



OFFICE OF THE
HEALTH INSURANCE COMMISSIONER
STATE OF RHODE ISLAND

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MAR 05 2007

Health Insurance
Commissioner

February 28, 2007

Mr. Stephen J. Farrell
President & CEO
United Healthcare of New England, Inc.
475 Kilvert Street, Suite 310
Warwick, RI 02886

Re: Small Employer Market Conduct Examination of United HealthCare of
New England, Inc. and United HealthCare Insurance Company

Dear Mr. Farrell:

As you are aware, the Office of the Health Insurance Commissioner has completed its targeted small employer market conduct examination of United HealthCare of New England, Inc. and United HealthCare Insurance Company (collectively "United").

As a result of the examination, this Office determined, as discussed more fully in the draft examination report provided to you, that United failed in certain respects to meet the requirements of R.I.G.L. § 27-50-1, *et seq.* and applicable regulations and guidance documents. As a result of these failures, the Office has determined that a monetary penalty should be assessed.

Enclosed for your review is a draft order that we propose for the final version of the report. The draft order specifies, among other things, that a monetary penalty of \$75,000.00 will be assessed against United.

If United wishes to resolve this matter in an expeditious manner, United can agree to the terms of the draft order, countersign this letter in the space provided below and return the letter to this Office by Monday, March 5, 2007. In return for doing so, the penalty will be reduced by 10%, to \$67,500.00. The draft final order reflects this reduction in paragraph 17.

Accepting this offer to resolve this matter amicably and expeditiously will not be construed as an admission of liability on the part of United. However, by accepting this offer, United understands that it will waive its right to appeal or contest the findings and recommendations in the report as well as the terms of the order.

Protecting Consumers • Ensuring Solvency • Engaging Providers • Improving the System

Office of the Health Insurance Commissioner
233 Richmond Street, Suite 237 • Providence, RI 02903-4237
401.222.5424 • 401.222.6098 fax • TTY: 711

Stephen J. Farrell
February 28, 2007
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Should you fail to respond by March 5, 2007, this Office will issue a final order on the report and initiate an administrative action for the violations set out in the report. This will include the appointment of a hearing officer and a formal administrative proceeding. You will be afforded the right to defend against the allegations through an attorney licensed in the state of Rhode Island.

The Office will provide you with a fully executed copy of the order once a countersigned copy of this letter has been received.

Very truly yours,

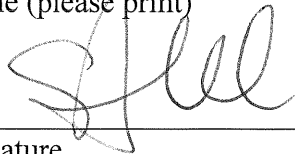


Christopher F. Koller
Health Insurance Commissioner

On behalf of United HealthCare of New England, Inc. and United HealthCare Insurance Company I accept the terms and conditions of the offer, as set out in this letter, and certify that have authority to execute this letter on behalf of the above-named entities.

STEPHEN J. FARRELL

Name (please print)



Signature

C.E.O.

Title (please print)

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
OFFICE OF THE HEALTH INSURANCE COMMISSIONER
233 RICHMOND STREET
PROVIDENCE, RHODE ISLAND 02903**

FINAL ORDER (OHIC-2007-2)

**The Market Conduct Examination of United Healthcare of New England, Inc.
& United Healthcare Insurance Company**

THIS MATTER comes before the Health Insurance Commissioner (the "Commissioner") as a result of a targeted market conduct examination of United HealthCare of New England, Inc. and United HealthCare Insurance Company (collectively "United"). The examination was conducted on behalf of the Commissioner by HinckleyAllenTringale, LP, (the "Examiners") pursuant to R.I.G.L. §§ 27-13.1-1, *et seq.*, and 27-50-9. The Commissioner has reviewed the Examiners' report dated September 11, 2006 (the "2006 United Examination Report"), relevant Examiner work papers, all written submissions and rebuttals, and the recommendations of Commissioner's staff. After full consideration of the above-referenced report and other materials and recommendations, the Commissioner orders as follows:

FINDINGS OF FACT

1. At all relevant times, United HealthCare of New England, Inc., was licensed by the State of Rhode Island as a health maintenance organization and United HealthCare Insurance Company was licensed by the State of Rhode Island as an insurance company.
2. In accordance with R.I.G.L. §§ 27-13.1-1, *et seq.*, and 27-50-9, the Examiners completed a targeted market conduct examination of United.
3. The Commissioner scheduled the examination in furtherance of his statutory duty under R.I.G.L. § 27-50-9 to prepare a periodic market evaluation. This examination was conducted to determine the extent of United's compliance with R.I.G.L. § 27-50-1, *et seq.*, as a basis for determining the effectiveness, efficiency and fairness of the small group health insurance marketplace and for determining whether United and its producers are fairly and actively marketing or issuing health benefit plans to small employers in fulfillment of the purposes of R.I.G.L. § 27-50-1, *et seq.*
4. In conducting the examination, the Examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to R.I.G.L. § 27-13.1-4(a).
5. The Examiners prepared the 2006 United Examination Report. This report comprises only the facts appearing upon the books, records, or other documents of United, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and the conclusions and recommendations as the Examiners reasonably warranted from the facts.

6. Because United's records were unavailable or incomplete in significant respects, the Examiners were unable to verify the following:
 - a) the development of base rates for small employers;
 - b) the development of health plan relativities;
 - c) the appropriateness of the inter-company administrative charge;
 - d) the age/gender factor for new and renewing cases;
 - e) the process for recertification of small employer status; and
 - f) the calculations of rates for a specified sample of small employers.

The 2006 United Examination Report is thus incomplete in several major respects.

7. The Examiners found, as discussed more fully in the 2006 United Examination Report, that United failed in certain respects to meet the requirements of R.I.G.L. § 27-50-1, *et seq.* and applicable regulations and guidance documents. Those failures included the following:
 - a) a failure to develop an acceptable rate manual;
 - b) a failure to properly document administrative expenses;
 - c) a failure to properly document age and gender factors to show compliance with Rhode Island's "adjusted community rating" system;
 - d) a failure to maintain complete case files;
 - e) a failure to properly maintain renewal disclosures for statutory products;
 - f) a failure to compute the health status adjustment in a permitted manner; and
 - g) a failure in submitting the required actuarial certification in a required format.
8. United was provided an opportunity to review the 2006 United Examination Report. After that review, United delivered to the Commissioner written submissions and rebuttals to the report.
9. The Commissioner has fully considered and reviewed the 2006 United Examination Report, all of United's submissions and rebuttals, and all relevant portions of the Examiners' work papers.
10. Unless expressly modified in this Final Order ("Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the 2006 United Examination Report. A copy of the 2006 United Examination Report is attached to this Order and is incorporated by reference.
11. Any Conclusion of Law that is also a Finding of Fact is hereby adopted as a Finding of Fact.

CONCLUSIONS OF LAW AND ORDER

12. The preceding sections 1 through 11 of this Final Order are incorporated into these Conclusions of Law.

13. The OHIC has jurisdiction in this matter pursuant to R.I.G.L. §§ 42-14.5-1 *et seq.*, 42-14-5(d), 27-13.1-1 *et seq.* and 27-50-1 *et seq.*
14. The examination was conducted in accordance with the provisions of R.I.G.L. § 27-13.1-1 *et seq.*
15. As a result of his review of the 2006 United Examination Report, the Commissioner has reached certain conclusions of law with respect to United's compliance with Chapter 27-50 and all applicable regulations and guidance documents. These conclusions are identified as Issues A through H, below.

a) Issue A: Rate Manual

Issue A concerns Recommendations 3, 7 and 9 of the 2006 United Examination Report, related to United's rate manual. United's rate manual should clearly document the development of United's small employer rates. It does not. This requirement addresses the fundamental elements that underlie United's whole small employer rating system. These Recommendations signify violations of R.I.G.L. §§ 27-50-5(h)(1), 27-50-5(h)(3), 27-13.1-4(b), and Adopt. DBR Reg. 82(5)(A)(3), (A)(4) and (B), which require a carrier to maintain a rate manual and sufficient records to show compliance with insurance laws and to make such records available to examiners duly appointed by the Office of the Health Insurance Commissioner. This failure is at the most fundamental level because verification of United's compliance with the State's entire rating system rests on the ability of the Commissioner to verify United's underlying rate development.

b) Issue B: Adequate Documentation To Allow Verification of Compliance With Rating Requirements

Issue B concerns Recommendations 4, 6 and 8 of the 2006 United Examination Report, related to United's failure to maintain adequate documentation to allow verification of compliance with rating requirements. Like the Recommendations referenced in Issue A, Recommendations 4, 6 and 8 signify violations of R.I.G.L. §§ 27-50-5(h)(1), 27-50-5(h)(3), 27-13.1-4(b), and Adopt. DBR Reg. 82(5)(A)(3), (A)(4) and (B). This failure is at the most fundamental level because verification of United's compliance with the State's entire rating system rests on the ability of the Commissioner to verify United's underlying rate development.

c) Issue C: Incomplete Case Files

Issue C concerns Recommendations 15, 17, 18 and 19 of the 2006 United Examination Report, related to incomplete case files. The Examiners cited a lack of waiver forms and other information that were missing from the files. Failure to maintain complete case files, especially to obtain copies of waivers to document eligibility, is a violation of Adopt. DBR Reg. 82(6)(B)(2). Complete case files are necessary to assure that eligibility standards have been fairly administered.

d) Issue D: Disclosure of Certain Rating and Renewability Provisions, Including Disclosure of Information Related to the Statutory Standard and Economy Plans

Issue D concerns Recommendations 25, 26 and 27 of the 2006 United Examination Report, related to the disclosure of certain rating, renewability and availability provisions, including disclosure of information related to the statutory Standard and Economy plans. The Standard and Economy plans were required to be offered pursuant to (the now amended) R.I.G.L. § 27-50-7(b)(1). R.I.G.L. § 27-50-5(g) requires that, in connection with the offering for sale of any health benefit plan, United make reasonable disclosures of certain information, including information about the Standard and Economy plans. R.I.G.L. § 27-50-7(b) and Adopt. DBR Reg. 82(10)(B) required that every small employer carrier shall actively offer to small employers all health benefit plans it actively markets to small employers, including the statutory Standard and Economy plans. United failed to do so. The fact that the statutory mandate for these plans has been repealed does not alter the fact that United failed to comply with applicable statutes and regulations. Likewise other information and disclosures required by R.I.G.L. §§ 27-50-5(g), 27-50-7(b), and Adopt. DBR Reg. 82(10)(A)(2) and (B) were not disclosed. Finally, United's renewal material did not fully disclose that groups of one were eligible for participation in the small group market. These disclosures are critical for fully informed consumer decision making.

e) Issue E: Actuarial Certifications

Issue E concerns Recommendations 10, 11, 12, 13 and 14 of the 2006 United Examination Report, related to actuarial certifications. R.I.G.L. § 27-50-5(h)(2) requires that United file on an annual basis an actuarial certification that certifies that the company is in compliance with R.I.G.L. § 27-50 and that the rating methods of the small employer carrier are actuarially sound. The certifications lacked certain information required by Insurance Bulletin 2002-4. Such information is necessary for a thorough review of the actuarial certifications filed by United.

f) Issue F: Health Status Adjustment

Issue F concerns Recommendation 5 of the 2006 United Examination Report, related to United's use of the health status adjustment set out at R.I.G.L. § 27-50-5(a)(2). United's actual range of health status factors is a band of 3% below the adjusted community rate and 17 % above the adjusted community rate. R.I.G.L. § 27-50-5(a)(2) requires that a small employer carrier can vary the adjusted community rates by 10%. As a result of applying health status risk factors to a "base rate" that is above its adjusted community rate, United has charged certain small employer health plans rates that exceed those allowed by R.I.G.L. § 27-50-5.

g) Issue G: Consumer Issues

Issue G concerns Recommendations 1, 2, 20, 23 and 24 of the 2006 United Examination Report, related to consumer issues. Adopt. DBR Reg. 82(10)(C) requires a toll-free number. The number does not appear to be adequately available to small employers. United's website does not include information about groups of

one. United's pre-existing condition requirement does not meet the requirements of R.I.G.L. § 27-50-7. United's consumer complaints may not be fully and adequately addressed. Finally, United's Joint Life and Health Employer Application may not accurately describe the overall cost and the mechanism of cost recovery for bonus payments. These consumer issues should be addressed by United.

h) Issue H: Underwriting Manuals

Issue H concerns Recommendations 16, 21 and 22 of the 2006 United Examination Report, related to underwriting manuals. R.I.G.L. § 27-50-5(h) and Adopt. DBR Reg. 82(5) require medical and financial underwriting manuals. In addition, United's underwriting manual should include policies with respect to renewals. These manual issues should be addressed by United.

16. Pursuant to R.I.G.L. § 42-14-16, the Commissioner has concluded that United shall pay an administrative penalty to the State of Rhode Island in the amount of seventy-five thousand dollars (\$75,000). R.I.G.L. § 42-14-16 provides for the assessment of administrative penalties in an amount not less than one hundred dollars (\$100) nor more than fifty thousand dollars (\$50,000) whenever the Commissioner shall have cause to believe that a person or entity required to be licensed under title 27 of the General Laws has violated that title or the regulations promulgated thereunder. The amount of the penalty was determined as follows:

a) Issues A and B: \$50,000

These violations are fundamental. In addition, some of these violations were repeats (or were similar to) violations noted in the 2002 market conduct exam. The Examiners' findings also suggest that there have been multiple violations of multiple requirements during each of the years 2003 through 2005. Based on these factors, a single penalty at the maximum of the statutory range, issued for all violations covered by Issues A and B, is appropriate.

b) Issue C: \$10,000

Complete case files are necessary to assure that eligibility standards have been fairly administered. These violations, while not fundamental in nature, nevertheless make it difficult for the Commissioner to fully assess United's compliance with R.I.G.L. § 27-50-1, *et seq.* The Examiners' findings also suggest that there have been multiple violations of multiple requirements during each of the years 2003 through 2005. Based on these factors, a single penalty in the lowest quartile of the statutory range, issued for all violations covered by Issue C, is appropriate.

c) Issue D: \$15,000

Disclosure of certain rating and renewability provisions is mandated by both statute and regulation. In addition, United failed to fully disclose the Standard and Economy plans, as required by statute. United's renewal material did not fully disclose that groups of one were eligible for participation in the small group market. These disclosures are critical for fully informed consumer decision making. This is similar to a violation noted in the 2002 market conduct exam. The Examiners' findings also

suggest that there have been multiple violations of multiple requirements during each of the years 2003 through 2005. Based on these factors, a single penalty in the lowest third of the statutory range, issued for all violations covered by Issue D, is appropriate.

d) Issues F, G and H: \$0

No monetary penalty

17. While admitting no violations of Rhode Island Law, United has agreed not to contest this Final Order. Therefore, the penalty amounts set out above have been reduced by 10%, for a total of sixty-seven thousand five hundred dollars \$67,500. A letter reflecting United's decision and signed on behalf of the Commissioner and United is appended to this Order.
18. R.I.G.L. § 42-14-16 provides that the Commissioner, when he has cause to believe that a person or entity required to be licensed under title 27 of the General Laws has violated that title or the regulations promulgated thereunder, may require the licensee or person or entity conducting any activities requiring licensure under title 27 to take such actions as are necessary to comply with title 27 and/or the regulations thereunder. Therefore, United is ordered to:
 - a) Submit a compliant rate manual to the Commissioner within 60 days of the date of this Order; and
 - b) Provide to the Commissioner, within 60 days, a list of those affected adversely by United's inappropriate application of the health status adjustment set out at R.I.G.L. § 27-50-5(a)(2) accompanied by a description of the specifications used.
19. R.I.G.L. § 27-50-5(h)(2) requires that United file on an annual basis an actuarial certification that certifies that the company is in compliance with R.I.G.L. § 27-50. United is hereby notified that its actuarial certifications must comply fully with all statutory and regulatory requirements and all written agency guidance. Commencing on the date of this Order, United's actuarial certifications will be subject to rejection if not fully compliant.
20. Pursuant to R.I.G.L. § 27-13.1-5(d), United shall, within thirty (30) days of the issuance of the 2006 United Examination Report and this Order, file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and this Order.
21. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. United shall submit written evidence of compliance within the thirty (30) day time frame, except where United has already complied, as noted in this Order.
22. In recognition that the report is incomplete because of the lack of or unavailability of key records, United is hereby notified that the Commissioner intends to order a limited examination that will commence approximately six (6) months from the date of this Order ("the Re-Examination"). The purpose of the Re-Examination will be to verify that United has developed appropriate records and made them available to complete the

examination. The items to be reviewed as part of the Re-Examination shall include, but not be limited to the following:

- a) United's commission database included some Massachusetts data, so that the commissions by broker may be overstated when compared to RI small employer premiums. United indicated that it was unable to split the commission data by state of issue of the underlying business. Although the format of the data provided was satisfactory, the data provided must be limited to Rhode Island issued small employer business.
- b) The Examiners did not receive sufficiently detailed data from United to make definitive statements about the United's age/gender distribution. United indicated that the age/gender factors listed for each group on the monthly renewal summaries could not be relied on because they did not include children. This was a problem not only for the Examiners' modeling, but it also meant that the Examiners could not reproduce their rates on a group-by-group basis. The age/gender factor indicated on the monthly renewal summaries for each renewing group should be reflective of the age/gender factor developed by United as part of the renewal rate calculation process. Alternatively, the Examiners would be receptive to another means of obtaining this data.
- c) The data obtained from United included a few cases with health status adjustments outside the +/- 10% bounds. (This issue is in addition to the one described in Issue F above.) The actuarial certifications for several years reference this problem and indicate that there is a system problem that needs to be fixed. The Examiners requested further information about the nature of this problem and received no response. The Examiners expect to receive an explanation regarding the circumstances that give rise to this problem, a definitive plan to correct the problem, identification of any small employers who were charged premiums in excess of that allowed and a plan to reimburse such small employers for overpayments.
- d) Starting rates are included in the rate manual. The Examiners requested documentation related to the development of the starting rates. The Examiners received a brief generic response that was not adequate and did not allow the Examiners to conclude that the starting rates were developed in accordance with commonly accepted actuarial assumptions and are in accordance with sound actuarial principles. United has indicated in its response to Recommendation 3 that it will provide the requested documentation in its rate manual, with a completion date of March 31, 2007. The Examiners look forward to receiving the documentation.
- e) The Examiners requested information that supported the health plan relativities (i.e. the relationship of a given plan to the base rate) contained in the rate manual. In response to this request, United provided a very short paragraph, which constituted an inadequate response. The response provided did not provide the Examiners sufficient information to conclude that United's plan relativity factors meet the requirements of Adopt. DBR Reg. 82(5)(B)(2). Adopt. DBR Reg. 82(5)(B)(2) requires that premium rates for benefit plans be based on the benefit design and cannot be based on the actual or expected experience of the employer groups who select the particular health

benefit plan. United has indicated in its response to Recommendation 7 that it will provide the requested documentation in its rate manual, with a completion date of March 31, 2007. The Examiners look forward to receiving the documentation.

- f) The Examiners requested information with respect to the allocation of expenses between the small employer business and other business and how the allocated expenses are reflected in the premium rates. The administrative expense charges to United HealthCare of New England, Inc. are based on an administrative agreement with United's affiliate, United HealthCare Services ("UHS"). United provided a copy of the agreement but United did not provide details regarding the basis for the 12% of premium inter-company charge and did not provide details as the development of the expense component of its rate. United has indicated in its response to Recommendation 9 that it will provide the requested documentation in its rate manual, with a completion date of March 31, 2007. The Examiners look forward to receiving the documentation.
- g) During a meeting with United's actuaries, the Examiners requested United's target loss ratio for its small employer products. The Examiners never received a response to the question, even though they reminded United's staff several times. The requested information can be included in the rate manual documentation. If the recommendations related to the rate manual are implemented by United, the requested information will be apparent from the data provided in the rate manual.
- h) The Examiners were provided with data that resulted in a membership estimate at year end that differed significantly from that reflected in the annual filing with OHIC, as required by Adopt. DBR Reg. 82(10)(G). United staff was unable to resolve the discrepancy in the estimates and provide a definitive count of membership. United should research the data source for the membership counts that were used by United in reporting membership to OHIC and the Examiners, determine the reason for any difference, and determine the most appropriate source for reporting membership in the future.
- i) United was not able to provide the Examiners with sufficient detail at the case level to determine the adjustment, if any, required to meet the 4:1 compression requirement. It is the understanding of the Examiners that any required adjustment is reflected within the group level age/gender factor by limiting the group level age factor to a range so as to satisfy the compression requirement. The rate manual should include the step(s) required to ensure that United's rating methodology meets the 4:1 compression requirement.
- j) In order to verify compliance with respect to the rating and underwriting requires of R.I.G.L. § 27-50 and to test the actual calculations for accuracy, the Examiners requested "complete" files for specified new business and renewal cases.

i) Case sample analysis – Health Status

The Examiners requested that United provide case files for a specified sample of small employer groups. The request included specific demographic data that was to be included in the response. However, the response provided was limited to

copies of the proposal or renewal package. A request was made to United for the missing information. As a result of the inadequate response the Examiners were unable include a case level audit of the medical underwriting process in the report.

ii) Case Sample Analysis – Renewal and proposal rating

The sample renewal files did not contain demographic data that would allow the Examiners to test the age/gender calculations. Sample renewal case files provided to the Examiners did not contain documentation related to re-certifying small employer status, verifying participation, and verifying employee eligibility. United did not specify the plan sold, age/gender factor for the group, health status factor calculated by underwriting, and the various steps in the rate process.

The initial response for sample case files for new business did not contain requested information pertaining to health status evaluation of enrolling members and other data that would allow the Examiners to test the health status adjustment. Additional information was provided by United on March 30, 2006. However, the additional was still insufficient for the performance of the intended audit procedure. In response to this request, United should provide the following information:

For new issues this would include:

- Employer application
- Information obtained by United to verify small employer status
- Enrollment forms for eligible employees who choose to enroll
- Waiver forms for eligible employees who choose to waive or decline coverage
- Plan of benefits selected
- Rates sold
- Medical underwriting action by individual – indicating action taken and basis for such action (Screen prints for each member and a screen print that indicates the calculation of the health status adjustment factor would be satisfactory)

For renewals this would include:

- Documentation related to re-certifying small employer status
- Documentation related to verifying total number of eligible employees, waiver forms for eligible employees who are not enrolled
- Detailed census for those enrolled
- Detail to support rating at the renewal (health status)
- Plan selected

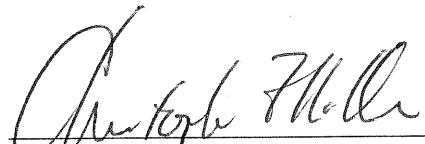
It is the objective of the Examiners to obtain sufficient information to calculate the health status adjustment, the age factor, and the billing rates based on the rate manual provided, the detailed census data, and the medical underwriting decisions at the member level (for new business) and compare this result against the billing rates contained in files that provided.

- k) The Examiners requested and received an extract of detailed claim data by member. The format of the extract was consistent with the specifications provided to United by

the Examiners. Based on an analysis of the data contained in the extract and summary data available from other sources, the Examiners believe that the detailed claim extract may be incomplete. The Examiners have not received a satisfactory resolution to their concerns. United should review the system specifications developed by its staff that were the basis of the claim extract provided to the Examiners in order to ensure that it was consistent with the requirements of the data request.

23. Pursuant to R.I.G.L. §§ 27-13.1-4(d), 42-14-5(d), and § 42-14-19, the Commissioner may retain attorneys, independent actuaries, independent certified public accountants, or other professionals and specialists for the purposes of the Re-Examination, the cost of which shall be borne by United.
24. This Order shall not prevent the Commissioner from commencing future action relating to conduct of United not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by United to comply with the terms of this Order may result in additional actions, penalties and sanctions, as provided for by law.
25. Copies of the 2006 United Examination Report, United's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of R.I.G.L. § 27-13.1-5.

WHEREFORE: It is hereby ordered that the findings and conclusions contained in the final examination report dated September 11, 2006 are hereby adopted and filed and made an official record of this Office, and the above Order is hereby approved this 8th day of March, 2007.



Christopher F. Koller
Health Insurance Commissioner