

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of the Proposed)	
Adoption of the Market Conduct)	
Review Report of PREFERRED PLUS OF)	Docket No. 3111-MC
KANSAS)	

FINAL ORDER

NOW COMES on this date for formal disposition the matter of the proposed adoption of the market conduct review report of Preferred Plus of Kansas, Inc., a Kansas corporation. This matter is brought before the Commissioner of Insurance for adoption, rejection, or modification pursuant to the provisions of Kansas Statutes Annotated ("K.S.A.") 40-222.

I, Sandy Praeger, the duly elected, qualified, and Commissioner of Insurance of the State of Kansas, having fully considered and reviewed the examination report, together with all written submissions, applicable rebuttals, and all relevant portions of the examiner's work papers, and further being advised on all premises, hereby find:

Findings of Fact

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222.
2. A market review of the Preferred Plus of Kansas, Inc. ("Preferred") was undertaken by the Kansas Insurance Department and completed on June 2, 2002.

3. On June 21, 2002, the examiner in charge tendered and filed with the Kansas Insurance Department ("KID") a verified written report of the market conduct review under oath.

4. Within thirty (30) days following receipt of the report, KID sent a draft of the Market Conduct Report to Preferred. The company was asked to review the document and forward any written comments or additions or acceptance of the report to KID.

5. On August 5, 2002, KID received written comments from Preferred on the written report.

6. Within thirty (30) days following the written response, the Commissioner of Insurance fully reviewed the report together with any written responses provided by Preferred.

7. Preferred was incorporated in 1991 and admitted to write business in Kansas on November 22, 1991.

8. In the course of the examination, the examiner found that of the 25 files reviewed for the period of January, 1999 through June, 2001 that were registered directly with Preferred, Preferred did not conduct and complete its investigations within 20 days on 5 grievance letters.

9. In the course of the examination, the examiner found that all the forms for 2001 did not specify "30 business days" under the wording, "XIII COMPLAINT AND APPEAL POLICY, D. EXTERNAL REVIEW PROCESS."

10. In the course of the examination, the examiner found that eight forms covered diabetic medical equipment and supplies under Durable Medical Equipment.

11. In the course of the examination, the examiner found that eight forms covered diabetic medical equipment and supplies under Durable Medical Equipment limited coverage of insulin pumps and diabetic hypodermic needles and associated supplies per calendar year.

12. In the course of the examination, the examiner found that 5 of 50 agents for Preferred wrote business prior to being appointed by Preferred.

13. In the course of the examination, the examiner found that Preferred did not complete the investigation of 15 of 50 emergency room claims within 30 days after notification was given to Preferred.

14. In the course of the examination, the examiner found that Preferred did not complete the investigation of 22 of 50 hospital claims within 30 days after notification was given to Preferred.

15. In the course of the examination, the examiner found that Preferred did not complete the investigation of 26 of 50 denied hospital claims within 30 days after notification was given to Preferred.

16. In the course of the examination, the examiner found that Preferred did not complete the investigation of 40 of 100 denied doctor and other provider claims within 30 days after notification was given to Preferred.

Applicable Law

17. Kansas Statutes Annotated ("K.S.A.") 40-241i(a) states, in relevant

part:

Any company authorized to transact business in this state may... appoint such agent as the agent of the company under the license in effect for the agent. The appointment shall be made to the commissioner annually on a form prescribed by the commissioner at the same time the company files its returns... and failure of the company to certify an agent shall subject the company to a penalty of not more than \$25 per calendar day from the date the appropriate return was required to the date proper certification is recorded by the insurance department.

18. 40-2,125 states, in relevant part:

(a)(1) If the commissioner determines after notice and opportunity for a hearing that any person has engaged in or is engaging in any act or practice constituting a violation of any provision of Kansas insurance statutes or any rule and regulation or order thereunder, the commissioner may in the exercise of discretion, order... payment of a monetary penalty of not more than \$1,000 for each and every act or violation, unless the person knew or reasonably should have known such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder, in which case the penalty shall be not more than \$2,000 for each and every act or violation.

19. K.S.A. 40-2,163 states, in relevant part:

(c) Diabetes outpatient self-management training and education shall be provided by certified, registered or licensed health care professional with expertise in diabetes. The coverage for outpatient self-management training and education shall be required pursuant to this section only if ordered by a health care professional legally authorized to prescribe such services and the diabetic (1) is treated at a program approved by the American diabetes association; (2) is treated by a person certified by the national certification board for diabetes educators; or is, as to nutritional education, treated by a licensed dietitian pursuant to a

treatment plan authorized by such healthcare professional.

(d)(1) The benefits provided in this act shall be subject to the same annual deductible or co-insurance and the same requirement of medical necessity established for all other covered benefits within a given policy...

20. K.S.A. 40-22a15(c) states, in relevant part:

The external review organization shall issue a written decision to the insured and concurrently send a copy of such decision to the commissioner of insurance including the basis and rationale for its decision within 30 business days...

21. K.S.A. 40-3228(2) states, in relevant part:

A health maintenance organization shall... conduct a complete investigation of the grievance within 20 working days after receipt of a grievance, unless the investigation cannot be completed within this period of time...

22. Kansas Administrative Regulation ("K.A.R.") 40-1-34 states, in relevant part:

Section 7. Every insurer shall complete investigation of a claim within thirty days after notification of claim, unless such investigation cannot reasonably be completed within such time.

Conclusions of Law

23. Based on the findings of fact set out in paragraphs 1 through 6, the market conduct of affairs examination report of Preferred Plus of Kansas, Inc., is adopted.

24. Based on the findings of fact set out in paragraph 8 of the Order, the commissioner finds and concludes that the company is in violation of K.S.A. 40-3228(1), which is the requirement for companies to investigate grievances within 20 days of the receipt.

25. Based on the findings of fact set out in paragraph 9 of the Order, the commissioner finds and concludes that the company is in violation of K.A.R. 40-22a15(c), which is the requirement that external review organizations issue a written decision within 30 business days.

26. Based on the findings of fact set out in paragraphs 10 and 11 of the Order, the commissioner finds and concludes that the company is in violation of K.S.A. 40-2,163, which is the requirement that benefits shall be the same requirement of medical necessity established for all other covered benefits.

27. Based on the findings of fact set out in paragraph 12 of the Order, the commissioner finds and concludes that the company is in violation of K.S.A. 40-241i(a), which requires companies to appoint agents to write business for the companies.

28. Based on the findings of fact set out in paragraph 13, 14, 15 and 16 of the Order, the commissioner finds and concludes that the company is in violation of K.A.R. 40-1-34, Section 7, which requires companies to complete investigations of claims within 30 days of notification.

29. The violations as outlined in paragraphs 9, 10, 11, and 12 constitute three (3) unintentional violations of Kansas law. Under the provisions of K.S.A. 40-2,125, the company is fined \$0.

30. The violations as outlined in paragraphs 8, 13, 14, 15, and 16 constitute two (2) violations of Kansas law. Under the provisions of K.S.A. 40-2,125, the company is fined \$500.

Policy Reasons

31. It is the stated policy reason of the State of Kansas that whenever the Commissioner deems it necessary, an examination of the affairs and financial condition of any insurance company in the process of organization, applying for admission, or doing business in this State can be undertaken. In all cases, such an examination must occur every (5) five years. Through the examination process the insurance concerning consuming public will be well served and protected.

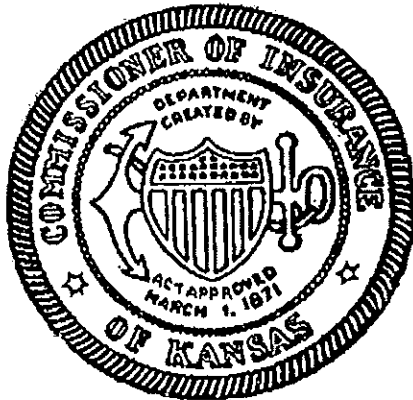
IT IS THEREFORE, BY THE COMMISSIONER OF INSURANCE, ORDERED THAT:

1. The market conduct review of Preferred Plus of Kansas, Inc. is hereby adopted.
2. The Commissioner levies fines in the amount of \$500 for each violation.
3. The Commissioner of Insurance retains jurisdiction over this matter to issue any and all further orders deemed appropriate or take further action necessary to dispose of this matter.
4. The Commissioner further orders, pursuant to K.S.A. 40-222(k)(3), that the company files written affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

NOTICE OF RIGHT TO JUDICIAL REVIEW

You have the right to judicial review in accordance with the provisions set forth in the Act for Judicial Review and Civil Enforcement of Agency Actions (K.S.A. 77-601, et seq., as amended). If you wish to appeal this decision, you must file a petition for judicial review after exhausting all administrative remedies available in this matter within 30 days. Your written petition for judicial review shall be served upon: Sandy Praeger, Commissioner of Insurance, Kansas Insurance Department, 420 SW 9th Street, Topeka, Kansas 66612-1678.

IT IS SO ORDERED THIS 3RD DAY OF FEBRUARY, 2003 IN THE CITY OF TOPEKA, SHAWNEE COUNTY, STATE OF KANSAS.



Sandy Praeger

Sandy Praeger
Commissioner of Insurance

John Campbell

John Campbell
General Counsel