



STATE OF MAINE
 DEPARTMENT OF PROFESSIONAL
 AND FINANCIAL REGULATION
 BUREAU OF INSURANCE
 34 STATE HOUSE STATION
 AUGUSTA, MAINE
 04333-0034

ANGUS S. KING, JR.
 GOVERNOR

ALESSANDRO A. IUPPA
 SUPERINTENDENT

IN RE: WASHINGTON NATIONAL)
 INSURANCE COMPANY)
) ORDER TO COMPEL
 Docket No. INS 00-3034)
)

This Order is issued to compel Washington National Insurance Company to comply with certain provisions of the Maine Insurance Code, specifically, those provisions guaranteeing renewal of individual health insurance policies, and to compel Washington National to honor the terms of certain of its policies as those terms relate to guaranteed renewal. *See* 24-A M.R.S.A. § 2850-B.

FACTS

On June 16, 2000, Conseco Medical Insurance Company (hereinafter "Conseco Medical") notified the Superintendent of Insurance of the State of Maine that individual health insurance policies issued by Washington National Insurance Company (hereinafter "Washington National"), Pioneer Life Insurance Company (hereinafter "Pioneer Life"), and Conseco Medical would terminate effective December 31, 2000. Washington National, Pioneer Life, and Conseco Medical are all insurers within the Conseco Group of companies authorized to transact insurance in Maine. The Washington National policies covered by the notice are those written on policy forms AMC 2787, AMC 2837, AMC 2945, CC3720, CC4161, and CC4162.

Conseco Medical has clarified that its intent is to nonrenew policies on the first renewal dates occurring on or after December 31, 2000 as opposed to canceling the policies mid-term effective December 31, 2000. The three insurers are requiring, however, that any insureds with renewal dates of September 1, 2000 and beyond who are on an annual, semiannual or quarterly premium mode, change to a monthly renewal mode. The reason given for terminating the individual health insurance policies is the intention of the Conseco Group to withdraw from the individual health insurance market in Maine.

Guaranteed renewal of individual health insurance policies has been in effect in Maine since 1993. *See* P.L. 1993, c. 477, "An Act to Amend the Laws Regarding Health Insurance and Health Care Services." Since its enactment, the guaranteed renewal provisions have been amended including in 1997 when the original section (codified as 24-A M.R.S.A. § 2736-C) was repealed and replaced with what is codified as 24-A M.R.S.A. § 2850-B. The current



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requirements state individual policies are guaranteed renewable except in certain limited circumstances. Those circumstances include when the carrier ceases offering a particular product and meets certain requirements set forth in the statute. Additionally, with regard to individual policies only, carriers are precluded from modifying “the coverage, terms and conditions of the policy.”

As a result of the enactment of these statutes, insurers including Washington National and Pioneer Life filed with the Maine Superintendent of Insurance and received approval for the use of policy riders reflecting the terms of the new statutes. Specifically, the Bureau approved Pioneer Life Amendment R3052 and Washington National Amendment C4364 on June 27, 1994 and November 4, 1993, respectively.

Washington National Amendment C4364, which constitutes a part of each of the 2, 248 policies subject to the notice of termination, provides, in pertinent part:

For adults, you may renew this policy for each covered person until the first renewal date which falls on or after such person’s eligibility for Medicare.

On the other hand, current Pioneer Life policyholders subject to the notice of termination of coverage have policies containing Rider Form R-3052 that provides, in pertinent part:

RENEWABLE AT THE OPTION OF THE INSURED

You may renew your policy on any renewal date up to the first anniversary after your 65th birthday, unless we have given you notice 6 months prior to the premium due date in writing of our intent to nonrenew all form IHP-9145-O policies in your state. The policy cannot be renewed beyond the date you become eligible for Medicare or other State or Federal government insurance plan. To renew, just pay the renewal premium on or before the date it is due or during the 31 days that follow.

Conseco’s stated intention is “to nonrenew as of the Insureds [*sic*] premium renewal date. We are, however, requiring that any Insureds with renewal dates of September 1st and beyond who are on an annual, semiannual or quarterly premium mode, change to a monthly renewal mode.” See Letter of Brian Camling, Vice-President of Compliance for Conseco Medical dated August 17, 2000.

That same letter clarifies that Amendments R-3052 and C4364 were designed to bring the Pioneer Life and Washington National policies into compliance with Maine’s 1993 health reform law (P.L. 1993, c. 477).

Bureau of Insurance staff advised Conseco Medical that the terms of Washington National Rider C4364 compel Washington National to continue to renew policies containing Rider C4364 and prohibit the termination that has been noticed. Conseco Medical disagrees and continues to pursue termination of all individual health policies including those with Washington National.

DISCUSSION AND FINDINGS

Given the existence in Washington National Rider C4364 of language permitting nonrenewal at the time of Medicare eligibility, Conseco Medical believes Washington National’s guaranteed renewal provision is void since Medicare eligibility is no longer a permissible basis for nonrenewal under state and federal law. While Section 2742(b) of HIPAA allows nonrenewal

of individual health insurance policies for five specified reasons, it in no way prohibits insurers from offering contracts that further limit the insurer's right to nonrenew coverage, which is exactly what Washington National has done. Washington National's Rider C4364 is in stark contrast with Pioneer Life's Rider R-3052. While Pioneer Life's ability to nonrenew individual health insurance policies is now subject to HIPAA Section 2742 standards, as well as state law, that insurer clearly has maintained for itself the contractual authority to do so in policies that utilize Rider R-3052. Washington National has maintained no such ability.

Conseco Medical also argues that the enactment at the federal level of HIPAA requires it to terminate all policies if it withdraws from a particular product market. The pertinent language of § 2742(c)(2) of HIPAA reads as follows:

(2) Discontinuance of All Coverage.—

(A) In General.—Subject to subparagraph (C),¹ in any case in which a health insurance issuer elects to discontinue offering all health insurance coverage in the individual market in a State, health insurance coverage may be discontinued by the issuer only if

(ii) all health insurance issued or delivered for issuance in the State in such market are [*sic*] discontinued and coverage under such health insurance ... is not renewed.

As the Superintendent interprets that provision, when a "health insurance issuer elects to discontinue offering" new business, its existing "health insurance coverage may be discontinued" (*emphasis added*). If permitted by applicable state law (as it is in Maine), the carrier also has the option to cease writing new business and run off its existing business as a closed block. What it cannot do is pick and choose which policies to renew and which policies to nonrenew — if and when it exercises its right to discontinue its existing business, it must do so across the board for all policies and nonrenew them at the earliest time permitted by the policy terms. The provision in question prohibits a withdrawing carrier from "cherry-picking" by exercising discretionary renewal rights. Where the policy terms provide no carrier discretion, those terms are controlling.

Nothing in HIPAA preempts state law in a manner that would require a withdrawing carrier to repudiate its contractual obligations and terminate coverage for all insureds, even those to whom it has unconditionally guaranteed renewal for life. It would be totally at odds with the purposes of HIPAA to interpret it as diminishing any policyholder's existing contractual renewal rights. Those rights must be honored.

Furthermore, the provisions of HIPAA § 2742(c)(2) apply only when "a health insurance issuer" discontinues writing new business. For purposes of HIPAA, Washington National, not the Conseco Group, is the relevant "issuer," and Washington National had already ceased offering individual coverage in Maine before the enactment of HIPAA. The withdrawal of other affiliated carriers from Maine's individual market is not a triggering event that would alter Washington National's rights or obligations under HIPAA.

¹ There is no subparagraph C.

Thus, the Superintendent concludes that Washington National is bound by the terms of its policy rider and must continue to renew the policies at issue as well as reinstate, at the option of the insured, policies of insureds who have obtained coverage elsewhere. It is incumbent upon the Superintendent to assure that all insurers comply with all requirements of the Insurance Code. Accordingly, Washington National shall take the steps required in the Order that follows.

ORDER

It is hereby ORDERED that Washington National Insurance Company:


1. Continue in force all policies issued on forms AMC2787, AMC2837, AMC2945, CC3720, CC4161, and CC4162 which include Rider C4364;
2. Notify all persons holding the aforementioned policies, within 10 days after the effective date of this Order, that the previous notice of coverage termination is rescinded and that insureds who obtained coverage elsewhere have the right to have their policies reinstated under the same terms;
3. Continue to service all of the aforementioned policies and reinstate all policies of persons who obtained coverage elsewhere in response to the notice of termination;
4. Notify the Superintendent whether the affected policyholders will still be changed to monthly premium mode in light of this Order. If so, Washington National shall advise the Superintendent of Insurance whether or not total premiums payable on a yearly basis by affected policyholders will increase as a result of the change in premium mode;
5. Provide confirmation in writing to the Superintendent that all actions required by this Order have been taken.

NOTICE OF RIGHT TO HEARING

Given the limited time within which to act, the Superintendent has exercised his discretion to issue this Order without a hearing. Accordingly, any person aggrieved by this Order may apply to the Superintendent for a hearing. Any such application must be signed and sworn to and filed within 30 days after the applicant knew or reasonably should have known of the issuance of this Order. Further, any application must state in what way the applicant is aggrieved and the grounds to be relied upon for the relief to be demanded at the hearing. *See* 24-A M.R.S.A. § 229.

This Order is effective November 15, 2000. A request for hearing shall not stay this Order. Immediate compliance is required.

November 15, 2000


PER ORDER OF
ALESSANDRO A. IUPPA
Superintendent of Insurance



STATE OF MAINE
 DEPARTMENT OF PROFESSIONAL
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 BUREAU OF INSURANCE
 34 STATE HOUSE STATION
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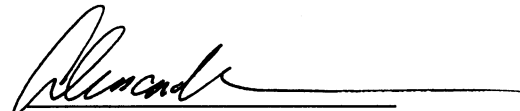
ALESSANDRO A. IUPPA
 SUPERINTENDENT

**IN RE: WASHINGTON NATIONAL)
 INSURANCE COMPANY) ORDER
 Docket Number INS 00-3034)**

On January 31, 2001, Washington National Insurance Company filed a Motion to Reconsider Order to Compel, with an incorporated memorandum of law, requesting that the Superintendent reconsider his Order to Compel of November 15, 2000 that directed Washington National Insurance Company to continue in force certain individual health insurance policies, which the company had previously terminated by notice of coverage termination. The Company did not request a hearing or oral argument on its motion because the issues raised were "solely legal in nature", with no facts in dispute.

Having carefully considered the Company's arguments submitted in support of its position, the Superintendent of Insurance hereby denies the Motion to Reconsider Order to Compel. The Order to Compel issued by the Superintendent on November 15, 2000 remains in full force and effect.

Dated: May 10, 2001


Alessandro A. Iuppa
Superintendent of Insurance



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ALESSANDRO A. IUPPA
SUPERINTENDENT

February 20, 2001

Daniel M. Snow, Esq.
Attorney at Law
Pierce Atwood
One Monument Square
Portland, ME 04101-1110

RE: IN RE: Washington National Insurance Company
Docket No. INS 00-3034

Dear Mr. Snow:

Your Motion for Reconsideration in the referenced matter was received in this office on January 31, 2001. Your arguments in support of that motion are being given most careful consideration. Bureau of Insurance Rule Chapter 350, section 19 (B) provides "(a)ny motion for rehearing or reopening that is not granted within twenty (20) days from the date of filing shall be deemed to be denied." In order to allow for the Bureau's review to fully consider your position, the Superintendent, as permitted by Bureau of Insurance Rule Chapter 350, section 3(A), is suspending the application of the section 19 (B) deemer provision. You should not consider a failure to receive today a substantive ruling on your motion to constitute a denial of the motion.

It is the Bureau's expectation that a substantive response will be provided in the near future.

Sincerely,

Thomas M. Record
Senior Staff Attorney



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