

LAWRENCE G. WASDEN
Attorney General

DAVID M. FARNEY, ISB No. 8926
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street
P.O. Box 83720
Boise, Idaho 83720-0043
Telephone No. (208) 334-4219
Facsimile No. (208) 334-4298
david.farney@doi.idaho.gov

FILED
SEP 07 2017 *AM*
Department of Insurance
State of Idaho

Attorneys for the Department of Insurance

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:

MONTANA HEALTH COOPERATIVE
DBA: MOUNTAIN HEALTH CO-OP

Certificate of Authority No. 4273

Docket No. 18-3335-17

CONSENT ORDER

COMES NOW the staff of the Idaho Department of Insurance (the “Department”) and MONTANA HEALTH COOPERATIVE DBA: MOUNTAIN HEALTH CO-OP (“MHC”), a managed care organization holding Idaho Certificate of Authority No. 4273, and do hereby agree and stipulate as follows:

FINDINGS OF FACT

1. MHC is a Montana non-profit corporation duly authorized by the State of Idaho to operate as a managed care organization pursuant to title 41, chapter 39, of the Idaho Code. MHC was granted Certificate of Authority No. 4273 effective June 13, 2014, pursuant to title 41, chapter 3, Idaho Code.

2. Your Health Idaho is an exchange formed pursuant to the Idaho Health Insurance Exchange Act, title 41, chapter 61, Idaho Code. MHC is licensed in Idaho as a managed care organization that offers policies through the Your Health Idaho exchange.

3. Prior to September 2016, MHC sent a letter to 137 insureds who had enrolled in health benefit plans during a special enrollment period. The letter demanded that the insureds provide eligibility documentation related to their enrollment during the special enrollment period. The letter stated in part, "Failure to provide the documents within 60 days can result in termination of coverage."

4. Between the dates of September 22, 2016, and September 28, 2016, MHC rescinded the policies of 137 insureds for failing to provide valid verification forms during the special enrollment period. The 137 individual policies at issue had original effective dates between May and July 2016.

5. In late September 2016, MHC requested that Your Health Idaho retroactively terminate the policies of 137 members within its system.

6. In early October 2016, Your Health Idaho sought advice from the Department regarding MHC's request to retroactively terminate the 137 policies. The Department informed Your Health Idaho that retroactive termination was tantamount to rescission, and that MHC would violate the law if it rescinded the 137 policies without producing evidence that the policyholders had been fraudulent or had misrepresented a material fact.

7. On or about October 3, 2016, MHC informed the Department that it had already rescinded the 137 policies and that MHC had already denied claims since the date of the policy rescissions.

8. As part of the rescissions, MHC denied eleven medical claims, totaling \$58,898.33, and sixty-six pharmacy claims, totaling \$5,003.77.

9. On October 3, 2016, MHC met with members of the Department. The Department required that MHC take immediate remedial steps to reinstate the 137 rescinded policies.

10. On or about October 5, 2016, MHC reinstated the 137 rescinded policies in its system to allow for members with balances owing to return the refunded premiums. MHC automatically restored the policies that had no premiums due.

11. Over the following months, MHC attempted to contact the affected policyholders to restore coverage for those who chose to stay with their plan. MHC represented to the Department that the denied claims were reprocessed.

12. Despite these efforts, MHC failed to contact some affected policyholders, so their status regarding health insurance remains unknown.

CONCLUSIONS OF LAW

13. Idaho Code § 41-5207 provides that “[a] health benefit plan subject to the provisions of this chapter shall be renewable with respect to the individual or dependents, at the option of the individual,” except in certain specified instances. A policyholder’s failure to provide valid verification forms after the special enrollment period is not a circumstance that provides an exception to the qualified guaranteed renewal granted under section 41-5207, Idaho Code.

14. MHC’s rescission of the 137 individual policies based on the policyholder’s failure to provide valid verification forms during the special enrollment period constitutes 137 separate violations of Idaho Code § 41-5207.

15. Department Rule 72, specifically IDAPA 18.01.72.046.04, relates to the authorized use of rescissions. The Department Rule states that “[w]hen material application misstatements are found, rescission action by the carrier shall be taken at the carrier’s option.”

16. MHC violated the foregoing Department Rule and the law relating thereto when it rescinded 137 individual policies without a showing that material application misstatements were made by the affected policyholders.

17. Pursuant to Idaho Code § 41-327(1), “[t]he director may, in his discretion, impose an administrative penalty not to exceed five thousand dollars (\$5,000) ... or refuse to continue or suspend or revoke an insurer’s certificate of authority if he finds after a hearing thereon that the insurer has violated or failed to comply with ... any provision of this code....”

18. Idaho Code § 41-117 makes clear that each instance of violation may be considered a separate offense.

19. Pursuant to 45 CFR § 147.128(a)(1), “A group health plan, or a health insurance issuer offering group or individual health insurance coverage, must not rescind coverage under the plan, or under the policy ... with respect to an individual (including a group to which the individual belongs or family coverage in which the individual is included) once the individual is covered under the plan or coverage, unless the individual ... performs an act, practice, or omission that constitutes fraud, or makes an intentional misrepresentation of material fact, as prohibited by the terms of the plan or coverage. A group health plan, or a health insurance issuer offering group or individual health insurance coverage, must provide at least 30 days advance written notice to each participant ... who would be affected before coverage may be rescinded under this paragraph (a)(1)....”

20. 45 CFR § 147.128(a)(2) defines rescission as “a cancellation or discontinuance of coverage that has retroactive effect.”

21. MHC violated 45 CFR § 147.128(a)(1) when it rescinded the coverage of 137 individual policies without a showing that the policyholders had been fraudulent or misrepresented a material fact and without providing at least 30 days advance written notice to each as required by the rule.

22. Federal law also allows for a penalty up to “\$100 for each day for each individual with respect to which such a failure occurs,” but the penalty provided in this Consent Order is based on Idaho law.

23. Under the foregoing legal authority, the Director of the Department is authorized to impose an administrative penalty of up to \$5,000 for each act in violation of Idaho law and to revoke or suspend MHC’s certificate of authority pursuant to Idaho Code § 41-327(1).

24. In lieu of contested enforcement proceedings, the parties agree that this matter can be brought to a close by a negotiated and stipulated settlement and entry of a Consent Order.

AGREEMENT

25. MHC admits to and agrees with the Findings of Fact and Conclusions of Law stated hereinabove.

26. As sanction for all violations referenced above, MHC and the Department agree that MHC shall pay to the Department an administrative penalty in the amount of Seventeen Thousand One Hundred Twenty-Five Dollars (\$17,125), representing a \$125.00 penalty for each of the 137 rescinded policies at issue, by no later than thirty (30) calendar days after the entry of this Consent Order.

27. MHC agrees that in the future it will comply with all applicable laws, and rules promulgated thereunder, and specifically with all requirements relating to rescissions.

28. MHC acknowledges that the terms of this Consent Order are appropriate and proper under the circumstances referenced herein, and that MHC has entered into this Consent Order knowingly, voluntarily, and with full knowledge of any rights it may be waiving thereby.

29. The parties waive their right to notice and hearing at which they may be represented by counsel, present evidence, and examine witnesses.

30. MHC knowingly and voluntarily waives any rights it would otherwise have to litigate the matters and issues addressed herein, including but not limited to the rights afforded by Idaho Code § 41-232A, which provides for: the right to a hearing; the right to be represented at hearing by counsel chosen and retained by MHC; the right to present a defense, oral and documentary evidence and to cross-examine witnesses at such hearing; and the right to seek judicial review.

31. This Consent Order constitutes full and final resolution of all matters addressed herein, and the Department agrees that, upon execution of this Consent Order by MHC and MHC's full compliance with all terms and conditions set forth herein, the Department shall seek no further sanctions for the violations addressed herein.

32. MHC acknowledges that this is an administrative action that may be required to be reported on Department licensing applications and license renewal forms. The disclosure requirements of other states may also require disclosure of the same.

33. This Consent Order is subject to approval by the Director or the Director's designee, and shall become effective and binding upon the Department and MHC upon such approval. Should the Director decline to approve this Consent Order, the Department and MHC

shall retain all of their rights, claims and/or defenses, and any factual and/or legal admissions made by MHC herein shall be withdrawn.

IT IS SO AGREED.

Dated this 6th day of September, 2017.

MONTANA HEALTH COOPERATIVE

DBA: MOUNTAIN HEALTH CO-OP

By: 

Printed Name: JERRY DWORSKI

Title: CEO

Dated this 6th day of September, 2017.

STATE OF IDAHO
DEPARTMENT OF INSURANCE

By: 

Hermoliva B. Abejar, CFE
Deputy Chief Examiner
Idaho Department of Insurance

IT IS HEREBY ORDERED,

1. That the preceding Consent Order is approved and adopted in full;
2. That MHC shall pay to the Department an administrative penalty in the amount of Seventeen Thousand One Hundred Twenty-Five dollars (\$17,125), representing a

\$125.00 penalty for each of the 137 rescinded policies at issue, by no later than thirty (30) calendar days after the entry of this Consent Order.

Dated this 6 day of September, 2017.

STATE OF IDAHO
DEPARTMENT OF INSURANCE



DEAN L. CAMERON
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 7th day of September, 2017, I caused a true and correct copy of the foregoing, fully-executed **CONSENT ORDER** to be served upon the following by the designated means:

Montana Health Cooperative
Jerry Dworak, CEO
P.O. Box 5358
Helena, MT 59604

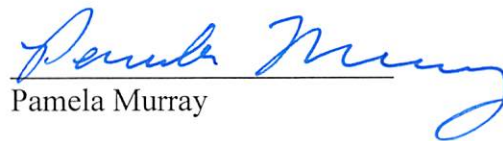
- first class mail
- certified mail
- hand delivery
- via facsimile

Montana Health Cooperative
David Slonaker, CFO
667 E. River Quarry Dr.
Eagle, ID 83616

- first class mail
- certified mail
- hand delivery
- via facsimile

David M. Farney
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043

- first class mail
- certified mail
- hand delivery
- via facsimile


Pamela Murray