

REPORT OF EXAMINATION

OF THE

MARKET CONDUCT AFFAIRS

OF

TENET CHOICES, INC.

KENNER, LOUISIANA

AS OF

March 31, 2003

NAIC CODE 95690

NAIC ETS EXAM NO. LA071-M19

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September 18, 2003

Honorable Robert Wooley
Commissioner of Insurance
P O Box 94214
Baton Rouge, Louisiana 70804-9214

Sir:

Pursuant to your instructions and authorization, and in compliance with statutory provisions, a limited market conduct examination has been made of the affairs of

TENET CHOICES, INC.

200 W. ESPLANADE AVENUE, SUITE 600

KENNER, LOUISIANA 70065

as of March 31, 2003 and the report of examination is herewith submitted.

FOREWORD

In accordance with **LSA-R.S. 22:1301 D.**, a market conduct examination was conducted on the activities of Tenet Choices, Inc. from January 1, 2000 through March 31, 2003. The examination was performed by test and all tests applied are included in this report.

PURPOSE AND SCOPE OF MARKET CONDUCT EXAMINATION

The market conduct examination of Tenet Choices, Inc., hereinafter referred to as ("Tenet") or ("Company"), was a limited routine market conduct examination authorized by the Louisiana Department of Insurance ("LDOI") or ("Department"). Limited, in that not all examination procedures recommended by the National Association of Insurance Commissioners were performed.

The examination included, but was not limited to, the following areas of the Company's operation:

- Company Overview,
- Complaints,
- Producer Licensing & Appointments,
- Marketing and Sales, and
- Underwriting and Rating.

The purpose of this examination was to review compliance by the Company with Louisiana Insurance Laws, Regulations, Directives and portions of the National Association of Insurance Commissioners ("NAIC") Guidelines. The NAIC Guidelines set the standard of conduct for a health insurer and promote a program of fair treatment of

policyholders. Portions of the NAIC Market Conduct Examiner's Handbook, Volume II were used as a measure of compliance.

An Audit Command Language Program ("ACL"), a data manipulation program, provided by the Louisiana Department of Insurance, was utilized in this examination. Samplings were utilized to test the Company's records and procedures for statutory compliance. The ACL Program was used, when possible, to automatically generate a random sampling of data records. "Random" is a theoretical concept meaning that all items in a population or file (before selection) have an equal chance of appearing in the sampling. In instances in which ACL was not used, a systematic (sequential) sampling or a judgmental sampling of certain company record listings was performed.

Generally a random or systematic sampling of sixty (60) records was selected for review. A minimum confidence level of ninety-five percent (95%) with a maximum error rate of five percent (5%) was used for all samples. Based on a review of the sampling's error rate, additional samplings may have been required.

COMPANY OVERVIEW

COMPANY HISTORY

Tenet Choices, Inc. was formed as a Louisiana for-profit stock corporation to act as a health maintenance organization (HMO) and to engage in any lawful activity on November 21, 1996. Tenet Choices' purpose was to provide comprehensive health care services on a prepaid basis through an integrated network. The network includes Tenet's Greater New Orleans area hospitals and outpatient diagnostic centers as well as over one

thousand two hundred (1,200) providers belonging to the eight (8) independent physician associations (IPAs).

In June 1995, the Health Care Financing Administration (HCFA), now Centers for Medicare and Medicaid Services (CMS), announced a Medicare Demonstration project which was designed to expand managed care options for Medicare beneficiaries and improve the payment methods for managed care plans. Tenet Choices, Inc. and New Orleans Regional Physician Hospital Organization, Inc. (NORPHO) d/b/a Peoples Health Network, Inc. (PHN) were awarded a joint Medicare risk-based contract with CMS under the Medicare Choices Demonstration project. Under the terms of the contract, the Company and PHN agreed to arrange for the provision of covered services to Medicare beneficiaries in a defined geographic area, which includes the parishes of Orleans, Jefferson, St. Tammany and Plaquemines.

Each month the Company receives payments from CMS for the current months premium. Under the terms of the agreement, the Company withholds a predetermined amount to cover its expenses and a reserve amount of ten percent (10%) of the last three (3) months premium as an out of network reserve. Fifteen percent (15%) of the remainder is then paid to PHN as management fees. Based on a responsibility of service matrix, each year PHN contracts an independent actuarial firm to allocate the revenue requirements of the benefits between the hospital and physician cost. Until benefit year 2003, the Company's benefit package included an out of network benefit, the cost of which, the actuaries also projected. The cost of the out of network benefit, approximately twelve percent (12%), was then reserved to reimburse the IPAs for out-of-network cost. The remaining seventy-three percent (73%) of the premium is then paid to the

appropriate hospital or IPA based on the percent of revenue requirements determined above. Any excess in the twelve percent (12%) out-of-network reserve is also returned to the appropriate hospital and IPA based on the pool splits.

PARENT, SUBSIDIARIES AND AFFILIATES

The following schedule depicts certain affiliations with the Company. Ownership is denoted by indenture.

- Tenet Healthcare Corporation, Inc. (Parent)
 - Tenet HealthSystems Holdings, Inc. (100%)
 - Tenet Health Systems Medical, Inc. (100%)
 - Tenet Choices, Inc. (100%)
 - Tenet HealthSystem Hospitals, Inc. (100%)
 - New Orleans Regional Physician Hospital Organization, Inc.
D/b/a Peoples Health Network (PHN) (50%)*

* PHN is owned fifty percent (50%) by Tenet HealthSystem Hospitals, Inc. and fifty percent (50%) by seven (7) Independent Physician Associations.

TERRITORY AND PLAN OF OPERATIONS

The Company's Certificate of Authority was issued with an effective date of January 31, 1997 and authorized the Company to operate as a Health Maintenance Organization.

The Company offers coverage in the New Orleans metropolitan area under a commercial and Medicare line of business. Commercially, the Company only offers a self-funded product to the employees in the New Orleans metropolitan area of the Tenet hospitals and Peoples Health Network (PHN), the Company's contracted management company. The Company does not offer a commercial product to the general public. The Company and PHN, under a joint contract with CMS, offers two (2) Medicare+Choice

products: Tenet Choices 65, a traditional Medicare+Choice plan and Healthcare Select, a Medicare+Choice PPO demonstration plan. Both plans are offered in a four (4)-parish service area of Orleans, Jefferson, Plaquemines and the eastern part of St. Tammany.

The Company uses both independent agents and employed staff agents, Benefits Advisors employed by Peoples Health Network, to market its products.

The following schedule depicts the Company's premium volume for the three (3) years under examination:

<u>YEAR</u>	<u>PREMIUM VOLUME</u>
2000	\$ 96,109,654
2001	\$ 139,287,542
2002	\$ 204,781,163

ANTIFRAUD POLICY

The Company has established a 24-hour hotline for members, providers and staff to report issues of fraud and abuse. Employees must sign a confidentiality agreement and a standard of conduct agreement.

The Company has not taken any action for fraud during the period under examination.

PRIVACY POLICIES AND PROCEDURES

The Company states that they are exempt from the requirements of Regulation 76 based on the exceptions outlined in Section 9931 of the Regulation: Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information

for Processing and Servicing Transactions. Section 9931 A (1) allows an exception for servicing or processing an insurance product or service that a consumer requests or authorizes.

RECOMMENDATIONS FROM PRIOR EXAMINATION REPORTS

In the previous examination report as of June 30, 1999, it was recommended that the Tenet Choices 65 enrollment form be revised to contain the notice required by **LSA-R.S. 22:2026(A)**. It appears that the Company revised the Tenet Choices Employee enrollment form and not the Tenet Choices 65 enrollment form. Refer to the Underwriting and Rating Review for more details.

It was also recommended that the Company submit a plan to become accredited in accordance with **LSA-R.S. 22:2017(C)**. The Company has not submitted a formal plan to the Department for becoming accredited but has hired a National Committee of Quality Assurance Accreditation (NCQA) manager and is in the initial stages of doing an assessment and developing an accreditation work plan. The Company is projecting that they will go through an initial survey during the first quarter of 2005.

COMPLAINT REVIEW

This review was conducted in accordance with the provisions of Louisiana Revised Statute **22:1214(17)** which states as follows:

“The following are declared to be unfair methods of competition and unfair or deceptive acts or practices in the business of insurance: ... Failure to maintain adequate complaint handling procedures. Failure of any insurer to maintain a complete record of all the complaints that is received since the date of the last examination. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For purposes of

this paragraph, "complaint" shall mean any written communication primarily expressing a grievance received by the insurer from the Department of Insurance."

The Company's complaint register was reviewed and compared to the Department's listing of complaints. The Department's register contains sixty-four (64) complaints for the period under examination. It was found that the Company's register was missing two (2) complaints, but it must be noted that three (3) complaints were listed on the Company's register without complaint numbers. It is recommended that the Company implement procedures to ensure that all complaints entered into its register contain the Department's complaint number.

In seventeen (17) cases, the complaint register did not contain the disposition of the complaint. The register did not contain the time it took to process each complaint. The register also did not contain the total number of complaints. This is not in compliance with **LSA-R.S. 22:1214(17)** which is stated above. It is recommended that the complaint register be modified to include the disposition of the complaint, the time it took to process the complaint and the total number of complaints.

The Company stated that the complaint register has been modified to include the items recommended above on a go-forward basis.

The Company's policy and procedure for "Use and Maintenance of the Compliance Database" was reviewed and seems adequate for handling complaints. It was noted that this policy and procedure appears to be unapproved by management.

The Department's complaint register contains sixty-four (64) complaints that have been submitted to the Company for investigation. The following table summarizes the complaints for the period under examination by category:

Category	2000	2001	2002	2003 (thru 3-31)
Claims Handling	17	24	11	2
Underwriting	0	0	0	0
Policyholder Service	3	3	2	2
Marketing & Sales	0	0	0	0
Complaint Total	20	27	13	4

A systematic sample of sixty (60) complaints filed with the Department between January 1, 2000 and March 31, 2003 was reviewed and they generally consist of complaints relating to delays in claim payments, denials of claims and the amount of the benefit payment. In all cases, the Company adequately addressed the issues and either explained its position or resolved the complaint. A summary of the reasons for the complaints follows:

<u>Reason for Complaint</u>	<u>No. Of Complaints</u>
Claims Delay	27
Claims Denial	15
Access to Care	5
Unsatisfactory Settlement	4
Abusive Service	2
Miscellaneous	7
Total	<u>60</u>

After reviewing the sample of sixty (60) complaints, it was found that twenty-two (22) had response times greater than the twenty-five (25) day time limit allowed by the Department in its directives or extensions. There was no evidence in the files that the Company had requested an extension to the time limit for these complaints.

It is recommended that the Company implement procedures to ensure that they respond to complaints submitted by the Department within the twenty-five (25) day time limit specified in the Department's directive, or request an extension to the time limit in writing. The Company has stated that it will develop a policy to ensure that complaints are handled within the Department's time limits. The policy will include the process for initial entry of the complaint into the database and the development of a report that will allow management to monitor all open complaints.

The average response time for all the complaints in the sample was thirty-one (31) days.

PRODUCER REVIEW

A comparison was made between the Department's list of appointed producers and a list provided by the Company. The Department's list contains one hundred three (103) producers. The Company's list contains fourteen (14) staff members, thirteen (13) benefits advisors and three (3) brokers for a total of thirty (30). All of the benefits advisors and brokers are appointed. Twelve (12) of the staff members are not appointed. The Company stated that these people are not producers but clerical staff of the Sales and Marketing Department.

The Company stated that the remaining seventy-three (73) producers on the Department's list may refer a member to the Company but then one of the producers on the Company's list handles the sale and application process. The Company feels it is best to continue to appoint the producers who only refer members to the Company.

During this exam, the Company was reminded of the DOI's Bulletin #99-01 dated June 1, 1999 referencing "Consent for Prohibited Person to engage in Insurance Business". This Bulletin was a notification to all persons and entities engaged in or contemplating being engaged in the business of insurance in this state and that the Louisiana Department of Insurance has enacted guidelines and requirements for granting written consent to engage in the business of insurance for individuals who are considered "prohibited persons" under The Violent Crime Control and Law Enforcement Act of 1994, Title 18 U.S. Code, Sections 1033 and 1034.

The Company feels like they are in compliance with this bulletin. They conduct criminal background investigations on all employees.

No producers have been terminated for cause.

This review was completed without exception.

MARKETING AND SALES REVIEW

The Company advertises through newspaper and television advertisements. The newspaper advertisements for 2000-2002 were reviewed. They describe a product named "Tenet Choices 65".

The television advertisements for 2000-2002 were reviewed. The advertisements describe a product named "Tenet Choices 65." The theme of the advertisements is that there is no plan premium and one can go to any doctor desired. The extra benefits of the plan are also explained. The following statement appears at the bottom of the screen: "Tenet Choices is a MCO with a Medicare+Choice contract."

Three (3) sales brochures for Tenet Choices 65 were reviewed. The brochures contain the statement, "Tenet Choices, Inc. is a MCO with a Medicare+Choice contract".

The Company has an Internet website www.TenetChoices.com and www.TenetChoices65.com but it was not launched to the public until after the examination period.

During this review, no exceptions were found.

UNDERWRITING AND RATING REVIEW

The Company stated that they do not have any Underwriting procedures. The Company currently provides commercial insurance to an affiliated entity only, and as such does not underwrite this product. The Company does have the plan reviewed by an outside actuarial firm to develop premium rates. The Company also offers two (2) Medicare+Choice plans, which account for the majority of the revenue and enrollment. Under federal statute The Centers for Medicare and Medicaid Services (CMS) does not allow for the underwriting of Medicare+Choice plans. The Company instead, must file an Adjusted Community Rating (ACR) with CMS every year. This document explains the benefits that are being offered under the plan as well as the associated cost of the plan. CMS requests that the ACR be certified by an independent actuarial firm. The Company complies with this voluntary request and has its ACR certified.

Tenet Choices commercial enrollment form TCTOP-ENRFRM-1099-0203 was reviewed and it does contain the requirements of **LSA-R.S. 22:213.7** concerning the release and use of genetic information on the back of the form.

The Tenet Choices commercial enrollment form for the PHN employee plan (form TC-ENRFRM-1099-0201) was approved by the Department on December 15, 1999. The current form in use is form TCTOP-ENRFRM-1099-0203. This form has not been approved by the Department but is worded exactly the same as the one approved in 1999.

It is recommended that the Company implement procedures to ensure that any policy forms regulated by the Department, are approved by the Department before use.

Enrollment for hospital employees on the New Orleans Choice Plan is done via Tenet's Web based system so there are no Company enrollment forms used in this process.

The Certificates of Coverage, Additional Benefits Guide and Summary of Benefits were reviewed and it was verified that they do contain all of the mandated benefits listed in the Department's Chart of Mandated Benefits and those required by **LSA-R.S. 22:2026 C, 22:2027 D, and 22:2027 E.**

The following Certificates of Coverage were reviewed and have been determined that they do not have to be approved by the Department due to being under a self-funded plan:

Triple Option Plan for 2001 - TCTOP-COC-1100
PHN Employee Group for 2002 - TCTOP-COC-0102
PHN Employee Plan for 2003 - P138-12/02
Point of Service for 2000 - TCPOS-COC-1099-0201
New Orleans Choice Plan for 2002 - TCNOCP-COC-1100 (9/4/01)
New Orleans Choice Plan for 2003 - N126-12/02

It was noted that form TCTOP-COC-1100 was disapproved by the Department on 5/31/01 and form TCNOCP-COC-0102 was disapproved by the Department on 2/21/02. They were never resubmitted for approval.

The Company states that it will implement a procedure to ensure that all policy forms are approved by the Department before they are used.

A random sample of sixty (60) new business applications was reviewed for the Medicare product. All applications were complete and the producers for these applications were all properly appointed.

CLAIMS REVIEW

The claims review was not performed because the Company pays no claims directly. All claims are absorbed by the providers from capitated payments made by the Company.

UNIFORM DISPOSITION OF PROPERTY ACT REVIEW

Effective July 10, 1997, Act 809 of the 1997 Regular Legislative Session requires all companies, including life insurance companies, to file a report by November 1 each year of unclaimed property in its possession. The Company stated it has no unclaimed property to report. All of the Company's transactions are with related entities and as such there are no unclaimed transactions to report. This is not in compliance with Act 809. It is stated in the instructions, "If you do not have any items that are reportable, please file an annual report indicating that fact." It is recommended that the Company file the necessary report to comply with Act 809.

The Company stated that it will file all past due unclaimed property reports as required by Act 809 and will establish a policy to file such reports in the future.

COMMENTS AND RECOMMENDATIONS

COMPLAINT REVIEW

The Company's complaint register was reviewed and compared to the Department's listing of complaints. The Department's register contains sixty-four (64) complaints for the period under examination. It was found that the Company's register was missing two (2) complaints but it must be noted that three (3) complaints were listed on the Company's register without complaint numbers. It is recommended that the Company implement procedures to ensure that all complaints entered into its register contain the Department's complaint number. See COMPLAINT REVIEW.

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complaints submitted by the Department within the twenty-five (25) day time limit specified in the Department's directive or request an extension to the time limit in writing. See COMPLAINT REVIEW.

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The Company stated that it will file all past due unclaimed property reports as required by Act 809 and will establish a policy to file such reports in the future.

CONCLUSION

I, Richard S. Robison, do solemnly swear and affirm that I am an examiner for the Commissioner of Insurance of the State of Louisiana and that as such I was assigned to conduct an examination of the market conduct activities of

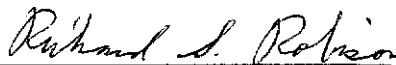
TENET CHOICES, INC.

KENNER, LOUISIANA

That I made such examination and the above and foregoing is a true and correct copy of my report of such company and the same is true and correct to the best of my knowledge, information and belief.

I would like to acknowledge the courteous cooperation of the Company's Officers and Employees.

Respectfully submitted,



Richard S. Robison
Louisiana Department of Insurance