

STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF INSURANCE

IN RE:

Harvard Pilgrim Health Care Inc.  
NAIC Co. Code: 96911  
ME License No. HMF39507

HPHC Insurance Company, Inc.  
NAIC Co. Code: 18975  
ME License No. LHF115693

Docket No. INS-24-220

**CONSENT AGREEMENT  
AND ORDER**

Harvard Pilgrim Health Care, Inc. and HPHC Insurance Company, Inc. (collectively, "Harvard Pilgrim" or "Company"), the Superintendent of the Maine Bureau of Insurance ("the Superintendent"), and the Office of the Maine Attorney General ("the Attorney General") hereby enter into this Consent Agreement pursuant to 10 M.R.S. § 8003(5)(B) to resolve, without resort to an adjudicatory proceeding, violations of the Maine Insurance Code. As set forth in more detail below, Harvard Pilgrim violated the Code when it failed to provide timely access to a prescription contraceptive in violation of 24-A M.R.S. §§ 2847-G and 4247.

**APPLICABLE LAW**

1. Under 24-A M.R.S. § 12-A, the Superintendent may assess civil penalties, issue a cease and desist order, or take any combination of these and other actions listed within this section against any person who violates any law enforced by the Superintendent; any rule lawfully adopted by the Superintendent; or any lawful order of the Superintendent.
2. Pursuant to 10 M.R.S. § 8003(5)(B), the Superintendent may resolve an investigation without further proceedings by entering into a consent agreement with a licensee and with the consent of the Attorney General.
3. Pursuant to 24-A M.R.S. §§ 2847-G and 4247, and subject to a religious exclusion that is not at issue here, group health plans and health maintenance organizations (HMOs) that provide coverage for prescription drugs "must provide coverage for all prescription contraceptives approved by the federal Food and Drug Administration or for outpatient contraceptive services, respectively, to the same extent that coverage is provided for other prescription drugs or outpatient medical services."

#### STATEMENT OF FACTS

4. On May 3, 2024, the Bureau was contacted by a direct primary care (DPC) provider's office because their patient, covered by a Harvard Pilgrim HMO plan, was unable to access a contraceptive implant, Nexplanon, which was fully covered by the member's Harvard Pilgrim plan.
5. The specialty pharmacy that dispenses Nexplanon told the DPC provider that they would have to pay for the prescription upfront and bill Harvard Pilgrim for the cost.
6. DPC providers are not part of Harvard Pilgrim's network, so they do not have contracts with Harvard Pilgrim that allow them to bill the insurer for costs of prescriptions.
7. To allow this member to access her covered benefit, Harvard Pilgrim informed the Bureau it had entered into a single use agreement with a specialty pharmacy that allowed the pharmacy to bill Harvard Pilgrim directly for the Nexplanon.
8. This workaround was not implemented by Harvard Pilgrim until June 24, 2024.
9. On August 5, 2024, the Bureau was copied on a message from the same DPC provider's office to Harvard Pilgrim notifying them that another member had been prescribed Nexplanon and providing Harvard Pilgrim with this member's information so Harvard Pilgrim could set up a new single use agreement.
10. Harvard Pilgrim's response was that it was unable to replicate the process created for the previous member due to staff turnover.
11. The workaround for this member was not implemented by Harvard Pilgrim until September 27, 2024.

#### VIOLATIONS OF LAW

12. As set forth in paragraphs 4 through 11, Harvard Pilgrim effectively failed to provide timely coverage under its policies for covered prescription contraceptives for these two members for several months' time in violation of 24-A M.R.S. §§ 2847-G and 4247.

#### COVENANTS

13. Harvard Pilgrim agrees to the Statement of Facts and Violations of Law and agrees that it is subject to disciplinary action.
14. Within 30 days of the Superintendent's signature hereto, the Company will provide the Superintendent with a copy of a formalized procedure for handling specialty pharmacy prescription requests from DPC providers.

- A. To the extent similar issues exist for out-of-network providers who are not DPC providers, this should be addressed in the procedure.
  - B. If the procedure being submitted to the Bureau contains confidential information, the Company shall also prepare a public version of the procedure and submit both versions to the Superintendent.
  - C. Harvard Pilgrim shall make the public version of this procedure available to members and providers upon request.
15. If, during a period of six (6) months that commences on the date of the Superintendent's signature hereto, Harvard Pilgrim fails to meet the below conditions, the Maine Bureau of Insurance may assess a civil penalty in the amount of twenty thousand dollars (\$20,000) to Harvard Pilgrim. The penalty will be assessed if Harvard Pilgrim meets any of the following conditions:
- A. There have been further material issues identified by the Maine Bureau of Insurance with DPC providers accessing covered prescription contraceptives for Maine consumers in a timely manner caused by Harvard Pilgrim or a Harvard Pilgrim designated specialty pharmacy within this six (6) month period.
  - B. The Maine Bureau of Insurance has identified additional Harvard Pilgrim members whose DPC providers experience delays accessing their covered prescription contraceptives caused by Harvard Pilgrim or a Harvard Pilgrim designated specialty pharmacy within this six (6) month period.
  - C. Within thirty (30) days of the Bureau's notice of the penalty imposition, Harvard Pilgrim will remit to the Maine Bureau of Insurance a company check in the amount of twenty thousand dollars (\$20,000) payable to the Treasurer of the State of Maine.
  - D. The imposition of the penalty will be in the sole and absolute discretion of the Superintendent. In exercising that discretion, the Superintendent shall provide Harvard Pilgrim with written notice of any further issue identified in accordance with (A) above and shall take into account any written response Harvard Pilgrim submits, as well as taking into account the nature of any reported delays, the number of delays, and the facts and circumstances surrounding the delays.
16. This Consent Agreement is not subject to appeal. Harvard Pilgrim waives any right it might have to appeal any matter that is a subject of this Consent Agreement.
17. This Consent Agreement constitutes an Order of the Superintendent. A violation of its terms is enforceable by the Superintendent pursuant to 24-A M.R.S. §§ 12-A and 211.
18. This Consent Agreement is also enforceable by an action in Maine Superior Court pursuant to 24-A M.R.S. § 214, 10 M.R.S. § 8003(5)(B), and 14 M.R.S. § 3138.

19. The effective date of this Consent Agreement is the date of the Superintendent's signature hereto.
20. This Consent Agreement may be modified only by a written agreement executed by all the parties hereto. Any decision to modify, continue or terminate any provision of this Consent Agreement rests in the discretion of the Superintendent and the Attorney General.
21. This Consent Agreement is a public record, as that term is defined by 1 M.R.S. § 402(3). It is subject to the provisions of the Maine Freedom of Access Act, 1 M.R.S. §§ 401 through 410, and it will be available for public inspection and copying as provided for by 1 M.R.S. § 408-A.
22. This Consent Agreement is also an adverse action and will be reported to the Regulatory Information Retrieval System ("RIRS") database at the National Association of Insurance Commissioners ("NAIC").
23. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.
24. Terms of this Consent Agreement constitute the entire agreement between and among the parties.
25. If any provision of this Consent Agreement is for any reason determined to be invalid, the effectiveness and enforceability of all other provisions of the Consent Agreement shall not be affected by such determination.
26. By the duly-authorized signature of its representative on this Consent Agreement, Harvard Pilgrim warrants that it has consulted with counsel before signing the Consent Agreement or has knowingly and voluntarily decided to proceed in this matter without consulting counsel, that it understands this Consent Agreement, and that it enters into the Consent Agreement voluntarily and without coercion of any kind from any person.
27. As consideration for Harvard Pilgrim's execution of and compliance with the terms of this Consent Agreement, the Superintendent and the Attorney General agree to forego pursuing further disciplinary measures or other civil or administrative sanctions for the specific conduct described above in this Consent Agreement. However, should Harvard Pilgrim fail to comply with any term or condition of this Consent Agreement, it may be subject to any available remedy under the law for such a failure or violation.

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HARVARD PILGRIM HEALTH CARE, INC.  
HPHC INSURANCE COMPANY, INC.

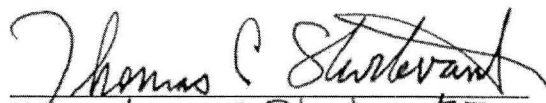
Dated: January 27, 2025



Name: Kathryn E. Skouteris  
Title: VP, Regional Commercial Markets

FOR THE OFFICE OF THE ATTORNEY GENERAL

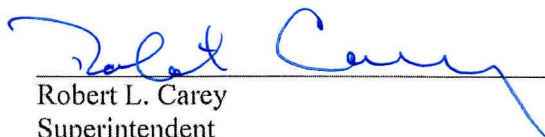
Dated: Jan 28, 2025



Name: Thomas C. Sturtevant, Jr.  
Assistant Attorney General

THE SUPERINTENDENT OF THE MAINE BUREAU OF INSURANCE

Dated: Jan - 28, 2025



Robert L. Carey  
Superintendent