



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

*Jim Doyle, Governor*  
*Jorge Gomez, Commissioner*

*Wisconsin.gov*

125 South Webster • P.O. Box 7873  
Madison, Wisconsin 53707-7873  
Phone: (608) 266-3585 • Fax: (608) 266-9935  
E-Mail: [information@oci.state.wi.us](mailto:information@oci.state.wi.us)  
Web Address: [oci.wi.gov](http://oci.wi.gov)

Notice of Adoption and Filing of Examination Report

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

Touchpoint Health Plan, Inc.  
5 Innovation Court  
Appleton, WI 54912-0507

dated March 3-March 11, 2003, and served upon the company on August 28, 2003, 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 25<sup>th</sup> day of September, 2003.

Jorge Gomez  
Commissioner of Insurance

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

**MARKET CONDUCT EXAMINATION**

**OF**

**TOUCHPOINT HEALTH PLAN  
APPLETON, WISCONSIN**

**MARCH 3, 2003 TO MARCH 11, 2003**

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# State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

*Jim Doyle, Governor*  
*Jorge Gomez, Commissioner*

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June 24, 2003

125 South Webster Street • P.O. Box 7873  
Madison, Wisconsin 53707-7873  
Phone: (608) 266-3585 • Fax: (608) 266-9935  
E-Mail: [information@oci.state.wi.us](mailto:information@oci.state.wi.us)  
Web Address: [oci.wi.gov](http://oci.wi.gov)

Honorable Jorge Gomez  
Commissioner of Insurance  
Madison, WI 53702

Commissioner:

Pursuant to your instructions and authorization, a compliance examination was conducted March 3 to March 11, 2003 of:

TOUCHPOINT HEALTH PLAN  
Appleton, Wisconsin

and the following report of the examination is respectfully submitted.

## I. INTRODUCTION

Touchpoint Health Plan, Inc., formerly known as United Health of Wisconsin Insurance Company, Inc, was incorporated February 2, 1988, under ch.611, Wis. Stat., as a for profit stock health maintenance organization (HMO) insurer. It commenced operation on April 1, 1988. Touchpoint Health Plan (THP) is owned by United Investors (UII) which owns 80% and by United Providers Inc (UPI), which owns 20%. UII and UPI are for profit stock corporation holding companies. UII is 51% owned by ThedaCare Inc, a not-for-profit organization and 49% owned by other investors. UPI is 89% owned by Bellin Health, a not-for-profit organization and 11% by other investors.

The company has 498 listed agents. It markets point of service and HMO group plans. It recently began offering a stand-alone dental plan. Touchpoint Health Plan, Inc., operates only in Wisconsin. During the period of review, the company's service area included

the counties of Brown, Calumet, Door, Fond du Lac, Green Lake, Kewaunee, Marinette, Marquette, Menomonee, Oconto, Outagamie, Portage, Shawano, Waupaca, Waushara and Winnebago.

In October 2001, the company converted its claim processing system to new software called Tapestry. Effective January 1, 2002, the company terminated its administrative services agreement with Humana Insurance Company (Humana), formerly known as Employers Health Insurance Company. Also, in January 2002, the company's agreement with Aurora terminated, which resulted in significant changes to its provider panel.

The majority of the premium written by Touchpoint in 2001 was group accident and health. In 2001, Touchpoint ranked as the 6<sup>th</sup> largest writer of group health in Wisconsin with 3.9% of the market share.

The majority of the premium written by Touchpoint in 2000 was group accident and health. In 2000, Touchpoint was ranked as the 7<sup>th</sup> largest writer of group accident and health in Wisconsin with 4.2% of the market share.

The following tables summarize the premium written and incurred losses in Wisconsin for 2001 and 2000 broken down by line of business.

## Premium and Loss Ratio Summary

<b>2001</b>				
<b>Line Of Business</b>	<b>Direct Premiums Earned</b>	<b>% of Total Premium</b>	<b>Direct Losses Incurred</b>	<b>Pure Loss Ratio</b>
Medical Only	\$243,008	100%	\$218,008	90%
Total	\$243,008	100%	\$218,008	90%

  

<b>2000</b>				
<b>Line Of Business</b>	<b>Direct Premiums Earned</b>	<b>% of Total Premium</b>	<b>Direct Losses Incurred</b>	<b>Pure Loss Ratio</b>
Medical Only	\$223,122	100%	\$202,832	91%
Total	\$223,122	100%	\$202,832	91%

## Complaints

The Office of the Commissioner of Insurance received 74 complaints against the company between January 1, 2001 and December 31, 2002. A complaint is defined as “a written communication received by the Commissioner’s Office that indicates dissatisfaction with an insurance company or agent.” The company was not ranked on the OCI above-average complaint summary for group in 2001 or 2002.

The majority of the company's complaints in 2001 involved access problems. In 2002, 88% of complaints involved claim problems.

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.

<b>2002 Reason Type</b>					
<b>Coverage Type</b>	<b>Underwriting</b>	<b>Marketing &amp; Sales</b>	<b>Claims</b>	<b>Policyholder Service</b>	<b>Other</b>
HMO	3	0	27	0	0
PPO	0	0	2	0	1
Other (Self –Funded)	0	0	1	0	0
Total	3	0	30	0	1

  

<b>2001 Reason Type</b>					
<b>Coverage Type</b>	<b>Underwriting</b>	<b>Marketing &amp; Sales</b>	<b>Claims</b>	<b>Policyholder Service</b>	<b>Other</b>
HMO	3	0	25	1	2
PPO			2		
All Others	1		5		
Total	4	0	32	1	2

## Grievances

The company submitted annual grievance summary reports to OCI for 2000 and 2001. A grievance is defined as any dissatisfaction with the provision of services or claims practices of an insurer offering a health benefit plan or administration of a health benefit plan by the insurer that is expressed in writing to the insurer by, or on behalf of, an insured.

The grievance report for 2001 indicates the company received 285 grievances, 83 or 29% were reversed. The majority of the grievances filed with the company in 2001 were related to non-covered benefits. The grievance report for 2000 indicates the company received 182 grievances, 42 or 23% were reversed. The majority of the grievances filed with the company in 2000 were related to non-covered benefits.

The following tables summarize the grievances for the company for the last two years:

<b>2000</b>			
<b>Category</b>	<b>No.</b>	<b>No. Reversed</b>	<b>% Reversed</b>
Out-of-Network Provider	35	11	31%
Prescription Drug	4	1	25%
Preexisting Condition	35	0	0%
Out-of-Area Emergency	0	0	0%
Emergency Room	2	0	0%
Durable Medical	0	0	0%
No Preauthorization	8	2	25%
Noncovered Benefit	43	16	37%
Not Medically Necessary	11	4	36%
Usual and Customary	0	0	0%
Request for Preauthorization	0	0	0%
Request for Referral	3	1	33%
Maximum Benefit Reached	0	0	0%
Other	26	7	27%
Total	132	42	32%

  

<b>2001</b>			
<b>Category</b>	<b>No.</b>	<b>No. Reversed</b>	<b>% Reversed</b>
Access to Care	0	0	%
Billing/Claim Processing	8	1	13%
Continuity of Care	0	0	%
Drug & Drug Formulary	15	3	20%
Emergency Services	1	0	0%
Enrollment/Eligibility Requirements	3	2	67%
Experimental Treatment	6	1	17%
Prior Authorization	17	6	35%
Not Covered Benefit	90	17	19%
Not Medically Necessary	40	19	48%
Other	36	4	11%
Plan Administration	5	1	20%
Request for Referral	52	11	21%
Quality of Care	6	0	0%
Total	279	65	23%

## **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, 2001 through December 31, 2002. In addition, the examination included a review of any subsequent events deemed important by the examiner-in-charge during the examination.

The examination included, but was not limited to, a review of the insurer's operations in claims, company operations/management, complaints/grievances, managed care, rates and policy forms, small employer, electronic commerce, producer licensing, and privacy activities. The examination also included a review of compliance with the prior managed care desk audit recommendations.

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



### III. PRIOR EXAMINATION RECOMMENDATIONS

A previous financial examination, as adopted September 15, 1997, contained 24 market conduct recommendations. The prior managed care desk audit report, adopted January 3, 2000, contained seven recommendations. Following are the recommendations contained in these reports, and the examiners' findings regarding the company's compliance with each recommendation.

#### Grievances

1. It is recommended that the company resolve all grievances within 30 calendar days of their receipt of the grievance or, if they are unable to resolve the grievance within 30 calendar days, notify the grievant in writing of the reason why additional time is needed and when a resolution can be expected, pursuant to s. Ins 3.50 (10) (c), Wis. Adm. Code.

**Action:** Compliance

2. It is recommended the company acknowledge all grievances within 10 days of receiving the grievance, as required by s. Ins 3.50 (10) (f), Wis. Adm. Code.

**Action:** Compliance

3. It is recommended the company provide the grievant with written notification of the grievant's right to attend the grievance committee meeting, at least 7 calendar days prior to the meeting, pursuant to s. Ins 3.50 (10) (d), Wis. Adm. Code.

**Action:** Compliance

4. It is recommended that the company revise its hospital and pharmacy provider agreements to include language that requires the provider to identify and forward all complaints and grievances to the HMO in a timely manner for recording and resolution, as required by s. Ins 3.50 (10) (g) 2, Wis. Adm. Code.

**Action:** Compliance

5. It is recommended that the company inform enrollees of their right to file a grievance and the procedure to follow each time a referral is denied or the company initiates disenrollment proceedings, and the company revise its certificate language to disclose that disenrolled members have the right to file a grievance, as required by Ins 3.50 (10) (b), Wis. Adm. Code.

**Action:** Compliance

## Complaints

6. It is recommended that the company distinguish complaints from grievances and other inquiries pursuant to the definition of a complaint in s. Ins.3.50 (3) (b), Wis. Adm. Code, and that the company maintain complaint records pursuant to s. Ins 3.50 (10) (g) 4,. Wis. Adm. Code.

**Action:** Compliance

## EOB Forms

7. It is recommended the company revise its Explanation of Benefits (EOB) form by using larger type for the grievance notification section of the form in order to comply with s. Ins 3.50 (10) (b), Wis. Adm. Code.

**Action:** Compliance

8. It is recommended that the company revise its Explanation of Benefits (EOB) form to include the use of American National Standards Institute (ANSI) codes, as required by s. Ins 3.651 (4) (a) 5.f, Wis. Adm. Code.

**Action:** Compliance

9. It is recommended that company revise its Explanation of Benefits (EOB) form to include a disclosure which states the telephone number of the contact person or the section of the company from whom providers and insureds may request information regarding the methodology used by the company in determining usual, customary and reasonable (UCR) amounts, pursuant to s. Ins 3.60 (7), Wis. Adm. Code.

**Action:** Compliance

## Small Employer Marketing

10. It is recommended that the company revise the rating and renewability disclosure notice (form number WI-58578-52 7/93) used in conjunction with the sale of small employer group business to disclose that 30% is the maximum rate variance from the midpoint, as required by s. Ins 8.52 (2), Wis. Adm. Code.

**Action:** Compliance

11. It is recommended the company revise its rating and renewability disclosure notice (form number WI-58578-52 7/93), its offer of the basic health benefit plan (form WI-58578-52 7/93), its notice to the small employer that the small employer will lose the protections of the small employer laws if the group fails to be a small employer (form number WI-58578-52 7/93), its coverage denial letter (no form number), its basic benefit health benefit plan rate quote sheets (no form number), and the basic health benefit plan brochure (form number WI-57544-10 12/94) to disclose that United Health of Wisconsin Insurance Company, Inc, is the insurer and to accurately disclose that, with respect to its coverage denial letter and its information about the basic health benefit plan, UHOW is the entity denying coverage and that UHOW is the entity offering the basic health benefit plan, pursuant to ss 3.27 (6) and (12), Wis. Adm. Code.

**Action:** No longer applicable, statute repealed per 1997 Wisconsin Act 27.

12. It is recommended that the company, when denying standard coverage to small employer groups, provide the small employer with rates and information for UHOW's basic health benefit plan rather than encouraging the small employer group to seek coverage through Employers Health's basic health benefit plan, pursuant to s. 635.18 (2) (a) 2, Wis. Stat.

**Action:** No longer applicable, statute repealed per 1997 Wisconsin Act 27.

13. It is recommended the company revise its small employer underwriting procedures to state that a late enrollee's coverage may be delayed for no longer than 18 months from the date of application for coverage, as required by s. Ins 8.63 (2), Wis. Adm. Code.

**Action:** Compliance

14. It is recommended the company disclose to small employer groups, as a separate notice on UHOW's letterhead, at the time of policy issuance, the fact that if the small employer employs less than 2 or more than 25 eligible employees during at least 50% of the number of weeks in any 12-month period, or moves the enterprise outside Wisconsin, the group will lose the protections of the small employer laws, as indicated in s. Ins 8.44 (2), Wis. Adm. Code.

**Action:** Non-compliance

15. It is recommended that the company revise its point-of-service (POS) brochure (form number WI-60958-10 12/94) to clearly identify that the product offered is solely underwritten by United Health pursuant to ss. Ins 3.27 (6) and (12), Wis. Adm. Code.

**Action:** Compliance

16. It is recommended the company revise its point-of-service brochure (form number WI-60958-10 12/94) to disclose the policy's limitations in the printed brochure, rather than disclosing the policy's limitations on a separate notice, pursuant to s. Ins 3.27 (10), Wis. Adm. Code.

**Action:** Compliance

17. It is recommended that the company revise its employee waiver form (form number UH-55123-10 1/90) by disclosing on the form that by waiving coverage an individual who requests coverage in the future may be subject to a waiting period of up to 18 months from the date of application, rather than disclosing that coverage may be denied, pursuant to s. Ins 8.63 (2), Wis. Adm. Code.

**Action:** Compliance

18. It is recommended the company obtain documentation to support the validity of all waiver forms, as required by s. Ins 8.65 (3), Wis. Adm. Code.

**Action:** Compliance

19. It is recommended the company revise its standards for what is and is not an acceptable reason for an employee or dependent of an employee to waive coverage, to comply with the standards in s. Ins 8.60 (1), Wis. Adm. Code.

**Action:** Compliance

20. It is recommended that the company require small employer groups to provide the company a list of all eligible employees and their dependents, and that the insurer require the employer to provide appropriate documentation to support the number of eligible employees and their dependents reported, as required by s. Ins 8.65 (1), Wis. Adm. Code.

**Action:** Compliance

21. It is recommended the company secure a waiver form signed by the eligible employee on behalf of the employee or the dependent of the employee with respect to each eligible employee, and each dependent of the employee who declines coverage under a policy, as required by s. Ins 8.65 (2), Wis. Adm. Code and maintain such waivers and documentation which supports that the waiver is acceptable, for a period of three years or until the policy is terminated, whichever is later, as required by s. Ins 8.65 (4), Wis. Adm. Code.

**Action:** Compliance

22. It is recommended that the company secure as a separate notice, prior to the completion of an application for coverage, a signed rating and renewability disclosure form from each small employer, as required by s. 635.11, Wis. Stat. and s. Ins 8.48, Wis. Adm. Code.

**Action:** Compliance

23. It is recommended the company provide small employer groups with a separate notice, of the company's offer of the basic health benefit plan at the time a small employer group applies for standard coverage, as required by s. Ins 8.68 (3), Wis. Adm. Code, any time a small employer group is denied coverage, as required by s. Ins 8.68 (6), Wis. Adm. Code, and any time a small employer group requests such information, as required by s. Ins. 8.68 (5), Wis. Adm. Code.

**Action:** No longer applicable, statute repealed per 1997 Wisconsin Act 27.

## **Policy Forms**

24. It is recommended that the company revise its small employer group application (form number UH-55115-03 1/90) to reflect the correct minimum participation levels as defined in s. Ins 8.46 (2), Wis. Adm. Code.

**Action:** Compliance

## Managed Care Desk Audit Recommendations

### **Standing Referrals**

1. It is recommended that Touchpoint obtain OCI approval of certificate language pertaining to standing referrals as required by s. 609.22 (4), Wis. Stat.

**Action:** Compliance

2. It is recommended that Touchpoint develop a process for providing information on its standing referral procedure to participating and nonparticipating providers, including the criteria and conditions that must be met, upon request to an enrollee or prospective enrollee, as required by s. 609.22 (4) (a) 3, Wis. Stat.

**Action:** Compliance

### **Second Opinions**

3. It is recommended that Touchpoint obtain OCI approval of certificate language pertaining to second opinions as required by s. 609.22 (5), Wis. Stat.

**Action:** Compliance

### **Emergency Care Access**

4. It is recommended that Touchpoint obtain OCI approval of certificate language pertaining to emergency care access as required by s. 609.22 (6), Wis. Stat.

**Action:** Compliance

### **Access Plan For Certain Enrollees**

5. It is recommended the Touchpoint develop an access plan to meet the needs, with respect to covered benefits, of its enrollees who are members of underserved populations as required by s. 609.22 (8), Wis. Stat.

**Action:** Compliance

### **Continuity of Care**

6. It is recommended that Touchpoint finalize the proposed procedure to provide coverage to an enrollee for the services of a provider during a continuity of care period, as required by s. 609.24, Wis. Stat.

**Action:** Compliance

7. It is recommended that Touchpoint obtain approval from OCI of language in its policies and certificates regarding an enrollee's right to continuity of care in order to comply with s. 609.24, Wis. Stat.

**Action:** Compliance

## IV. CURRENT EXAMINATION FINDINGS

### Claims

The examiners reviewed the company's response to the claims interrogatory, claims administration processes and procedures, procedure manual, administrative service agreements with Chiropractic Claims Management (CSN) and ComCoTec, explanation of benefit (EOB) and remittance advice (RA) forms, and claim adjustment (ANSI) codes. Touchpoint's administrative agreement with CSN provided that CNS was responsible for processing all chiropractic claims.

The examiners requested a sample of 100 paid and 100 denied chiropractic claims. The company stated that its chiropractic claims were paid on a capitation basis, and that only those chiropractic claims that were the result of duplication, workers compensation, subrogation, or lack of coverage were denied. The examiners verified that the claim sample of chiropractic claims included only capitated claims, and that the denied sample of chiropractic claims included only claims resulting from duplication, workers compensation, subrogation, and lack of coverage. Touchpoint stated that it was in the process of developing procedures for reviewing claims for medical necessity, with an April 2003 goal for instituting the new procedures.

The examiners reviewed a random sample of 100 paid and 100 non-paid claims. The examiners found five claims in the paid claim sample were not paid within 30 days after the company was furnished written notice of a covered loss, and that interest was not paid on these overdue claims. Section 628.46, Wis. Stat., provides that a claim shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of the loss. All overdue payments shall bear simple interest at the rate of 12% per year.

1. **Recommendation:** It is recommended that Touchpoint ensure that it pay interest on all overdue claims in order to comply with s. 628.46, Wis. Stat.

Prior to this examination, the OCI received complaints beginning February 2002 that indicated that Touchpoint was experiencing delays in paying its claims as a result of the October

2001 conversion of its claim system. The company failed to notify the OCI of the fact that it was experiencing claim payment delays. The OCI also found that the company was not paying interest on these delayed claims. The OCI required that the company provide an aging report regarding the delayed claim payments. In May 2002, the company produced a 79 page report identifying claims where interest was due, and stated that it would issue additional payments to affected providers within 60 days. In July 2002, the company provided documentation that it had paid interest on its OCI complaint files. However, during the examination, the company indicated it continued to experience problems with its interest reports until February 11, 2003, which contributed to delays in making interest payments.

2. **Recommendation:** It is recommended that Touchpoint develop a process that requires its management staff to notify the OCI of operations and systems difficulties and issues that may generate OCI complaints.



## Electronic Commerce

The examiners reviewed the company's response to the electronic commerce interrogatory, including provider listings, and information for agents. The information technology department of ThedaCare was responsible for the infrastructure and security of all of ThedaCare's networks, which includes Touchpoint. The marketing team at Touchpoint had the responsibility for the content of the Touchpoint web sites. Touchpoint had two registered URL'S and two of which are considered extensions but not necessarily separate URL's.

The examiners found that Touchpoint used its websites as a resource for members and providers. The websites included provider directories, pharmacy formularies, plan details, a health library and health management guidelines. The examiners found that the company did not use the website for marketing and selling of insurance products. The website did include some agent forms on line for their use such as applications for employers and employees, change forms, copies of master policies and forms needed to submit a quote request. Touchpoint's provider directory was available on line and allowed enrollees to identify providers by specialty and location.

The examiners found that Touchpoint did not have written procedures that prohibit agents from advertising company products on individual agent websites. The company's agent and agency agreements also did not include language that required agents to obtain approval of webpages. The company reported that it planned to modify its agent agreements to prohibit agents from advertising Touchpoint products on individual agent websites. Section Ins 3.27 (27), Wis. Adm. Code, provides that the content, form and method of dissemination of all advertisements, regardless of by whom designed, created, written, printed or used, is the responsibility of the insurer whose policy is advertised.

3. **Recommendation:** It is recommended that Touchpoint revise its individual agent agreement to prohibit agents from advertising or referencing Touchpoint products on individual agent websites in order to document compliance with s. Ins 3.27 (27), Wis. Adm. Code.

## Grievances and IRO

The examiners reviewed Touchpoint's response to the grievance interrogatory, grievance procedures, grievance committee minutes and annual grievance experience reports for 2000 and 2001.

The examiners also reviewed a random sample of 50 grievance files. No exceptions were noted regarding the company's grievance process.

The examiners reviewed the company's response to the independent review organization (IRO) questions in the grievance interrogatory, independent review procedures, policy and certificate of coverage language regarding the independent review process, and sample Explanation of Benefits (EOB) forms and benefit denial letters. The examiners also interviewed the compliance coordinator regarding the company's implementation of the independent review process.

The examiners found that the company has developed and implemented written policies and procedures to notify members of the right to request and obtain an independent review of an adverse determination or an experimental treatment determination. The examiners also found that the company had provided the required notices of the right to an independent review to its members.

The examiners found that the company's EOB form did not include a statement that the member may have the right to an independent review. Section 632.835 (2) (bg) 2, Wis. Stat., requires an insurer to include in its EOB form a statement that the insured may have the right to an independent review after the internal grievance process and that an insured may be entitled to expedited independent review with respect to an urgent matter.

4. **Recommendation:** It is recommended that Touchpoint modify its EOB form to include all of the information on the independent review process required by s. 632.835 (2) (bg) 2, Wis. Stat.

The examiners found that the company had established procedures to provide detailed information to the member on the independent review process at the time that the company sends the grievance resolution letter. However, the examiners found that this information did not include a list of independent review organizations certified by the Office. Section Ins 18.11 (2) (a) 3, Wis. Adm. Code, requires an insurer to include a current list of certified independent review organizations with its notice of the right to request an independent review.

5. **Recommendation:** It is recommended that Touchpoint include a current list of certified IROs with the information on the independent review process that accompanies its grievance resolution letter, as required by s. Ins 18.11 (2) (a) 3, Wis. Adm. Code.

The examiners also reviewed a sample of 7 grievance files in which the member had requested an independent review. Three of these files indicated that the independent review organization reversed or partially reversed the company's original determination. The examiners found that the files did not include documentation that the member's \$25.00 filing fee had been refunded. Section 632.835 (3) (a), Wis. Stat., requires an insurer to refund to the insured or his or her authorized representative the entire filing fee if the insured prevails on the review, in whole or in part.

6. **Recommendation:** It is recommended that Touchpoint maintain documentation that it has refunded the \$25.00 filing fee for those independent reviews that are reversed or partially reversed, as required by s. 632.835 (3) (a), Wis. Stat.

## Privacy and Confidentiality

The examiners reviewed the company's response to the privacy of consumer financial and health information interrogatory, corporation privacy and confidentiality practices, employee confidentiality agreement, privacy notice, committee meeting minutes, and provider, agent, and vendor agreements. The examiners also interviewed the company's privacy officer. The company reported that its privacy program was developed in conjunction with ThedaCare. The privacy and security officer for ThedaCare served as the company's privacy officer. The company's board of directors has assigned responsibility for the compliance program to its senior management.

The company reported that its senior management reported to the board of directors on an annual basis regarding the results of its corporate compliance program. However, the examiners found that the company's senior management reported to the board regarding its compliance program on a periodic basis.

7. **Recommendation:** It is recommended that the company's board of directors review the results of its compliance program on an annual basis in order to document its oversight of the requirements under s. 610.70, Wis. Stat., and ch. Ins 25, Wis. Adm. Code.

The examiners found that the company had developed a detailed privacy program to serve both ThedaCare and Touchpoint Health Plan. The company's privacy program includes a database that identifies specific provisions of HIPAA and indicates the manner and extent of compliance. The examiners found that the company had conducted periodic audits of its functional areas to determine compliance with internal procedures regarding the protection of member identifiable information. The company had also contracted with outside auditors to conduct security audits of its data files.

The examiners found that the company had an orientation program for new employees that included general training regarding its compliance program. Current employees

also receive periodic training. Both new and current employees were required to sign a statement of agreement supporting the company's confidentiality policy. The company also produced a *HIPAA Happenings* newsletter that updated staff on privacy issues.

The examiners found that the company provided members with a confidentiality of member information statement upon enrollment and annually thereafter. The enrollment form includes an authorization form that meets the requirements of s. 610.70, Wis. Stat.

The examiners verified that the company's provider and vendor agreements include a provision regarding confidential and private health information. The company has developed a business associate agreement to meet the requirements under HIPAA.

The examiners found that the company had in place a process for meeting the privacy and confidentiality requirements under s. 610.70, Wis. Stat., and ch. Ins 25, Wis. Adm. Code.

## **Managed Care**

The examiners reviewed the company's response to the managed care interrogatory, its policies and procedures regarding plan administration, compliance program, quality assurance and improvement, access to care, and credentialing and recredentialing. The examiners found that the company was in compliance with the recommendations made in the prior managed care desk audit report. Touchpoint Health Plan has received Excellent Accreditation from the National Committee for Quality Assurance (NCQA) since April 22, 1998. In September, 2002, Touchpoint received the highest ranking for the highest performing plan in the nation overall based on 2002 HEDIS Effectiveness of Care measures used for NCQA accreditation. The examiners verified that the company had filed with OCI annual certification of managed care plan type as required by s. 9.40 (8), Wis. Adm. Code.

The examiners' review of the company's plan administration activities included a review of its organization charts, medical director position, provider directories and provider agreements. The examiners found that Touchpoint's medical director was responsible for quality assurance activities, utilization management policies for the plan and the oversight of the clinical protocols, as required by s. 609.34, Wis. Stat.

The examiners' review of the company's quality assurance process included a review of its quality improvement program description, and quality assurance plan, and quality assurance program evaluations for 2001 and 2002. It also included a review of minutes from meetings of its quality and utilization management committee (QUM) Committee, and the credentialing/ peer review committee. The examiners verified that the company had filed with OCI its quality assurance plan as required by s. Ins 9.40 (2), Wis. Adm. Code. The examiners found that the company's quality assurance standards met the requirements set forth in s. 609.32(1), Wis. Stat.

The examiners' review of the company's credentialing and recredentialing activities included a review of its credentialing and recredentialing policies and procedures, provider

agreements and minutes from meetings of the credentialing/peer review committee. The peer review committee operated separately from the credentialing committee and had a four-step process prior to the termination of a contract agreement. The company had a process for notifying the state-licensing agency and National Practitioners Data Bank of a practitioner's suspension or termination. The examiners found that Touchpoint assumed responsibility for all the credentialing activities, including chiropractors that were associated with CSN. CSN is the vendor that processes all capitated chiropractic claims.

The examiners reviewed a random sample of 25 provider files in order to document that the company had in place and followed its credentialing requirements. No exceptions were noted regarding the company's credentialing activities.

The examiners reviewed the company's procedures regarding access to care. The examiners found that the company used the same standards for its primary care and specialty care providers. Touchpoint defined access as the ratio of PCP and specialty care practitioners to Touchpoint members as calculated by geocoding, which was based on the zip code of the address of the PCP. The company's health plan service team was responsible for access data, which is updated annually. The examiners verified that the company had filed with OCI annual certification of access standards as required by s. Ins 9.34 (1), Wis. Adm. Code. The examiners found that the company's access standards were sufficient to document compliance with s. Ins 9.34 (2) (a) and (b), Wis. Adm. Code, which require that managed care plans ensure prompt and efficient access to plan providers.

The examiners' review of the company's activities regarding continuity of care included a review of its continuity of care policy and procedure, claim processing policies and procedures and provider agreements. The examiners found that the company's procedures regarding continuity of care met the requirements of s. 609.24, Wis. Stat., which provides that, if the company represented that a provider was or would be a participating provider in marketing

materials, it continue to provide coverage to enrollees for services of the provider for the time periods specified therein.

The examiners' review of the company's activities regarding patient protection included a review of its provider agreements and policies and procedures regarding referrals, second opinions, and emergency services. The examiners found that Touchpoint complies with the requirements of s. 609.22 (8), Wis. Stat., regarding the access needs of underserved populations. The examiners also found that Touchpoint's provider relations section was responsible for the providers providing 24-hour telephone access for emergency or authorization for care as required by s. 609.22 (7), Wis. Stat.



## **Policyholder Services and Complaints**

The examiners reviewed the company's response to the policyholder service and complaints interrogatory, its complaint handling policies and procedures, and its complaint log.

The examiners reviewed a random sample of 50 of the company's complaint files. No exceptions were noted regarding the complaint review.

The examiners also reviewed the 64 complaints OCI received during 2001 regarding Touchpoint. The majority of the complaints in 2001 were claims paying issues. The 34 complaints in 2002 were mainly about claims issues due to Touchpoint's new claim paying system. No exceptions were noted regarding the OCI complaints reviewed by the examiners.

## Producer Licensing

The examiners reviewed the company's response to the producer licensing interrogatory, agency agreements, and policies and procedures regarding producer licensing, terminations and training. During the period of September 11, 1991 until December 31, 2001, Touchpoint had an agreement with Humana to list all agents marketing the HMO and POS products, pay commissions to agents, provide joint training of agents and provide agents with printed brochures and other advertising material. On January 1, 2002, Touchpoint assumed these responsibilities.

The examiners requested from Touchpoint a listing of all Wisconsin agents that represented the company as of the end date of the period under review. The agent licensing data provided by the company was compared to the agent database maintained by OCI. The examiners found that six agents were listed in the OCI database as company agents, but were not included in the listing provided by Touchpoint. The company reported that it had no record of ever listing these agents, although it presumed Humana may have listed the agents on its behalf.

The examiners found that the company could not provide copies of records for 45 of its agents. Section Ins 6.80 (4) (b), Wis. Adm. Code, provides that records of insurance company operations and other financial records reasonably related to insurance operations for the preceding 3 years shall be maintained and be available to the commissioner. Section 601.42, Wis. Stat., requires that reports, electronic data, and other forms of information requested by OCI be available for review.

8. **Recommendation:** It is recommended that Touchpoint institute procedures to ensure that it maintain documentation of the listing status of its agents in order to comply with s. Ins 6.80, Wis. Adm. Code and s. 601.42, Wis. Stat.
9. **Recommendation:** It is recommended that Touchpoint obtain its agent files from Humana to be compliant with ss. Ins 6.57, Ins 6.80, and Ins 9.42, Wis. Adm. Code.

The examiners found that Touchpoint's database showed 40 agents as listed with the company, but OCI's agent database did not show the agents as ever being listed with the company. The company reported that its data base contained the names of all individuals that had ever represented the company since inception in 1987 as it is unable to enter a termination date into the database. The examiners found that 9 agents that Touchpoint showed as listed with the company were not shown as listed with the company in OCI's agent database. The company was not able to provide any documentation regarding the listing status of these agents. The examiners found that 7 of the 9 agents wrote business totaling 82 group applications. The examiners found that Touchpoint did not reconcile the annual billing statement it received from OCI with its internal agent list, in order to identify discrepancies between its agent records and those of OCI. Section Ins 6.57(1), Wis. Adm. Code, requires companies to submit appointment validation forms on or before the date of appointment. The effective date of a valid appointment is 15 days prior to the date on which the appointment is entered on the OCI licensing system. Section Ins 6.57(2), Wis. Adm. Code, requires companies to file a notice of termination of appointment within 30 calendar days of the termination date with the office of the commissioner of insurance. Prior to or within 15 days of filing this termination notice, the insurer provides the agent written notice that the agent is no longer to be listed as a representative of the company and that he or she may not act as its representative.

10. **Recommendation:** It is recommended that Touchpoint revise its procedures to verify the listing of agents in order to comply with s. Ins 6.57(1), Wis. Adm. Code.
11. **Recommendation:** It is recommended that Touchpoint revise its procedures to verify termination of agents in order to comply with s. Ins 6.57(2), Wis. Adm. Code.
12. **Recommendation:** It is recommended that Touchpoint develop and implement procedures, including reconciling the annual billing statement from OCI, for maintaining accurate and current information on its agent database that corresponds with the OCI listing information in order to document compliance with s. Ins 6.57, Wis. Adm. Code.

The examiners found that Touchpoint failed to correctly list with OCI 22 agents. Touchpoint reported that it had attempted to list the agents by mailing to OCI on December 31, 2002 OCI form 11-001. The form was returned by OCI to the company with a statement that the forms were not processed because effective July 1, 2002 OCI would only accept insurance agent appointments and terminations electronically. Touchpoint reported that it had not received an OCI Bulletin dated March 27, 2002 that notified companies that effective July 1, 2002, OCI would only accept listings electronically. The company also stated that it was not aware that the OCI Bulletin was available on OCI's website. The company reported that as of the date of the examination, it was still negotiating a contract with a vendor to list its agents electronically. The examiners found that 13 of the 22 agents wrote 9 group policies for the company.

13. **Recommendation:** It is recommended that Touchpoint notify OCI when it has an executed agreement with a vendor for processing agent listings electronically.

The examiners requested a listing of commission paid for business written by agents the examiners had identified as not having active listings with the company. The examiners found that Touchpoint had paid \$37,586.79 in commission to 9 agents for 13 group applications written. The examiners found that Touchpoint has paid \$340,912.56 to the 7 agents who wrote 82 group applications. Section Ins 6.57(5), Wis. Adm. Code, provides that no insurer shall accept business directly from any intermediary or enter into an agency contract with an intermediary unless that intermediary is a licensed agent with that insurer.

14. **Recommendation:** It is recommended that Touchpoint develop and implement a process to ensure that it not accept business from agents until it receives from OCI verification of listing status in order to document compliance with s Ins 6.57 (5), Wis. Adm. Code.

The examiners reviewed a random sample of 25 active agent files. The examiners found six agent files that were missing either a copy of the OCI listing form, a copy of the OCI validation form, a copy of a valid Wisconsin license or a copy of the agent application form as

required by the company's internal procedure, and that the company could not verify that validation of agents complied with Wisconsin insurance law.

15. **Recommendation:** It is recommended that Touchpoint follow its internal policy and procedures for maintaining its agent files regarding validation of agent listings.

The examiners reviewed a random sample of 25 terminated agent files. The examiners found that the 25 agent files did not include documentation that Touchpoint had sent termination letters to agents that it was notified had been terminated by OCI. The company documented that it sent termination letters to agents it had terminated. The examiners found that five terminated agent file did not contain a copy of an application, and that four terminated agent files did not contain a copy of a valid license, as required by the company's internal procedures. The examiners also found that the company could not locate three terminated agent files. Touchpoint reported that it also was missing termination documentation on agents who were listed during the period it had an administrative agreement with Humana. Section 628.40, Wis. Stat., provides that every insurer is bound by any act of its agent while the agency contract remains in force and after that time until the insurer has made reasonable efforts to recover from the agent its policy forms and other indicia of agency. Reasonable efforts shall include a formal demand in writing for return of the indicia and notice to the commissioner if the agent does not comply with the demand promptly. Section Ins 6.57(2), Wis. Adm. Code also provides provisions for the termination of agents.

16. **Recommendation:** It is recommended that Touchpoint develop and implement procedures for the termination of agents to comply with s. 628.40, Wis. Stat., and s. Ins 6.57(2), Wis. Adm. Code.
17. **Recommendation:** It is recommended that Touchpoint conduct an audit of its agent files, and report to OCI within 3 months of the adoption of the examination report on the findings of its audit and its plan for correction action in order to document its compliance with s. Ins 6.57, Wis. Adm. Code.

The company reported that it did not conduct training for its listed agents. The company also reported that it did not conduct continuing education sessions nor monitor its agent's compliance with OCI's continuing education requirements under ch. Ins 28, Wis. Adm. Code.

18. **Recommendation:** It is recommended that Touchpoint develop and implement procedures for monitoring its agents' compliance with Wisconsin continuing education requirements.

## Small Employer

The examiners reviewed the company's response to the small employer interrogatory, its underwriting requirements, participation requirements, rating methodology, new business rates, renewal system, actuarial certifications, small group qualifications document, and employer submission guidelines.

The examiners found that Touchpoint's employee eligibility guidelines defined permanent employment as a minimum of 48 weeks per year. Section 632.745 (5), Wis. Stat., provides that "eligible employee" means an employee who works on a permanent basis and has a normal work week of 30 or more hours. Section 635.19 (1), Wis. Stat., prohibits an insurer from placing any restrictions on an eligible individual that is inconsistent with ss. 632.746 or 632.748.

19. **Recommendation:** It is recommended that Touchpoint revise its eligibility guidelines for all group sizes and delete any references to working a minimum of 48 weeks per year in order to document compliance with s. 632.745 (5) and s. 635.19 (1), Wis. Stat.

The examiners found that for the period November 1, 2001 through February 28, 2003, the company had failed to provide the notice required by s. Ins 8.44 (2) Wis. Adm. Code, to new small employer groups when the policy was issued. The company stated that prior to November 1, 2001 it had an administrative service agreement with Humana for the marketing and administration of Touchpoint's small employer business, including sending the required notice. The examiners found that Touchpoint had as of March 1, 2003 revised and sent letters with newly issued policies.

20. **Recommendation:** It is again recommended that Touchpoint disclose to small employer groups, as a separate notice on Touchpoint letterhead, at the time of policy issuance, the fact that if the small employer employs less than 2 or more than 25 eligible employees during at least 50% of the number of weeks in any 12 month period, or moves the enterprise outside Wisconsin, the group will lose the protections of the small employer laws, as indicated in s. Ins.8.44 (2), Wis. Adm. Code.

The examiners identified a random sample of 50 small employer quotes to document turn around time for issuing quotes to small employers. The examiners were unable to complete the sample review, as Touchpoint's computer system did not capture the original quote received date.

21. **Recommendation:** It is recommended that Touchpoint revise its quoting system to include in the record the date the request for a quote is received to comply with s. 601.42, Wis. Stat.

The examiners found that the company had in place a bonus program that provided additional agent compensation based on the block loss ratio and calculated as a percent of earned commission for all business written regardless of the size of group. The bonus program became effective January 1, 2002. The examiners found that the company paid bonus compensation on its small employer business for the period January 2002 through June 2003 of \$415,613.02. Section 635.18 (3), Wis. Stat., provides that a small employer insurer may not, directly or indirectly, enter into any contract, agreement or arrangement with an intermediary that provides for or results in compensation to an intermediary for the sale of a health benefit plan that varies according to the health status, claims experience, industry, occupation or geographic location of the small employer or eligible employees or dependents.

22. **Recommendation:** It is recommended that Touchpoint immediately cease from paying compensation to its agents for its small employer business based on loss ratio, and provide written notice to its agents that it is ceasing this practice, in order to document compliance with s. 635.18 (3), Wis. Stat.



## **Company Operations/Management**

The examiners reviewed the company's response to the company operations and management interrogatory, network, provider and administrative service agreements, and board of directors meeting minutes. The examiners also reviewed the company's administrative service agreement with Chiropractic Services Network, Inc, MedStat, ComCoTec. and Humana.

During the period of review until January 1, 2002, Touchpoint had an administrative agreement with Humana that provided that Humana would market Touchpoint's HMO and POS plans to groups of 2-99 employees in Touchpoint's service area. Humana was responsible for agent contracting and licensing, paying commissions, training agents to market the joint plans, provide agents with printed brochures and other advertising materials, process applications through Humana's administration system, provide underwriting services, provide quoting support and handle billing and collection of gross premiums for groups it marketed and all dual choice small group business. The agreement terminated December 31, 2001, and Touchpoint assumed these responsibilities. The examiners found that the termination of the agreement resulted in missing documents from Touchpoint's files, as well as issues involving ownership of files and documents. The administrative agreement indicated that Humana would own and retain title to all data, documents and software used in connection with the provision of all services. Touchpoint would own and retain title to all data, documents and software used or created in connection with the provision of all services. Medical, financial and enrollee information reviewed and collected in connection with the services provided would be held in confidence by both parties.

The examiners found that the company did not have a compliance program in place that provided that Touchpoint regularly audit, monitor and supervise Humana's performance of administrative responsibilities, although Touchpoint had audited Humana's enrollment procedures. The examiners also found that the company did not have compliance program for auditing or oversight of CSN or CoComTec activities. Section Ins 9.42, Wis. Adm. Code,

provides that all insurers writing managed care plans, preferred provider plans to be responsible for having a compliance plan in place for ss. 609.22, 609.24, 609.30, 609.32, 609.34, 609.36 and 632.83, Wis. Stats. including s. Ins 9.42 and other applicable sections including but not limited to s. Ins 9.07, Wis. Adm. Code. The insurer's compliance plan shall include regular internal audits, including regular audits of any contractors or subcontractor who perform functions relating to compliance of the sections listed above.

23. **Recommendation:** It is recommended that Touchpoint enforce the language in its administrative service agreements that allows the company to audit and require reports regarding administrative activities.

24. **Recommendation:** It is recommended that Touchpoint develop and implement an auditing process that allows the company to manage outside vendors in order to document compliance with s. Ins 9.42, Wis. Adm. Code.

During the period of September 11, 1991 and December 31, 2001, Touchpoint had an agreement with Humana to list all agents. The examiners' review of the company's producer licensing functions indicated that the company did not exercise sufficient oversight of this listing and termination process, which resulted in the company paying significant commissions to agents not listed with the company.

25. **Recommendation:** It is recommended that Touchpoint develop and institute at its management level a plan for supervising the activities of its vendors and the provisions of its administrative agreements in order to ensure compliance with Wisconsin insurance law.

## **CONCLUSION**

The examiners found that Touchpoint complied with the seven recommendations from the prior managed care desk audit. The company also complied with 23 of the 24 recommendations that were adopted in 1997. This compliance examination resulted in 25 recommendations in the areas of claims, company operations and management, electronic commerce, privacy and confidentiality, managed care, producer licensing and small employer. This examination also includes recommendations requiring that the company develop processes for oversight of company activities.

## VI. SUMMARY OF RECOMMENDATIONS

### Claims

- Page 12 1. It is recommended that Touchpoint ensure that it pay interest on all overdue claims in order to comply with s. 628.46, Wis. Stat.
- Page 13 2. It is recommended that Touchpoint develop a process that requires its management staff to notify the OCI of operations and systems difficulties and issues that may generate OCI complaints.

### Electronic Commerce

- Page 14 3. It is recommended that Touchpoint revise its individual agent agreement to prohibit agents from advertising or referencing Touchpoint products on individual agent website in order to document compliance with s. Ins 3.27(27), Wis. Adm. Code.

### Grievances and IRO

- Page 15 4. It is recommended that Touchpoint amend its EOB form to include the information on the independent review process required by s. 632.835 (2) (bg) 2, Wis. Stat.
- Page 16 5. It is recommended that Touchpoint include a current list of certified IROs with the information on the independent review process that accompanies its grievance resolution letter, as required by s. Ins 18.11 (2) (a) 3, Wis. Adm. Code.
- Page 16 6. It is recommended that Touchpoint maintain documentation that it has refunded the \$25.00 filing fee for those independent reviews that are reversed or partially reversed, as required by s. 632.835 (3) (a), Wis. Stat. The examiners found that the denied EOBs did not contain information on the Independent Review Process as required by s. 632.835 (2) (bg) 2, Wis. Stat.

### Privacy and Confidentiality

- Page 17 7. It is recommended that the company's Board of Directors review the results of its compliance program on an annual basis in order to document its oversight of the requirements under s. 610.70, Wis. Stat., and ch. Ins 25, Wis. Adm. Code.

### Producer Licensing

- Page 23 8. It is recommended that Touchpoint develop and implement procedures for monitoring its agents compliance with Wisconsin continuing education requirements.

- Page 23 9. It is recommended that Touchpoint obtain its agent files from Humana to be compliant with ss. Ins 6.57, Ins 6.80, and Ins 9.42, Wis. Adm. Code.
- Page 24 10. It is recommended that Touchpoint revise its procedures to verify listed agents to comply with s. Ins 6.57(1), Wis. Adm. Code.
- Page 24 11. It is recommended that Touchpoint revise its procedures to verify termination of agents to comply with s. Ins 6.57(2), Wis. Adm. Code.
- Page 24 12. It is recommended that Touchpoint develop and implement procedures, including reconciling the annual billing statement from OCI, for maintaining accurate and current information on its agent database that corresponds with the OCI listing information in order to document compliance with s. Ins 6.57, Wis. Adm. Code.
- Page 25 13. It is recommended that Touchpoint notify OCI when it has an executed agreement with a vendor for processing agent listings electronically
- Page 25 14. It is recommended that Touchpoint develop and implement a process to insure that business is not accepted from an agent until they receive the OCI validation notice to comply with s. Ins 6.57(1)and (5), Wis. Adm. Code.
- Page 26 15. It is recommended that Touchpoint follow their Policy and Procedures when making agents active to be in compliance with s. Ins 6.57(1), Wis. Adm. Code.
- Page 26 16. It is recommended that Touchpoint develop and implement procedures for the termination of agents to comply with s. 628.40, Wis. Stat., and s. Ins 6.57(2), Wis. Adm. Code.
- Page 26 17. It is recommended that Touchpoint conduct an audit of its agent files, and report to OCI within 3 months of the adoption of the examination report on the findings of its audit and its plan for correction action in order to document its compliance with s. Ins 6.57, Wis. Adm. Code.
- Page 27 18. It is recommended that Touchpoint develop and implement procedures for monitoring its agents' compliance with Wisconsin continuing education requirements.

### **Small Employer**

- Page 28 19. It is recommended that Touchpoint revise its Eligibility Guidelines for all group sizes to delete the definition, "permanent employment is defined as a minimum of 48 weeks per year" so as to be consistent with the requirements of s. 632.745 (5) and s. 635.19 (1) Wis. Stat.
- Page 28 20. It is again recommended that Touchpoint disclose to small employer groups, as a separate notice on Touchpoint letterhead, at the time of

policy issuance, the fact that if the small employer employs less than 2 or more than 25 eligible employees during at least 50% of the number of weeks in any 12 month period, or moves the enterprise outside Wisconsin, the group will lose the protections of the small employer laws, as indicated in s. Ins 8.44 (2), Wis. Adm. Code.

Page 29 21. It is recommended that Touchpoint revise its quoting system to include in the record the date the request for a quote is received to comply with s. 601.42, Wis. Stat.

Page 29 22. It is recommended that Touchpoint immediately cease from paying compensation to its agents for its small employer business based on loss ratio, and provide written notice to its agents that it is ceasing this practice, in order to document compliance with s. 635.18 (3), Wis. Stat.

### **Company Operations and Management**

Page 31 23. It is recommended that Touchpoint enforce the language in its administrative service agreements that allows the company to audit and require reports regarding administrative activities.

Page 31 24. It is recommended that Touchpoint develop and implement an auditing process that allows the company to manage outside vendors in order to document compliance with s. Ins 9.42, Wis. Adm. Code.

Page 31 25. It is recommended that Touchpoint develop and institute at its management level a plan for supervising the activities of its vendors and the provisions of its administrative agreements in order to ensure compliance with Wisconsin insurance law.

## VII. 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>
Pam Ellefson	Senior Insurance Examiner
Jerry Zimmer	Insurance Examiner
Diane Dambach	Chief, Accident & Health Ins Sec
Barbara Belling	Managed Care Specialist
Jamie Key	Advanced Examiner

Respectfully submitted,

Linda Low  
Examiner-in-Charge