

**UNITED OF OMAHA
LIFE INSURANCE COMPANY**

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) **CONSENT AGREEMENT**
) **Docket No. 00-3001**
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This document is a Consent Agreement, authorized by 5 M.R.S.A. § 9053(2), entered into by United of Omaha Life Insurance Company (hereafter also "*United of Omaha*") and the Superintendent of the Maine Bureau of Insurance (hereafter also the "*Superintendent*"). Its purpose is to resolve, without resort to an adjudicatory proceeding, violations of Bureau of Insurance Rule Chapter 850(8)(E)(5).

FACTS

1. United of Omaha has been a Maine licensed life and health insurer, License# LHF28, since September 2, 1930.

2. The Superintendent of Insurance is the official charged with administering and enforcing Maine's insurance laws and regulations.

3. On February 2, 2000, the Bureau received complaint # 2000506967 from Consumer, an individual covered under a United of Omaha group dental insurance policy. Consumer complained because of United of Omaha's retrospective denial of benefits for dental inlays on medical necessity grounds.

4. Bureau of Insurance Rule Chapter 850(8)(E)(5) requires adverse utilization review determinations to be communicated in writing to an insured. The notice must include:

the principal reasons or reasons for the determination, the instructions for initiating an appeal or reconsideration of the determination, and the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination. The notification must include a phone number the covered person may call for information on and assistance with initiating an appeal or reconsideration and/or requesting clinical rationale and review criteria.

5. The first notice Consumer received regarding United of Omaha's retrospective adverse utilization review determination was an Explanation of Benefits (EOB) form dated September 22, 1999. The EOB indicated that no coverage had been provided for a dental procedure on August 23, 1999. The note explaining the coverage denial states, "x-ray does not indicate substantial decay or injury to warrant an inlay."

6. On October 8, 1999, United of Omaha wrote to Consumer's dentist stating in relevant part:

This letter is in response to your request for a review of [Consumer's] claim... Our Dental Consultant has reviewed all information in this file. It was the determination of this review that, based on the documentation received, there is no extensive decay or fracture to warrant an inlay on tooth 13... If you wish to appeal this review decision, you may do so within ninety (90) days. If there are any medical facts or circumstances that you feel would affect our handling, please submit this additional documentation and we will be happy to review the claim again.

7. On October 13, 1999, Consumer's dentist wrote to the plan stating in relevant part:

You have denied both of these claims stating that the x-rays do not indicate substantial decay sufficient to warrant an inlay. In fact, the x-rays show more than sufficient indication for inlays. In addition to what can be seen on the x-rays, the existing amalgams were badly deteriorated. If these teeth had been more damaged than they were, they would have needed more extensive treatment: onlays or crowns, not inlays. If, by your criteria, these teeth do not qualify for inlays, then I would have to conclude that no teeth ever qualify. If your policy states (which I believe it does) that inlays are a covered service, then I would also wonder if your policy may constitute fraud, since you would appear to be promising a benefit that does not in fact exist. Please reconsider paying for your subscriber's wisely chosen and needed treatment.

8. Rule 850(8)(G)(1)(c) requires carriers to notify in writing both the covered person and the provider of an appeal decision, within 20 working days following the request for an appeal. Additional time is permitted where the 20-day limit cannot reasonably be met because of the carrier's inability to obtain necessary information from a person or entity not affiliated with or under contract to the carrier.

9. On November 10, 1999, United of Omaha wrote to Consumer stating, "our dental consultant is reviewing this claim.... Thank you for your patience during this delay...."

10. On December 15, 1999, United Omaha wrote to Consumer's dentist stating in relevant part:

We have requested additional information to support your appeal which has not been received. We cannot make a final determination until such information is received. Therefore, your file has been closed and will be re-opened when the additional information is received. If you wish to appeal this review decision, you may do so within 90 days.

11. On December 22, 1999, Consumer's dentist wrote to Consumer summarizing his conversations with the dental consultants for United of Omaha. The letter states in relevant part:

I have had two conversations with two different consultants.... The first conversation was on November 1, 1999, and as I understood it, I was talking with the consultant that works directly with Mutual of Omaha to review dental claims... I asked him under what circumstances the company would pay benefits for an inlay and got nothing that could be called an answer.... The second conversation was on December 21, 1999 with a Dr. Spar, who is a dental consultant for an organization referred to as "P and R" which handles disputed claims for Mutual of Omaha. This conversation was very similar to the first. When I realized I would get nothing more helpful from Dr. Spar than I had gotten from the first consultant, I asked him a few pointed questions.

The first was "Under what circumstances would you approve benefits for an inlay?" His answer was, "That's confidential."

CONCLUSIONS OF LAW

12. United of Omaha violated Rule 850(8)(E)(5). The company denied the inlays at issue on medical necessity grounds, but failed to provide Consumer and her dentist with 1) a written adverse determination with instructions for initiating an appeal or for seeking reconsideration; and 2) the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria, used to make the determination.

13. United of Omaha violated Rule 850(8)(G)(1)(c) by failing to issue a decision in Consumer's appeal within 20 days and by failing to advise Consumer or her provider until December 15, 1999, some two months after the appeal, of the company's inability to obtain information necessary to review the appeal.

COVENANTS

14. Each party waives its right to a formal hearing concerning the conclusions of law in the preceding paragraph. Mutual of Omaha waives any right of appeal it may have, and agrees not to file an appeal.

15. At the time of executing this Agreement, United of Omaha shall pay to the Maine Bureau of Insurance a penalty in the amount of six thousand dollars (\$6,000.00) payable to the Treasurer of the State of Maine.

16. At the time of executing this Agreement, United of Omaha shall provide the Bureau, Consumer and her dentist with: 1) the clinical rationale and criteria upon which the initial denial was based; and 2) the names and qualifications of all persons who reviewed and denied the claim at issue.

17. At the time of executing this Agreement, United of Omaha shall provide the Bureau with a corrective action plan detailing how the company intends to ensure future compliance with the requirements of Bureau Rule Chapter 850.

18. In consideration of United of Omaha's execution of and compliance with the terms of this Consent Agreement, the Superintendent agrees to forgo pursuing any disciplinary measure or other civil sanction for the violations described above other than those stated in this Agreement.

MISCELLANEOUS

19. United of Omaha understands and acknowledges that this Agreement will constitute a public record within the meaning of 1 M.R.S.A. § 402, and will be available for public inspection and copying as provided in 1 M.R.S.A. § 408.

20. The parties understand that nothing herein shall affect any right or interest that any person not a party to this Agreement may possess.

21. This Agreement may be modified by the written consent of the parties.

22. United of Omaha was informed of its right to consult with counsel before executing this Agreement.

FOR UNITED OF OMAHA LIFE INSURANCE COMPANY

Dated: _____, 2000 By: _____

Signature

Typed Name

Typed Title<

Subscribed and Sworn to before me
this _____ day of _____, 2000.

Notary Public

Dated: _____, 2000

**FOR THE MAINE
BUREAU OF INSURANCE**

Dated: _____, 2000

Alessandro A. Iuppa

Superintendent of Insurance

**FOR THE MAINE
ATTORNEY GENERAL**

Dated: _____, 2000

**Judith Shaw Chamberlain
Assistant Attorney General**

STATE OF MAINE
KENNEBEC, SS.

Subscribed and sworn to before me
this _____ day of _____, 2000.

Notary Public/Attorney-at-Law