

**STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER**

In the Matter of

ZION HEALTH,

Unauthorized Insurer/Respondent.

Order No. 22-0024

FEIN 83-2537408

**ORDER TO CEASE AND DESIST AND
ORDER IMPOSING FINE, ASSESSING
PREMIUM TAX & PENALTIES**

This Order to Cease and Desist and Order Imposing Fine, Assessing Premium Tax, and Penalties (“Order”) is entered into by the Insurance Commissioner of the state of Washington (“Insurance Commissioner”) acting pursuant to the authority set forth in RCW 48.02.080, RCW 48.14.060, RCW 48.14.095 RCW 48.42.010, and RCW 48.15.023. This Order is a public record and will be disseminated pursuant to Title 48 RCW and the Insurance Commissioner’s policies and procedures.

BASIS:

1. Zion Health (“Zion”) is a Utah-domiciled nonprofit corporation, first registered on November 7, 2018. Zion is not registered with the Washington Secretary of State.
2. On May 3, 2019, the Internal Revenue Service (“IRS”) granted Zion tax-exempt status as a 501(c)(3) public charity, known as a 509(a)(2) entity. Zion’s effective IRS exemption date is November 7, 2018.
3. Zion represents itself as a “health sharing organization reimagined.” Zion admits it is not a healthcare sharing ministry (“HCSM”), or an offering that satisfies the previous individual mandate of the Affordable Care Act (“ACA”).
4. Zion does not possess a Certificate of Authority to act as an insurer.

5. Zion identified itself to the IRS as “a voluntary community benevolence program designed to assist in the sharing of legitimate medical expenses by and for the exclusive benefit of program members.” Zion markets “throughout the nation.” In videos available online, Zion’s President, Nathan Udy (“Udy”) verified Zion’s programs are available in all 50 states.

Zion is soliciting Washington consumers

6. The Insurance Commissioner visited the Zion Health website and completed the enrollment application found there. The Insurance Commissioner designated residency in the state of Washington, and provided date of birth, gender, and tobacco usage on the enrollment form. The “\$2,500 IUA – Zion Direct Membership Plan” was elected. Zion returned confirmation membership would begin on May 19, 2020, and invoiced an initial billing amount of \$340 (\$50 registration fee, plus \$290 monthly membership). A recurring \$290 membership payment due on the 19th of each month was also itemized.

7. In addition to enrollment, a prospective member must also adhere to the five (5) Zion Principles of Membership (“the Principles”) in order to become a member. The Principles include an acknowledgement that Zion is not an insurance entity and cannot guarantee payment of medical expenses.

8. Upon attestation by a member to adhere to the Principles and participate in Zion’s Program, Zion, in turn, “will evaluate the requests for reimbursement of expenses and provide reimbursement in accordance with its guidelines.”

9. The consumer is offered 3 membership options at the Zion website: IUA Option \$1,000, IUA Option \$2,500, and IUA Option \$5,000.

10. A member is first responsible for paying their Initial Unshareable Amount (“IUA”). The Zion website explains:

- “The IUA is the personal responsibility of the member. ... All qualified medical expenses after the IUA is met are shareable with the Zion Health community.”
- “A member’s IUA is calculated per medical need, meaning members only pay 1 IUA for each need. Members do not pay another IUA for the same need unless they are symptom free for a 12-month period”, and

- “Members generally save by having an IUA compared to an insurance deductible ...”

11. The Insurance Commissioner also obtained a Zion enrollment email shared during a webinar participated in by Udy. The email from Zion says in the “How Does It Work?” section: “1. You experience a medical event; 2. You submit a share request; 3. We evaluate your needs; 4. You get reimbursed by our community to cover your expenses.”

Zion’s Membership Guidelines

12. Zion’s Membership Guideline book is 57 pages, the contents of which are divided into the following sections: “Healthshare Beginnings, Our Mission, Membership Eligibility, Enrollment Requirements, Member Responsibilities, How Needs are Shared, Medical Conditions Existing Prior to Membership, Limitations on Sharing, Maternity Needs, Additional Giving, Submission of Medical Needs, and End of Life Assistance.”

13. According to Zion’s Membership Guidelines (“the Guidelines”), before submitting a medical “need”, a member must pay up to the IUA. The membership book then says, “All qualifying medical expenses submitted after the IUA is met are shareable with the Zion Health community at one hundred percent. There is no annual or lifetime limit.”

14. Next, the consumer reads about how to change their IUA and how to appeal sharing limitations. The next 3 pages discuss sharing eligibility and limitations on pre-existing conditions. For pre-existing medical conditions, Zion says:

To keep membership contributions low for all members, Zion Health implements a waiting period for sharing of medical conditions that exist prior to enrollment in a Zion Health membership.

...

Needs that arise from conditions that existed prior to membership are only shareable if the condition was regarded as cured and did not require treatment or present symptoms for 24 months prior to the effective date of membership.

15. After this, the Guidelines contain 7 pages of “limitations on sharing” which list specific expenses which are either not sharable (e.g., abortion, ADHD, allergy treatments) or are subject to limitations (e.g., speech therapy, injections, hospitalizations, emergency visits). Maternity sharing guidelines follow, stating “[a]s a general rule, maternity needs are shareable and are treated like any other medical need.”

16. The Guidelines also explain how members submit “needs” for “sharing.” Members are directed to submit original, itemized bills, proof of IUA payment, and medical records to Zion. Zion also explains, “To make your experience as simple as possible, *Zion Health can pay providers over the phone at the time of service for select preventive care...*” (Emphasis added.)

17. The consumer has an expectation that Zion will pay a specified amount of their medical expenses because Zion makes representations about paying medical costs directly to providers over the phone at the time of treatment. In addition, Zion also places specific limits on sharable medical expenses for specific medical treatments.

18. On November 20, 2019, on a nationwide radio talk show, Udy assured the radio audience that “within five business days we pay all of our member’s needs; about 95% of them, at least ...”¹ Zion advertised this interview on its social media as recently as April 23, 2021.

Zion has control over the membership monies collected

19. Zion makes representations via its website and the Guidelines about its ability to pay medical expenses. Zion guarantees “needs” are sharable at 100%, promises there are no annual or lifetime sharing limits, and has sole control of the member-contributed funds:

- Members must submit medical needs to Zion in a regimented way (original itemized bill, proof of IUA payment, medical records and “other additional documents”);
- “Zion Health then evaluates each submission for eligibility or ineligibility based on the Member Guidelines.” (Answer to FAQ “How does Zion Health handle medical claims?”);
- It encourages the submission of non-emergency medical services, such as surgical procedures, be made in advance (under “Submitting a Needs Request”);
- Zion has a “team of medical bill negotiators” which it deploys on members’ behalf (under “What procedure should I follow to request reimbursement for my medical bills when I have a need?”);
- It sets aside a “minimum of 15%” of contributions for payment of large needs over \$100,000”;
- Zion’s Articles of Incorporation state the company takes charge of “[s]oliciting, collecting, receiving, acquiring, holding, and

¹ Liberty Roundtable Radio: Sam Bushman & Friends, “Radio Show Hour 1 – 11/20/2019.” Retrieved from <https://www.libertyroundtable.com/liberty-roundtable/>

investing funds, including money received by gift, contribution, bequest, devise, or subscription ...”

20. Despite this structure, Zion maintains it does not sell an insurance product. Counsel for Zion (“counsel”) said the website and Membership Guidelines advertise Zion 1) is not a health insurance company, and 2) is not a substitute for a health insurance policy. Counsel says because Zion explicitly states it will not guarantee payment of medical costs or assume any risk, Zion, therefore, is not an insurer or provider of insurance.

The Insurance Commissioner subpoenaed Zion

21. Zion initially declined to provide any information on the number of Washington-state residents enrolled in its “HealthSharing Reimagined” program and asserted the Insurance Commissioner has no jurisdiction because Zion Health is not insurance.

22. On September 1, 2021, the Insurance Commissioner issued a subpoena duces tecum to Zion. Zion responded to the subpoena on October 14, 2021, with objections. Zion reported a total of 984 Washington members have been enrolled, with 907 still active. Zion collected a total of \$1,196,652.60 from Washington members and paid out claims totaling \$568,274.89.

23. Zion declined to provide contact information for its Washington members, citing HIPAA concerns.

24. Zion also identified that it has entered into Affiliate Agreement contracts with two (2) Washington-domiciled and located direct primary care (“DPC”) affiliates. Affiliates are medical providers/clinics who “allow HTML linking between your [the affiliate medical provider] website and the Zion Health’s website, and your [the affiliate’s] ability to promote and share Zion Health with your network, database or future contacts, via marketing or in person.” Zion, in turn, issues a monthly statement to the affiliate which itemizes the number of members who have joined Zion through the affiliate medical provider’s referral link. Zion pays the affiliate on a “pure commission basis” for each new customer who purchases services from Zion through the affiliate as follows:

- 5% of the monthly membership dues collected by Zion for individual memberships achieved through the affiliate; and
- \$15 per month for every active primary member of Zion added.

25. Zion has paid \$2,385.20 and \$110 in commissions, respectively, to the two (2) Washington affiliates. Zion redacted the identities of the affiliates. One of the Affiliate Agreements was executed on March 18, 2021.

26. Zion also declined to provide a copy of its annual audits as requested in the subpoena. It did, however, provide IRS Forms 990 (Return of Organization Exempt from Income Tax) for 2019 and 2020. The 2020 Form 990 return compares Zion's revenue and expenses to 2019:

	2019	2020
Membership dues & assessments	\$1,373,699	\$9,257,742
Salaries, other compensation, employee benefits	\$124,791	\$646,527
Number of employees	19	25
Member Development Fees	0	\$2,949,343
Business Fees/TPA Fees	\$76,219	\$521,112
Total Functional Expenses	\$1,054,014	\$4,446,484
Net assets or fund balances	\$319,830	\$5,174,827

Washington legal precedent

27. Although the Membership Guidelines state that members will always remain liable for medical expenses and have no legal right to seek reimbursement from Zion, under binding Washington precedent, this does not negate the formation of an insurance contract upon the members' application to be an enrollee. In examining whether a contract is one of insurance, the Washington Supreme Court has noted that "[n]o one can change the nature of insurance business by declaring in the contract that it is not insurance." *McCarty v. King Cty. Med. Serv. Corp.*, 26 Wn.2d 660, 684 (1946). Specifically, the nature of the contract, and "the examination of its contents," aside from the terms used or omitted, determine whether a contract is one of insurance. *Id.* Here, Zion unilaterally sets the monthly fees for members' participation in the medical cost sharing. Zion also pools the money of its enrollees and retains the right to review and determine whether a claim will be paid. Claims that exceed the member's deductible (IUA) go through a bill negotiations process, and afterward, Zion either reimburses the enrollee directly for their medical expenses or pays the medical provider directly. In so doing, Zion acts as an unauthorized insurer.

28. The Insurance Commissioner has not received any consumer complaints.

29. RCW 48.01.040 defines "insurance" as a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies.

30. RCW 48.11.030 defines "disability insurance" as insurance against bodily injury, disablement, or death by accident, against disablement resulting from sickness, and every insurance appertaining thereto including stop loss insurance. "Stop loss insurance" is insurance against the risk of economic loss assumed under a self-funded employee disability benefit plan.

31. RCW 48.05.030(1) states no person shall act as an insurer and no insurer shall transact insurance in this state other than as authorized by a certificate of authority issued to it by the Insurance Commissioner and then in force; except, as to such transactions as are expressly otherwise provided for in this code.

32. RCW 48.15.020(1) states an insurer that is not authorized by the Insurance Commissioner may not solicit or transact insurance business in this state, except as provided in this chapter.

33. RCW 48.14.020(1) provides subject to other provisions of this chapter, each authorized insurer, except title insurers, shall on or before the first day of March of each year pay to the state treasurer through the Insurance Commissioner's office a tax on premiums.

34. RCW 48.14.060(1) provides any insurer or taxpayer failing to file its tax statement and to pay the specified tax or prepayment of tax on premiums and prepayments for health care services by the last day of the month in which the tax becomes due shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not paid within forty-five days after the due date, the insurer will be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not paid within sixty days of the due date, the insurer will be assessed a total penalty of twenty percent of the amount of the tax. The tax may be collected by distraint, and the penalty recovered by any action instituted by the Insurance Commissioner in any court of competent jurisdiction. The amount of any penalty collected must be paid to the state treasurer and credited to the general fund.

35. RCW 48.14.060(2) provides, in addition to the penalties in subsection (1), interest will accrue on the amount of the unpaid tax or prepayment at the maximum legal rate of interest permitted under RCW 19.52.020 commencing sixty-one days after the tax is due until paid.

36. RCW 48.14.095(1) provides that this section applies to any insurer or taxpayer, as defined in RCW 48.14.0201, violating or failing to comply with RCW 48.05.030(1), RCW 48.17.060, RCW 48.36A.290(1), RCW 48.44.015(1), or RCW 48.46.027(1).

37. RCW 48.14.095(2) provides [e]xcept as provided in subsections (7) and (8) of this section, RCW 48.14.020, RCW 48.14.0201, and RCW 48.14.060 apply to insurers or taxpayers identified in subsection (1) of this section.

38. RCW 48.14.095(3) states [i]f an insurance contract, health care services contract, or health maintenance agreement covers risks or exposures, or enrolled participants only partially in this state, the tax payable is computed on the portion of the premium that is properly allocated to a risk or exposure located in this state, or enrolled participants residing in this state.

39. RCW 48.43.012(2) prohibits a health carrier from denying, excluding, or otherwise limiting coverage for an individual's preexisting health conditions including, but not limited to, preexisting condition exclusions or waiting periods.

40. RCW 48.43.073(1) provides that if a health plan issued or renewed on or after January 1, 2019, provides coverage for maternity care or services, the health plan must also provide a covered person with substantially equivalent coverage to permit the abortion of a pregnancy.

41. RCW 48.42.010(1) provides notwithstanding any other provision of law, and except as provided in this chapter, any person or other entity which provides coverage in this state for life insurance, annuities, loss of time, medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether the coverage is by direct payment, reimbursement, the providing of services, or otherwise, shall be subject to the authority of the state Insurance Commissioner, unless the person or other entity shows that while providing the services it is subject to the jurisdiction and regulation of another agency of this state, any subdivisions thereof, or the federal government.

42. RCW 48.42.020(1) provides a person or entity may show that it is subject to the jurisdiction and regulation of another agency of this state, any subdivision thereof, or the federal government, by providing to the Insurance Commissioner the appropriate certificate, license, or other document issued by the other governmental agency which permits or qualifies it to provide the coverage as defined in RCW 48.42.010.

43. RCW 48.42.030 provides any person or entity which is unable to show under RCW 48.42.020 that it is subject to the jurisdiction and regulation of another agency of this state, any

subdivision thereof, or the federal government, shall submit to an examination by the Insurance Commissioner to determine the organization and solvency of the person or the entity, and to determine whether or not such person or entity complies with the applicable provisions of this title.

44. RCW 48.02.080(3)(a) states if the Insurance Commissioner has cause to believe that any person is violating or is about to violate any provision of this code or any regulation or order of the Insurance Commissioner, he may issue a cease and desist order.

45. RCW 48.15.023(5)(a) states if the Insurance Commissioner has cause to believe that any person has violated the provisions of RCW 48.15.020(1), the Insurance Commissioner may issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080 and/or assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

46. RCW 48.02.080(3)(a) states if the Insurance Commissioner has cause to believe that any person is violating or is about to violate any provision of this code or any regulation or order of the Insurance Commissioner, he may issue a cease and desist order.

47. By transacting disability insurance in this state without a Certificate of Authority, excluding coverage for preexisting health conditions for 2 years, and excluding coverage for termination of pregnancy, Zion Health violated RCW 48.05.030(1), RCW 48.15.020(1), RCW 48.43.012(2), and RCW 48.43.073(1). These violations justify the issuance of a cease and desist order under RCW 48.15.023(5)(a)(i) and RCW 48.02.080(3)(a). Further, these violations justify the imposition of a fine under RCW 48.15.023(5)(a)(ii), and the assessment of premium tax, tax interest, and tax penalties under RCW 48.14.020, RCW 48.14.060, and RCW 48.14.095. Upon failure to pay a civil penalty when due, the Attorney General may bring a civil action on behalf of the Insurance Commissioner to recover the unpaid penalty.

ORDER TO CEASE AND DESIST

Pursuant to RCW 48.02.080(3)(a) and RCW 48.15.023(5)(a), and based upon the above Basis, the Insurance Commissioner orders the above-named Respondent, and its officers, directors, trustees, employees, agents, and affiliates to immediately cease and desist from:

- A. Engaging in or transacting the unauthorized business of insurance in Washington State without registration with the Insurance Commissioner;

- B. Seeking, pursuing, and obtaining any insurance business in Washington State without authorization by the Insurance Commissioner;
- C. Soliciting Washington residents to purchase any insurance issued or to be issued by an unauthorized insurer; and
- D. Soliciting Washington State residents in person, by e-mail, by facsimile (fax), by telephone, by mail, by internet/website, or by any other means, to induce them to purchase any insurance contract without authorization by the Insurance Commissioner.

This Order to Cease and Desist is effective immediately and will remain in effect subject to further order of the Insurance Commissioner and Respondent's right to demand a hearing, as set forth below.

IT IS FURTHER ORDERED that any violation of the terms of this Order to Cease and Desist by Respondent or its officers, directors, trustees, employees, agents, and affiliates will render the violator(s) subject to the full penalties authorized by RCW 48.02.080, RCW 48.15.023, and other applicable sections of the Insurance Code of the state of Washington.

ORDER IMPOSING A FINE

In accordance with RCW 48.15.023(5)(a) and based upon the above Basis, the Insurance Commissioner orders that Respondent must pay a fine in the amount of Fifty Thousand Dollars (\$50,000.00), for violating the Washington insurance laws as described above.

In accordance with RCW 48.14.020, RCW 48.14.060, and RCW 48.14.095, and based upon the above Order Basis, the Insurance Commissioner hereby orders that the Respondent must pay the two percent (2%) premium tax owed to the Office of the Insurance Commissioner on the \$1,196,652.60 it collected in premium from Washington consumers, plus the twenty percent (20%) penalty on the total amount of past due taxes, plus twelve percent (12%) simple interest on the total amount of past due taxes.

The fine and premium tax must be paid within 30 days of the date this order becomes final. This Order becomes final if no hearing is demanded within 90 days of receipt of this Order, as set forth below. In the alternative, this Order becomes final if a final order upholding the fine is issued after hearing.

NOTICE OF OPPORTUNITY FOR HEARING

Respondent has the right to demand a hearing in accordance with RCW 48.04.010, WAC 284-02-070, and WAC 10-08-110. Respondent has 90 days from the receipt of this Order to demand a hearing. **If the Insurance Commissioner does not receive a hearing demand from Respondent within 90 days from the date the Respondent received this Order, the Respondents' right to a hearing is conclusively deemed to have been waived.**

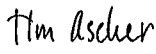
This Order shall remain in effect subject to the further order of the Insurance Commissioner.

THIS ORDER IS EFFECTIVE IMMEDIATELY AND IS ENTERED at Tumwater, Washington, this 17th day of February, 2022.



MIKE KREIDLER
Insurance Commissioner

By and through his designee

DocuSigned by:

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TIM ASCHER
Insurance Enforcement Specialist
Legal Affairs Division

CERTIFICATE OF MAILING

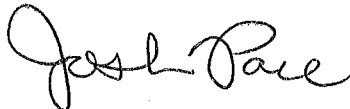
The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing ORDER TO CEASE AND DESIST AND ORDER IMPOSING FINE, ASSESSING PREMIUM TAX & PENTALTIES NO. 22-0024 on the following individuals by depositing in the U.S. Mail via State Consolidated Mail Service with proper postage affixed to:

Zion Health
Nathan Udy, President
1506 South Silicon Way, Ste #2C
St. George, UT 84770

Hyde Loubet Law, LLC
Jared S. Hyde
Registered Agent for Zion Health
1031 South Bluff Street
St. George, UT 84770
jared@hydeloubetlaw.com

SIGNED this 17th day of February 2022, at Tumwater, Washington.



JOSH PACE
Legal Assistant 3
Legal Affairs Division