

DEC 17 2021

FILED

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

|                          |   |                  |
|--------------------------|---|------------------|
| STATE OF NEBRASKA        | ) |                  |
| DEPARTMENT OF INSURANCE, | ) |                  |
|                          | ) |                  |
| PETITIONER,              | ) | CONSENT ORDER    |
|                          | ) |                  |
| VS.                      | ) |                  |
|                          | ) |                  |
| INDEPENDENCE AMERICAN    | ) | CAUSE NO. C-2726 |
| INSURANCE COMPANY,       | ) |                  |
|                          | ) |                  |
| RESPONDENT.              | ) |                  |

In order to resolve this matter, the Nebraska Department of Insurance ("Department"), by and through its representative, Michael W. Anderson, and Independence American Insurance Company, ("Respondent"), mutually stipulate and agree as follows:

JURISDICTION

1. The Department has jurisdiction over the subject matter and Respondent pursuant to Neb. Rev. Stat. §44-101.01, §44-303 and §44-4047, et seq.
2. Respondent was licensed as an insurer under the laws of Nebraska at all times material hereto.

STIPULATIONS OF FACT

1. The Department initiated this administrative proceeding by filing a petition styled State of Nebraska Department of Insurance vs. Independence American Insurance Company, Cause Number C-2726 on November 8, 2021. A copy of the petition was served upon the Respondent, at the Respondent's address registered with the Department by certified mail, return receipt requested.
2. The petition alleges that Respondent violated Neb. Rev. Stat. §44-1540(3), Title 210 NAC Ch. 61 §§ 004.01, 004.02, 006.03, and 008.03 as a result of the following conduct:

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

MEMORANDUM

TO : DIRECTOR, FBI

FROM : SAC, [illegible]

DATE

SUBJECT: [illegible]

[illegible]

[illegible text]

MEMORANDUM

[illegible text]

MEMORANDUM

[illegible text]

- a. On October 26, 2020, Petitioner's office received a complaint regarding Respondent's pre-existing condition review delaying processing of several claims.
- b. On October 27, 2020, Respondent was asked to provide a response to the allegations contained in the complaint and asked specifically to include detailed explanations of the company's handling, a timeline of events, copies of all correspondence sent to the complainant regarding the claims, and itemization of claims received and/or paid/denied.
- c. On November 16, 2020, Respondent's response was received, but did not include a detailed explanation of the handling, a timeline of the events, copies of all correspondence to the complainant, or itemization of claims.
  - a. This response did state, in part, that "According to Loomis (The Respondent's Third-Party Administrator), they are still waiting for records from the provider related to the pre-existing condition review", and further stated that the last contact attempt with the provider was on October 28, 2020.
  - b. A copy of the letter to the provider was provided, but was undated, and a mailing date could not be confirmed. It was also noted that the complainant was not copied on this letter and had been unaware that the company was pending the provider's response.
- d. On December 9, 2020, Respondent was asked to provide additional information, including the items that were missing from its' first response. Information requested in this response included:

- a. Dates and details of contact with the complainant regarding the claim(s).
  - b. Copies of all correspondence to the provider's office including date.
  - c. Claim itemization of complainant's claims
- e. On December 30, 2020, Respondent provided the following items in response to the December 9 request:
- a. Dates only of 8 letters purportedly sent to the provider, without copies of the letters as requested.
  - b. Claim itemization listing 19 claims under pre-existing condition review for services dating back to April 15, 2020.
  - c. A copy of 33 Explanation of Benefits ("EOBs") sent to the complainant regarding her 33 claims, with a remark section that stated "the plan is unable to make a benefit determination based on the information submitted at this time. A pre-existing investigation is in progress to determine the members eligibility for claims payment".
  - d. Of these 33 EOBs, 12 were sent outside of 15 days from the date of the claim. No further EOBs, nor notice concerning the unresolved status of these claims was ever sent to the complainant.
- f. On December 31, 2020, Respondent was requested to provide copies of each letter sent to the provider, as well as copies of explanation letters sent to the complainant for all claims remaining unresolved. A response to the December 31 request was received on January 15, 2021, which provided the following information:

- a. The dates of the letters to the provider's office contained in the previously provided screenshot of dates show "what is documented and maintained in the system" and is the result of an automated process.
- b. "The Explanation of Benefits (EOB) are used to communicate the status of the claim... [and] the remark section describes the status of the claims".
- g. No other communications to the complainant were provided, neither referencing the status of the claim, nor explaining what information was still needed to process the claims.
- i. On January 29, 2021, Respondent informed Petitioner's office that all claims concerning the complainant were being processed against the claim's benefits.
- j. On August 2, 2021, a final request was made of Respondent to explain their compliance with Title 210 NAC Ch. 61.
- k. On August 23, 2021, a response was received regarding the August 2 request. In that response, Respondent provided what it claimed were copies of the letters sent to the provider's office, and, regarding the notice requirements in Title 210 NAC Ch. 61 §008.02, asserted that "when there is a pre-existing investigation, the claim is closed" and that it depended on the claim what notice the consumer would receive in regard to incomplete/unresolved claims.

3. Respondent was informed of the right to a public hearing. Respondent waives that right, and enters into this Consent Order freely and voluntarily. Respondent understands and acknowledges that by waiving its right to a public hearing, Respondent also waives its right to confrontation of witnesses, production of evidence, and judicial review.

4. Respondent neither admits nor denies the allegations contained in the Petition and restated in Paragraph #2 above. Respondent admits that conduct as alleged above in paragraph #2 may subject Respondent to disciplinary action pursuant to Neb. Rev. Stat. § 44-1529. In the spirit of cooperation and in order to avoid further expense and loss of time, Respondent enters into this Consent Order freely and voluntarily.


CONCLUSIONS OF LAW

The conduct of Independence American Insurance Company, as alleged above, constitutes multiple violations of Neb. Rev. Stat. §44-1540(3), Title 210 NAC Ch. 61 §§ 004.01, 004.02, 006.03, and 008.03

CONSENT ORDER

It is therefore ordered by the Director of Insurance and agreed to by Respondent, that Respondent shall pay an administrative fine in the amount of three thousand dollars (\$3,000). The Respondent has thirty days from the date of approval of this consent order by the Nebraska Director of Insurance to pay the fine. The Nebraska Department of Insurance shall retain jurisdiction of this matter for the purpose of enabling the Department to make application for such further orders as may be necessary.


In witness of their intention to be bound by this Consent Order, each party has executed this document by subscribing their signatures below.

  
\_\_\_\_\_  
Michael W. Anderson, #67618  
Department of Insurance  
1526 "K" Street, Suite 200  
Lincoln, Nebraska 68501  
(402) 471-4649

12/17/2021  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Independence American Insurance Company

12/18/2021  
\_\_\_\_\_  
Date

Jon Dubauskas  
President  


Commission Expires June 28, 2008  
Qualified in Richmond County  
No. 0195811880  
NOTARY PUBLIC, State of New York  
TERESA L. PEREZ

State of New York )  
County of New York ) ss.

On this 8<sup>th</sup> day of December 2021, Jon Dubauskas  
Independence American Insurance  
Company personally appeared before me and read this Consent Order, executed the same and  
acknowledged the same to be their voluntary act and deed.

(AFFIX STAMP)

**TERESA L. PEREZ**  
NOTARY PUBLIC, State of New York  
No. 01PE8111860  
Qualified in Richmond County  
Commission Expires June 28, 2024

Teresa L. Perez  
Notary Public

CERTIFICATE OF ADOPTION

I hereby certify that the foregoing Consent Order is adopted as the Final Order of the  
Nebraska Department of Insurance in the matter of State of Nebraska Department of Insurance vs.  
Independence American Insurance Company, Cause No. C-2726.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

[Signature]

Eric Dunning  
Director of Insurance

12/17/21  
Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the executed Consent Order was sent to the Respondent at 485  
Madison Avenue, 14th Floor, New York, New York, 10022-5782, by certified mail, return receipt  
requested on this 17<sup>th</sup> day of December, 2021.

Shelley Storie



TERESA L. PEREZ  
NOTARY PUBLIC, State of New York  
No. 0195811880  
Qualified in Richmond County  
Commission Expires June 30,

