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DEPARTMENT OF MANAGED HEALTH CARE
By [Signature]
Filing Clerk

8 Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
11 OF THE STATE OF CALIFORNIA

12 IN THE MATTER OF:) DMHC No.: 04-377
13 EQUAL ACCESS HEALTH,) OAH No.:
14 INC./HEALTH BENEFITS OF AMERICA)
15 Respondent.) **CEASE AND DESIST ORDER AND**
16) **NOTICE OF RIGHT TO HEARING**
17) (Health and Safety Code sections 1349,
18) 1360, 1386, 1391 and 1395; California Code
of Regulations, title 28, section
1300.67.4(a)(3)(A))

19 **TO: EQUAL ACCESS HEALTH, INC./ HEALTH BENEFITS OF AMERICA**
20 **Equal Access Health, Inc.** **Equal Access Health, Inc.**
21 **600 Six Flags Drive, Suite 600** **c/o Nevada Corporate Planners, Inc.**
Arlington, TX 76011 **7469 West Lake Mead Blvd., Suite 200**
22 **Las Vegas, NV 89128**

23 The Director of the Department of Managed Health Care, by and through her
24 designee, Assistant Deputy Director Amy L. Dobberteen, after investigation, determines as
25 follows:

26 I.
27 **INTRODUCTORY STATEMENT**

28 1. California Health and Safety Code section 1349 requires certain entities

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1 purpose of enabling a rational choice for the consumer public.” (Health and Safety Code
2 sections 1341 and 1342(c).)

3 5. Health and Safety Code section 1345(f)(1) defines a health care service
4 plan to mean:

5 Any person who undertakes to arrange for the provision of
6 health care services to subscribers or enrollees or to reimburse
7 any part of the cost for those services, in return for a prepaid
8 or periodic charge paid by or on behalf of the subscribers or
9 enrollees.

10 6. The Legislature has plainly evidenced its intent as to the application of the
11 Knox-Keene Act in Health and Safety Code section 1399.5, which provides:

12 It is the intent of the Legislature that the provisions of this
13 chapter shall be applicable to any private or public entity or
14 political subdivision which, in return for a prepaid or periodic
15 charge paid by or on behalf of a subscriber or enrollee,
16 provides, administers or otherwise arranges for the provision
17 of health care services....

18 7. Any person conducting business as a health care service plan is required to
19 have a license under the Knox-Keene Act pursuant to Health and Safety Code section 1349,
20 which provides:

21 It is unlawful for any person to engage in business as a plan in
22 this state or to receive advance or periodic consideration in
23 connection with a plan from or on behalf of persons in this
24 state unless such person has first secured from the director a
25 license, then in effect, as a plan or unless such person is
26 exempted by the provisions of Section 1343 or a rule adopted
27 thereunder. A person licensed pursuant to this chapter need
28 not be licensed pursuant to the Insurance Code to operate a
health care service plan or specialized health care service plan
unless the plan is operated by an insurer, in which case the
insurer shall also be licensed by the Insurance Commissioner.

8. Untrue and misleading advertising and solicitation, both by affirmative
misstatement and by omission of important information, is prohibited by Health and Safety

1 Code section 1360, which provides:

2 (a) No plan, solicitor, solicitor firm, or representative shall
3 use or permit the use of any advertising or solicitation which
4 is untrue or misleading, or any form of evidence of coverage
5 which is deceptive. For purposes of this article:

- 6 1. A written or printed statement or item of information
7 shall be deemed untrue if it does not conform to fact in
8 any respect which is, or may be significant to an
9 enrollee or subscriber, or potential enrollee or
10 subscriber in a plan.
11 2. A written or printed statement or item of information
12 shall be deemed misleading whether or not it may be
13 literally true, if, in the total context in which the
14 statement is made or such item of information is
15 communicated, such statement or item of information
16 may be understood by a person not possessing special
17 knowledge regarding health care coverage, as
18 indicating any benefit or advantage, or the absence of
19 any exclusion, limitation, or disadvantage of possible
20 significance to any enrollee, or potential enrollee or
21 subscriber, in a plan, and such is not the case.

17 * * *

18 (b) No plan, or solicitor, or representative shall use or permit the use of any
19 verbal statement which is untrue, misleading, or deceptive or make any
20 representations about coverage offered by the plan or its cost that does
21 not conform to fact. All verbal statements are to be held to the same
22 standards as those for printed matter provided in subdivision (a).

23 9. California Code of Regulations, title 28, section 1300.67.4(a)(3)(A) prohibits
24 plans from offering illusory benefits. It provides: "A benefit afforded by the contract shall
25 not be subject to any limitation, exclusion, exception, reduction, deductible, or co-payment,
26 which renders the benefit illusory."

27 10. Health and Safety Code section 1386(b)(7) specifically proscribes conduct that
28 constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of

1 the Business and Professions Code.

2 11. Health and Safety Code section 1395 further requires that:

3 ...Any price advertisement shall be exact, without the use of such
4 phrases as "as low as," "and up," "lowest prices" or words or
5 phrases of similar import. ... Price advertising shall not be
6 fraudulent, deceitful, or misleading, nor contain any offers of
7 discounts, premiums, gifts, or bait of similar nature. In connection
with price advertising, the price for each product or service shall be
clearly identifiable.

8 12. The Director is empowered to enforce compliance with the Knox Keene Act by
9 Health and Safety Code section 1391 (a)(1), which provides in relevant part:

10 The director may issue an order directing a plan, solicitor firm, or
11 any representative thereof, a solicitor, or any other person to cease
12 and desist from engaging in any act or practice in violation of the
13 provisions of this chapter, any rule adopted pursuant to this chapter,
or any order issued by the director pursuant to this chapter.

14 IV.

15 VIOLATIONS OF LAW

16 13. Respondent is undertaking to arrange for the provision of health care services
17 to members in California, either directly or through arrangements with others, in return for a
18 periodic charge paid by the members, within the meaning of Health and Safety Code section
19 1345(f)(1). Additionally, Respondent is providing, administering or otherwise arranging for
20 the provision of health care services within the meaning of Health and Safety Code section
21 1399.5. It does so through a personal advocacy program which offers help with all of an
22 enrollee's healthcare needs, including locating a provider, identifying top medical
23 institutions, finding excellent medical facilities and hard to reach specialists and helping
24 schedule needed appointments such as the next doctor's visit. It also provides health care
25 services by offering a "NurseLine" which is described as a "trusted source of information for
26 a wide range of health issues" provided by "experienced registered nurses" which can help
27 enrollees recognize when emergency medical attention is needed. Respondent, therefore, is
28 engaging in business as a health care service plan in the State of California and is receiving

1 advance and periodic consideration in connection with a plan from, or on behalf of, persons
2 in this state, without having first secured a license from the California Department of
3 Managed Health Care. This conduct violates Health and Safety Code section 1349.

4 14. Respondent's advertising and solicitation, by facsimiles sent to homes and
5 business offices and by mailed enrollment materials, are untrue and misleading in that they
6 offer discounts from doctors, dentists, hospitals, and pharmacies that are unavailable because
7 providers, even those represented by Respondent's agents to be on their provider list, have
8 never heard of Equal Access Health or Health Benefits of America; membership cards and
9 information do not arrive as promised; providers will not accept the discount card or have
10 not agreed to offer discounted prices; the discounts available are far less than represented; or
11 the cost of prescriptions is higher with the card than without it. Respondent's marketing of a
12 30-day Satisfaction Guarantee also involves representations that are untrue and deceptive in
13 that they fail to disclose that such refunds are available only to clients who use the program
14 and are dissatisfied with the services they obtain; others who cancel in writing and return all
15 materials to the company within the 30 days may receive only a 50% refund of their
16 enrollment fee. Finally, Respondent falsely claims "\$50.00 off enrollment through Friday."
17 These practices violate Health and Safety Code sections 1360(a)(1) and (b). (See Exhibit A
18 attached hereto.)

19 15. Respondent's advertising and solicitation practices are further misleading in
20 violation of section 1360(a)(2) and (b) by using language typically associated with insurance
21 coverage, such as "ALL Pre-existing Conditions accepted!" and "no waiting periods for
22 coverage" and by offering its health care product in conjunction with something described as
23 "Accidental Injury (Emergency Room)", or "\$2,000 Excess Accident Medical Coverage"
24 which appears to be an insurance product, making it appear to consumers not possessing
25 special knowledge regarding health care coverage that the discount card is insurance as well.

26 16. Respondent's advertising and solicitations are also misleading in violation of
27 section 1360(a)(2) and (b) by failing to mention, or to clearly and conspicuously disclose,
28 that payment in full for doctor services and hospitalization is required at the time that

1 services are rendered. The solicitations further fail to point out that an advance payment of
2 \$1,000 a day for each day of a scheduled hospital stay is required to be paid to the hospital
3 before it renders service; that information is not revealed until after the member has enrolled.
4 (*See Exhibit B attached hereto.*) These limitations or disadvantages are of significance to
5 both potential members and currently enrolled, paying members, particularly for the low-
6 income population targeted by Respondent.

7 17. By requiring an advance payment of \$1,000 a day for each day of an
8 anticipated hospital stay, Respondent is subjecting the discount benefit ostensibly afforded
9 by the contract to a limitation or co-payment which is not conspicuously disclosed prior to
10 enrollment, thereby rendering the benefit illusory, in violation of California Code of
11 Regulations, title 28, section 1300.67.4(a)(3)(A).

12 18. Respondent's conduct described herein also constitutes fraud or dishonest
13 dealing or unfair competition, as defined by section 17200 of the Business and Professions
14 Code, in violation of Health and Safety Code section 1386(b)(7).

15 19. Respondent is engaging in prohibited inexact price advertising using terms
16 such as "potential savings of up to 80%," in fraudulent, deceitful, or misleading advertising
17 of non-existent discounts, and of offering insurance policies and a \$50 reduction in the
18 enrollment fee as premiums, gifts or bait to persuade consumers to enroll as members, in
19 violation of Health and Safety Code section 1395.

20 20. Respondent is also engaging in offering additional gifts or bait to persuade
21 consumers to enroll as members. It promotes a "\$25 First Use Rebate" program offering
22 money back the first time an enrollee uses the healthcare program, a "3-N-Free Program" by
23 which membership will be free to enrollees who refer three new clients, and a monthly
24 contest that each month awards five randomly selected current enrollees a \$250
25 Visa/MasterCard gift card. (*See Exhibit C attached hereto.*) These gifts or bait each
26 constitute a separate violation of Health and Safety Code section 1395.

27 21. Respondent was issued an Official Citation on February 9, 2005, by the
28 Federal Communications Commission pursuant to section 503(b)(5) of the Communications

1 Act of 1934, as amended, 47 U.S.C. 503 (b) (5), for sending unsolicited advertisements to
2 telephone facsimile machines in violation of Section 227(b)(1)(C) of the Communications
3 Act, which makes it “unlawful for any person within the United States, or any person outside
4 the United States if the recipient is within the United States . . . to use a telephone facsimile
5 machine, computer, or other device to send an unsolicited advertisement to a telephone
6 facsimile machine.” (See copy of that Citation attached as Exhibit D hereto.) The
7 unsolicited fax, attached hereto as Exhibit A, was sent on March 9, 2005, 30 days following
8 Respondent’s citation.

9
10 **V.**

11 **CEASE AND DESIST ORDER**

12 Based on the foregoing, the Director finds that Respondent has violated Health and Safety
13 Code sections 1349; 1360, subdivisions (a)(1), (a)(2), and (a)(3); 1386(b)(7) and 1395; and
14 California Code of Regulations, title 28, section 1300.67.4(a)(3)(A)).

15 **THEREFORE**, pursuant to Health and Safety Code section 1391 of the Knox-Keene
16 Act:

17 **IT IS HEREBY ORDERED:**

18 1. That Respondent, and any of its directors, officers, trustees, managers,
19 affiliates, agents, and all persons participating with them or acting in concert with them, shall
20 immediately **CEASE AND DESIST FROM:**

- 21 a. Operating in California without a Knox-Keene Act license.
22 b. Promoting any further deceptive or misleading advertisements or
23 solicitations to California residents;
24 c. Conducting any enrollment activities in California for health care
25 memberships; including, but not limited to, medical, dental,
26 hospitalization, and pharmacy;
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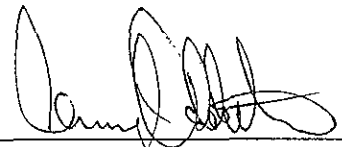
- d. Taking, receiving, or forwarding any application for health care memberships from California residents; and
- e. Collecting or receiving, in full or in part, any payments for health care memberships from or on behalf of California residents;

2. Respondent shall disclose in any advertisement or solicitation that may reasonably be viewed by residents of the State of California; including, but not limited to, any Internet web page or advertisement that their health care membership product is not available in the State of California.

3. Respondent shall refund all monies to demanding members without undue delay.

Dated: July 15, 2005

LUCINDA EHNES, Director
Department of Managed Health Care

By: 

AMY L. DOBBERTEEN
Assistant Deputy Director
Department of Managed Health Care