0        |
| LSHO           | 0             | 0                 | 0        | 0                | 0        |
| All Others     | 1             | 2                 | 0        | 2                | 0        |
| <b>Total</b>   | <b>1</b>      | <b>2</b>          | <b>0</b> | <b>2</b>         | <b>0</b> |

### Grievances and Independent Review

The company did not submit for its Medicare supplement business a grievance experience report to the OCI in 2006 as required by s. 632.83 (2), Wis. Stat. and s. Ins 18.06 (2), Wis. Adm. Code. In 2007, the company submitted a copy of its grievance procedures indicating it had not received any grievances for the year. Therefore, the company reported that it did not receive requests for independent review for its Medicare supplement business for 2006 and 2007.

## II. PURPOSE AND SCOPE

A targeted examination was conducted to determine whether the company's practices and procedures comply with the Wisconsin insurance statutes and rules. The examination focused on the period from January 1, 2007 through June 30, 2008. In addition, the examination included a review of any subsequent events deemed important by the examiner-in-charge during the examination.

The examination was limited to the company's Medicare supplement business and included a review of the insurer's operations and procedures in the areas of company operations & management, claims, e-commerce, marketing, sales & advertising, policy forms & rates, policyholder services & complaints, grievances, underwriting, new business, privacy and producer licensing.

The report is prepared on an exception basis and comments on those areas of the company's operations where adverse findings were noted.

### **III. EXAMINATION FINDINGS**

#### **Company Operations/Management**

The examiners reviewed the company's response to the OCI's company operations & management interrogatory, vendor and business associate agreements.

The company's functional areas were organized as parent company business units whereby both Physicians Life Insurance Company (the company) and Physicians Mutual Insurance Company, functions were handled by a business unit. This structure worked well for the company and is not uncommon. However, the examiners found that requests for data and information regarding its licensee, Physicians Life Insurance Company, often also included information for Physicians Mutual Insurance Company.

No exceptions were noted regarding the company operations/management interrogatory review.

#### **Policyholder Service & Complaints**

The examiners reviewed the company's response to the OCI's policyholder service & complaints interrogatory, the company's complaint handling procedures and the company's complaint log. The company indicated that its policyowner services division (POS) was responsible for functions identified in the interrogatory, and consisted of five separate departments: life and annuities customer service, administration and health customer service, health customer service, inbound teleservices, outbound teleservices and training and development. The policyowner services division was responsible for handling all customer inquiries and request for service and state insurance department inquiries. The company indicated that none of its policyholder service functions were outsourced.

The company reported that complaints received by its POS division were generally directed for handling to the department where the complaint originated. Each department maintained an individual record of the complaints it received. The examiners requested a

record of all complaints the company received during the period under review. The company reported that all departments combined received 10 complaints but it was not able to provide adequate documentation for eight of the complaints that explained what the complaints involved and how they were handled. The examiners found that two of the complaints that included adequate documentation were actually written expressions of dissatisfaction and, therefore, met the definition of grievance and should have been handled as grievances not as complaints. One of the two pertained to a Physicians Mutual Insurance Company product. The examiners question whether the number of complaints the company indicated it received accurately represented all complaints received by the company. The examiners' experience indicates that insurance companies receive more complaints from their policyholders than their policyholders file with the OCI. The OCI's complaint data indicated that the OCI received 10 complaints regarding the company for the period of review.

The examiners found that the company's claim department did not keep separate complaint logs for Physicians Life Insurance Company and Physicians Mutual Insurance Company. Section Ins. 18.06, Wis. Adm. Code, requires that an insurer offering a health benefit plan maintain a record of complaints it receives for a period of 3 years and to make these records available for review during examinations by or on request of the commissioners.

The examiners also reviewed 11 complaints the company received from the OCI. The examiners were not able to determine the PMG company that was the correct legal entity based on the company's response letter for five of the complaints. In addition, of the 11 OCI complaints reviewed, five of the complaint files did not include documentation of either an acknowledgement letter or notation of company contact to the complainant within 10 days of receipt of the OCI complaint.

- 1. Recommendation:** It is recommended that the company maintain separate complaint logs for Physicians Life Insurance Company and Physicians Mutual Insurance Company to ensure compliance with s. Ins 18.06 (1), Wis. Adm. Code.

2. **Recommendation:** It is recommended that the company when responding to OCI complaints identify the legal entity involved and provide documentation that they acknowledged the complaint.
3. **Recommendation:** It is recommended that the company revise its existing complaint procedures and maintain for the company a central log of complaints handled by its various departments to ensure that complaints are being correctly counted and documented in compliance with s. Ins. 18.06 (1), Wis. Adm. Code.

The company indicated that it defined a complaint as "a written communication that primarily expresses a grievance." Section Ins 18.01 (2), Wis. Adm. Code, defines a complaint as "any expression of dissatisfaction expressed to the insurer by the insured, or an insured's authorized representative, about an insurer or its providers with whom the insurer has direct or indirect contact with". This definition would include verbal complaints.

4. **Recommendation:** It is recommended that the company revise its existing complaint handling procedures to correctly identify complaints as verbal expressions of dissatisfaction expressed to the insurer by the insured, or an insured's authorized representative, about an insurer or its providers with whom the insurer has direct or indirect contact with in compliance with s. Ins. 18.01 (2), Wis. Adm. Code.
5. **Recommendation:** It is recommended that the company revise its procedures to correctly record and count all written dissatisfactions with the provision of services or claim practices as grievances rather than complaints in compliance with s. Ins. 18.01 (1) and (4), Wis. Adm. Code.
6. **Recommendation:** It is recommended that the company conduct a complete audit of its procedures and processes used for identifying, recording, and handling of complaints and grievances and file with OCI a copy of the audit findings per s. 601.42, Wis. Stat.

The company provided the examiners with an exhibit titled "Claim Services Manual Guideline Complaint Registers 801-1" that was used by its claims staff. The guideline provided in part, "Do not register an inquiry that does not primarily express a grievance. Complaints not in writing, such as those arising from telephone calls or at the time of field contact." The company stated that all verbal questions were handled immediately and resolved, and that typically, written questions were handled as they were received, were more involved, required additional research and therefore, were recorded.

7. **Recommendation:** It is recommended that the company establish procedures for its claim department to record all verbal complaints to ensure compliance with s. Ins. 18.06 (1), Wis. Adm. Code.

### **Grievances & Independent Review Organization (IRO)**

The examiners reviewed the company's response to the OCI's grievance and independent review interrogatory, its written grievance procedures and practices, and its written procedures for handling independent review requests from Wisconsin insureds. Section 632.83, Wis. Stat., provides that every insurer that issues a health benefit plan shall establish and use an internal grievance procedure for the resolution of insureds' grievances with the health benefit plan. The company marketed Medicare supplement policies that meet the definition of health benefit plans. The company reported that it had not received any grievances or requests for independent reviews in 2007.

The company utilized a written guideline titled "Wisconsin Appeals (WI) 802-WI-3" to file its annual grievance experience report with OCI. The guideline indicated that the due date for filing the annual report is March 31. Section Ins 18.06 (2), Wis. Adm. Code, regarding submitting a grievance experience report, provides that the report be filed with the commissioner by March 1 of each year.

8. **Recommendation:** It is recommended that the company correct the due date for filing its annual grievance experience report with the OCI in its guide titled "Wisconsin Appeals (WI) 802-WI-3" to March 1 to ensure compliance with s. Ins. 18.06 (2), Wis. Adm. Code.

The examiners reviewed materials the company used to train employees in responding to inquiries from insureds regarding the independent review process. The company reported that Bulletin Grievances-Wisconsin (WI) 802-WI-5 was the only guideline that its claims department used and only in conjunction with the actual policy benefit provisions. The examiners found that although the guideline was adequate with regard to information on the independent review process, it did not contain information regarding handling of expedited

grievances. The grievances and independent review interrogatory requested a copy of the procedures developed for expedited grievance situations and an explanation of how the enrollees were informed of the procedure. The company reported that its claims department was responsible for the development and administration of the expedited grievance procedure and communicating this information to insureds. The examiners requested procedures and information from the claims department concerning the expedited grievance procedure. The company reported that it did not offer any managed care Medicare supplement plans, and as it did not precertify benefits or conduct medical necessity reviews, it did not have a formal expedited grievance procedure. The company also stated that in the event an urgent situation was brought to the company's attention, its claims department would call a meeting of the claims review committee. The committee was chaired by the assistant vice-president of claims, and consisted of three claims administration managers and three special claims coordinators. The committee would review and discuss the claim in question, with a special claims coordinator contacting the insured to discuss the findings of the committee. The examiners found that the company's process did not comply with the requirements of s. Ins. 18.05, Wis. Adm. Code, that provides that an insurer offering a health benefit plan shall develop a separate expedited grievance procedure. An expedited grievance shall be resolved as expeditiously as the insured's health condition requires but not more than 72 hours after receipt of the grievance. An expedited grievance shall be resolved as expeditiously as the insured's health condition requires but not more than 72 hours after receipt of the grievance. The expedited grievance process applies to all health benefit plans, not just managed care plans. Expedited grievances should be reviewed by the company's grievance committee.

9. **Recommendation:** It is recommended that the company establish a written procedure for handling expedited grievance situations to ensure compliance with s. Ins. 18.05, Wis. Adm. Code.

The examiners requested copies of letters or forms the company used to notify insureds of their right to request an independent review. The company reported that insureds

were given this information, The Independent Review Procedure Form, at the time it issued the policy to an insured. Section 632.835 (2) (b), Wis. Stat., provides that if a coverage denial determination is made, the insurer involved in the determination shall provide notice to the insured of the insured's right to obtain the independent review, how to request the review, and the time within which the review must be requested. The notice shall include a current listing of independent review organizations certified. Section Ins 18.11 (2), Wis. Adm. Code, clarifies the information that must be included in the notice.

- 10. Recommendation:** It is recommended that each time the company makes an adverse determination or an experimental treatment determination for services that fall under Wisconsin mandated benefits, that the company provide a notice to the insured of the right to request an independent review in compliance with s. Ins 18.11 (2), Wis. Adm. Code and s. 632.835 (2) (b), Wis. Stat.

### **Terminations, Nonrenewals & Cancellations**

The examiners reviewed the company's response to the OCI's terminations nonrenewals and cancellation interrogatory, its written procedures and practices, its premium lapse and termination notices.

The examiners reviewed a random sample of 50 terminated or cancelled Medicare supplement policies. No exceptions were noted regarding the file review.

### **Marketing, Sales & Advertising**

The examiners reviewed the company's response to the OCI's marketing, sales and advertising interrogatory, its advertising activities, policies and forms used by the company during the period of review and the company's advertising file. The examiners also interviewed company management regarding its marketing activities.

As of June 30, 2008, the company had four division managers, three assistant division managers, nine associates, 97 career, and six licensed only agents. The company's

division managers oversaw remote location offices and were responsible for recruitment, training, and management of agents. Its assistant division managers were experienced agents who assisted with the oversight, training and development of agents. Its career agents were considered "captive" agents. Its associate agents were allowed to sell for other carriers, and its licensed only agents could sell the company's products but did not receive commissions directly from the company. The compensation agreement was between the licensed only agent and his/her direct up line agent. The company's training of newly recruited agents included on-line university courses, webinars and PowerPoint modules. The company asks all new agents to complete on-line university courses on long-term care insurance.

The company's division managers provided in-house training. After agents were deemed to have completed sufficient in-house training, they begin field work with a field trainer and assistant division manager. Field training could last from one to six weeks depending upon the agent and the number of sales appointments that were completed. After the completion of field training, managers held weekly meetings with new agents and division managers held monthly meetings with all agents to review sale issues.

Section Ins 3.39 (15), Wis. Adm. Code, requires that prior to use in Wisconsin, insurers must file with OCI a copy of any advertisement used in conjunction with the sale of a Medicare supplement policy. The examiners reviewed a random sample of 25 Medicare supplement advertisements and compared these advertisements with the OCI's policy form database of advertisements filed with OCI. The company allowed its agents to create their own advertisements. The examiners verified that the company's agent agreements included a provision that required agents to submit advertisements to the company for approval prior to using the advertisement. No exceptions were noted regarding the advertising review.

The examiners requested that the company describe the process used by its agents when soliciting a new applicant for Medicare supplement insurance and to provide copies of all materials given to applicants and copies of all documents that explained the solicitation

procedures. The company provided the examiners with two Medicare supplement application booklets and three Medicare supplement/dental application booklets. The company reported that the booklets contained the forms needed regarding the sale of a Medicare supplement policy. The booklet was described as a tear away booklet and was not left with the customer. The company did not provide documentation of how agents were trained to use the booklet. The examiners found that the application booklet used during the period of review included both a Medicare supplement and dental application and implied that a Medicare supplement applicant had to buy a dental policy. Section 628.34 (1), Wis. Stat., provides that no person who is or should be licensed under chs. 600 to 646 may make or cause to be made any communication relating to an insurance contract, the insurance business, any insurer or any intermediary which contains false or misleading information, including information misleading because of incompleteness.

**11. Recommendation:** It is recommended that the company remove the dental application from the Medicare supplement application booklet to ensure compliance with s. 628.34 (1), Wis. Stat.

The examiners found that company agents, when soliciting newly eligible Medicare supplement customers, routinely used a company produced questionnaire titled "Confidential Personal Planning Questionnaire." The company reported that agents used the form to help determine the customer's insurance needs, that not all questions were asked at every appointment and that applicants did not have to respond to every question. The company stated that agents did not submit the questionnaire to the home office and that the company did not use the questionnaire for underwriting purposes or for determining health status, claims experience, medical condition or receipt of health care. The examiners found that the company's use of the "Confidential Personal Planning Questionnaire" for Medicare beneficiaries applying for Medicare supplement coverage during their open enrollment period resulted in beneficiaries inadvertently disclosing medical information that was not required and that the

questionnaire constituted a marketing tool to gather information regarding beneficiary finances unrelated to the Medicare supplement policy.

**12. Recommendation:** It is recommended that the company revise the "Confidential Personal Planning Questionnaire" to include disclosures regarding that response to the questions is voluntary and not part of the Medicare supplement enrollment process, and submit the revised questionnaire to the OCI for review within 90 days of adoption of the report to ensure compliance with the marketing standards of s. Ins 3.39 and Ins 3.39 (4m), Wis. Adm. Code.

On August 12, 2008, the company had notified the OCI that it was reimbursing agents based on the NAIC Model, not based on the requirements in s. Ins 3.39 (21), Wis. Adm. Code, which state that an issuer may provide and an agent or other representative may accept commission or other compensation for the sale of a Medicare supplement or Medicare cost policy or certificate only if the first year commission or other first year compensation is at least 100% and no more than 150% of the commission or other compensation paid for selling or servicing the policy or certificate in the 2nd year. The company indicated it had reviewed and verified that the commission problem did not apply or impact states other than Wisconsin. The agent compensation issue is being reviewed outside the examination process.

## Electronic-Commerce

The examiners reviewed the company's response to the OCI's electronic commerce interrogatory and the company's corporate website:

www.physiciansmutualinsurancecompany.com and registered domains. The company utilized the website to provide consumers with product and company information. The company did not offer on-line applications for its products nor did it post policy forms on the web site.

The company reported that it used its website to generate electronic leads for its Medicare supplement policies when a consumer electronically submitted a contact form, when a consumer called the telephone number posted on its website and when a consumer searched for an agent.

The company reported that it allowed agents to create their own advertisements but that it required that its agents submit advertisements used on their business websites or elsewhere to the company for prior approval. The company indicated it did not routinely audit agent websites for compliance nor did it maintain a list of individual agent websites. The company reported that its auditing of websites was limited to periodic searches of the company name to determine inappropriate or unauthorized use of its name or product advertising.

- 13. Recommendation:** It is recommended that the company routinely audit its agents' websites for compliance with the company's advertising policies and procedures to ensure compliance with s. Ins 3.27 (27), Wis. Adm. Code.

The examiners reviewed the company's agent agreements, which included language prohibiting agents from using advertising in connection with company products without the prior written consent of the company.

## **Producer Licensing**

The examiners reviewed the company's response to the OCI's producer licensing interrogatory, agent agreements and the company's procedures and practices related to producer licensing, listings, terminations, training and recruiting.

The company's licensing and commissions department was responsible for contracting, licensing, appointments, terminations, renewals, licensing compliance, errors and omissions insurance and payment and recovery of agent commissions. As of June 30, 2008, the company had a total of 119 agents.

The examiners requested from the company a listing of all Wisconsin agents that represented the company as of the end of the examination period. The examiners compared these records with the agent database maintained by OCI. Based on the agent data match, the examiners found that the company failed to notify the OCI of four agent terminations within 30 calendar days of the termination date, as required by s. Ins 6.57 (2), Wis. Adm. Code.

- 14. Recommendation:** It is recommended that the company notify the OCI of agent terminations within 30 calendar days of termination to ensure compliance with s. Ins 6.57 (2), Wis. Adm. Code.

The examiners found that 23 policies were written by agents who were not appointed with the company at the time the policies were written. Thirteen of these policies were written by agents who were not appointed with the company until more than 300 days after the policy was written and one was written by an agent who was not at any time appointed with the company. In all cases, commission payments were made to the agents prior to the date they were appointed with the company.

- 15. Recommendation:** It is recommended that the company develop a process for ensuring that business is not accepted from and commission payments are not made to agents who are not appointed with the company at the time the business is written as required by s. Ins 6.57 (1) and (5), Wis. Adm. Code.

## Claims

The examiners reviewed the company's response to the OCI's claims interrogatory, claim procedures, internal audit reports, explanation of benefit (EOB) and remittance advice (RA) forms, claim adjustment (ANSI) codes, claim payment methodology and timely payment of its Medicare Supplement claims. The examiners verified that the company had annually filed the required Medicare supplement insurance benefit appeals reports as required by s. 632.84, Wis. Stat.

The examiners reviewed a random sample of 50 paid and 50 not paid Medicare supplement claims to verify that the company paid Wisconsin mandated benefits. The examiners found that the company did not have written claim procedures that addressed how Wisconsin specific mandated benefits for Medicare supplement policies were handled and paid. The company reported that its claims department was aware of the Wisconsin mandates and that paper claims involving Wisconsin mandated benefits were identified in claim initiation and analysis (CIA) and referred to an advanced examiner for adjudication. Electronic claims were identified by CPT or HCPCS code and referred to an advanced examiner for adjudication.

**16. Recommendation:** It is recommended that the company develop and implement written procedures for paying Wisconsin mandated benefits to ensure compliance with s. Ins 3.39 (5), (5c), (6), (8), (13), (16) and (17), Wis. Adm. Code.

Section Ins 3.651 (5), Wis. Adm. Code, requires insurers to use the uniform claim adjustment reason (ANSI) codes on explanation of benefits (EOB) and remittance advice (RA) forms. The examiners found that the company did not use ANSI codes on its EOB and RA forms, rather benefit payments were explained by using a "draft message" on the forms although the company indicated it also generated dictated letters when appropriate.

**17. Recommendation:** It is recommended that the company use ANSI codes on its explanation of benefits (EOB) and remittance advice (RA) forms as required by s. Ins 3.651 (4) (a) (7), Wis. Adm. Code.

The examiners reviewed a sample of the company's EOB and RA forms and noted that the company was not using CPT-4, HCPCS or CDT-1 codes. In addition the examiners

found that the format of the entire EOB and RA forms did not comply with the formatted information required by s. Ins 3.651, Wis. Adm. Code. The company explained that its claims system did not capture CPT-4, HCPCS or CDT-1 codes and, therefore, this information could not be provided on the EOBs and RAs. The company instead printed a description of the procedure on the forms.

**18. Recommendation:** It is recommended that the company use CPT codes on its explanation of benefits (EOB) and remittance advice (RA) forms as required by s. Ins 3.651 (4) (a) (5) (c), Wis. Adm. Code.

**19. Recommendation:** It is recommended that the company establish standardized explanation of benefits (EOB) and remittance advice (RA) forms conforming to the format required by s. Ins 3.651 (3) and (4), Wis. Adm. Code.

### **New Business & Underwriting**

The examiners reviewed the company's response to the OCI's new business and underwriting interrogatory, the terminations, nonrenewals and cancellation interrogatory, underwriting information, applications, premium lapse and termination notices, form letters, suitability guidelines, submission rules and agent training materials.

The examiners also reviewed a random sample of 50 not issued Medicare supplement policies. The examiners found three of the files had the premium sent to the agent for delivery rather than directly to the insured. The examiners found that the company utilized two automatically generated form letters when an application for coverage was withdrawn. One letter was titled, "Withdrawn due to missing medical information" and the second was titled, "Withdrawn due to missing information." Both of the letters provided that the premium that was submitted to the company was being given to the agent to return to the applicant. The company stated that it sent withdrawal refunds to the agents so that the agents could try to obtain the missing information needed to complete the underwriting process. The agents were able to give applicants their refund immediately if the applicants did not wish to proceed. Section Ins 3.39 (14) (b), Wis. Adm. Code, provides that an issuer shall mail any refund or

return of premium directly to the insured and may not require or permit delivery by an agent or other representative.

**20. Recommendation:** It is recommended that the company revise its procedures to require that all premium refunds be sent directly to the insured to ensure compliance with s. Ins 3.39 (14) (b), Wis. Adm. Code.

The company utilized application form number ULA29-WI1 for underwriting Medicare supplement applications, which it filed with and received approval for use in Wisconsin effective October 21, 2005. The application contained a tobacco use question in the section that was completed by all applicants, including applicants in their open enrollment period. The company reported that it did not consider the question to be a health question but rather a "life style" question and that it used the information gathered for statistical purposes only. Section Ins 3.39 (4m), Wis. Adm. Code, provides that an issuer may not deny or condition the issuance or effectiveness of or discriminate in the pricing of Medicare supplement coverage for which an application is submitted based on health status, claim experience, receipt of health care or medical condition.

**21. Recommendation:** It is recommended that the company revise and refile its Medicare supplement application to prominently disclose that the question need not be answered by applicants who are in their open enrollment period to ensure compliance with s. Ins 3.39 (4m), Wis. Adm. Code.

### **Policy Forms & Rates**

The examiners reviewed the company's response to the OCI's policy forms and rates interrogatory and its policies, riders, applications, outlines of coverage that were used or in effect during the period of review. The company's government and industry division was responsible for new product and rate filings. The company's actuarial division was responsible for pricing of new products and preparing rate filings.

The examiners found that the company had approved up to date Medicare supplement policies and outlines of coverage and that it had filed annual premium rate

increases for its Medicare supplement policy forms. No exceptions were noted regarding the Medicare supplement insurance policy forms and rates review.

### **Privacy & Confidentiality**

Section 610.70, Wis. Stat., regarding medical records privacy, became effective June 1, 1999, and created restrictions on insurers regarding their collection and release of personal medical information that corresponded with the federal Health Insurance Portability and Accountability Act (HIPAA) requirements. Chapter Ins 25, Wis. Adm. Code, became effective July 1, 2001, to address the provisions of Gramm Leach Bliley, and was based on the National Association of Insurance Commissioners (NAIC) privacy of consumer financial and health information model regulation.

The examiners reviewed the company's response to the OCI's privacy of consumer financial and health information interrogatory, training manuals and procedures for employees regarding treatment of personally identifiable information, privacy notices, enrollment and disclosure information forms, and employee privacy agreements.

The company's board of directors and its chief executive officer were responsible for oversight of its privacy program. Operational privacy functions were handled and overseen by a management team and the company's designated privacy officer, the vice president of information & protection. The company had a privacy training program that all new employees were required to complete and held a mandatory security training program for all employees in 2008. The company had a process for conducting periodic internal privacy audits and had in the past performed audits in the areas of training, division office operations and adequate safeguards. The examiners found that the company had not conducted a privacy audit during the period under review.

The examiners documented that the company provided privacy training to its agents and required all agents to sign a business associates agreement that included provisions

regarding the confidentiality of medical and personal information in order to meet HIPAA requirements. No exceptions were noted in this area.

#### IV. CONCLUSION

This market conduct examination was a targeted review of Physicians Life Insurance Company's practices and procedures for the period January 1, 2007 through June 30, 2008. The review was limited to the company's Medicare supplement business. The examiners simultaneously conducted a targeted market conduct examination of Physicians Mutual Insurance Company.

The examination contained 21 recommendations with regards the company's practices including policyholder service & complaints, grievances & IRO, marketing, sales & advertising, electronic commerce, producer licensing, claims, and new business & underwriting.

## V. SUMMARY OF RECOMMENDATIONS

### Policyholder Service & Complaints

- Page 7 1. It is recommended that the company maintain separate complaint logs for Physicians Life Insurance Company and Physicians Mutual Insurance Company to ensure compliance with s. 18.06 (1), Wis. Adm. Code.
- Page 8 2. It is recommended that the company when responding to OCI complaints identify the legal entity involved and provide documentation that it acknowledged the complaint.
- Page 8 3. It is recommended that the company revise its existing complaint procedures and maintain for the company a central log of complaints handled by its various departments to ensure that complaints are being correctly counted and documented in compliance with s. Ins. 18.06 (1), Wis. Adm. Code.
- Page 8 4. It is recommended that the company revise its existing complaint handling procedures to correctly identify complaints as verbal expressions of dissatisfaction expressed to the insurer by the insured, or an insured's authorized representative, about an insurer or its providers with whom the insurer has direct or indirect contact with in compliance with s. Ins. 18.01 (2), Wis. Adm. Code.
- Page 8 5. It is recommended that the company revise its procedures to correctly record and count all written dissatisfactions with the provision of services or claim practices as grievances rather than complaints in compliance with s. Ins. 18.01 (1) and (4), Wis. Adm. Code.
- Page 8 6. It is recommended that the company conduct a complete audit of its procedures and processes used for identifying, recording, and handling of complaints and grievances and file with OCI a copy of the audit findings per s. 601.42, Wis. Stat.
- Page 9 7. It is recommended that the company establish procedures for its claim department to record all verbal complaints to ensure compliance with s. Ins. 18.06 (1), Wis. Adm. Code.

### Grievances & Independent Review Organization (IRO)

- Page 9 8. It is recommended that the company correct the due date for filing its annual grievance experience report with the OCI in its guide titled "Wisconsin Appeals (WI) 802-WI-3" to March 1 to ensure compliance with s. Ins. 18.06 (2), Wis. Adm. Code.
- Page 10 9. It is recommended that the company establish a written procedure for handling expedited grievance situations to ensure compliance with s. Ins. 18.05, Wis. Adm. Code.
- Page 11 10. It is recommended that each time the company makes an adverse determination or an experimental treatment determination for services that fall

under Wisconsin mandated benefits, the company provide a notice to the insured of the right to request an independent review in compliance with s. Ins 18.11 (2), Wis. Adm. Code and s. 632.835 (2) (b), Wis. Stat.

### **Marketing, Sales & Advertising**

Page 13 11. It is recommended that the company remove the dental application from the Medicare supplement application booklet to ensure compliance with s. 628.34 (1), Wis. Stat.

Page 14 12. It is recommended that the company revise the "Confidential Personal Planning Questionnaire" to include disclosures regarding that response to the questions is voluntary and not part of the Medicare supplement enrollment process, and submit the revised questionnaire to the OCI for review within 90 days of adoption of the report to ensure compliance with the marketing standards of s. Ins 3.39 and Ins 3.39 (4m), Wis. Adm. Code.

### **Electronic-Commerce**

Page 15 13. It is recommended that the company maintain a complete list of individual agent websites and that it routinely audit the websites for compliance with the company's advertising policies and procedures to ensure compliance with s. Ins 3.27 (27), Wis. Adm. Code.

### **Producer Licensing**

Page 16 14. It is recommended that the company develop a process to ensure OCI is notified of agent terminations within 30 calendar days of termination to ensure compliance with s. Ins 6.57 (2), Wis. Adm. Code.

Page 16 15. It is recommended that the company develop a process for ensuring that business is not accepted from and commission payments are not made to agents who are not appointed with the company at the time the business is written as required by s. Ins 6.57 (1) and (5), Wis. Adm. Code.

### **Claims**

Page 17 16. It is recommended that the company develop and implement written procedures for paying Wisconsin mandated benefits to ensure compliance with s. Ins 3.39 (5), (5c), (6), (8), (13), (16) and (17), Wis. Adm. Code.

Page 17 17. It is recommended that the company use ANSI codes on its explanation of benefits (EOB) and remittance advice (RA) forms as required by s. 3.651 (4) (a) (7), Wis. Adm. Code.

Page 18 18. It is recommended that the company use CPT codes on its explanation of benefits (EOB) and remittance advice (RA) forms as required by 3.651 (4) (a) (5) (c), Wis. Adm. Code.

Page 18 19. It is recommended that the company establish standardized explanation of benefits (EOB) and remittance advice (RA) forms conforming to the format required by s. Ins 3.651 (3) and (4), Wis. Adm. Code.

## **New Business & Underwriting**

- Page 19 20. It is recommended that the company revise its procedures to require that all premium refunds be sent directly to the insured to ensure compliance with s. Ins 3.39 (14) (b), Wis. Adm. Code.
- Page 19 21. It is recommended that the company revise and refile its Medicare supplement application to prominently disclose that the question need not be answered by applicants who are in their open enrollment period to ensure compliance with s. Ins 3.39 (4m), Wis. Adm. Code.

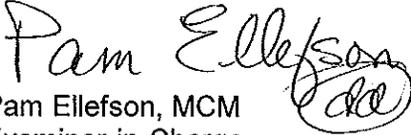
## VI. ACKNOWLEDGEMENT

The courtesy and cooperation extended to the examiners during the course of the examination by the officers and employees of the company is acknowledged.

In addition, to the undersigned, the following representatives of the Office of the Commissioner of Insurance, state of Wisconsin, participated in the examination.

| <u>Name</u>         | <u>Title</u>                |
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| Brian Baird         | Insurance Examiner          |
| Stephanie Cook, AIE | Advanced Insurance Examiner |
| Diane Dambach       | Section Chief               |
| Linda Low, MCM      | Senior Insurance Examiner   |
| Lynn Pink           | Insurance Examiner          |

Respectfully submitted,

  
Pam Ellefson, MCM  
Examiner-in-Charge