

Attachment A

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

In the Matter of

ALLIANCE FOR SHARED HEALTH,

Unauthorized
Entity/Respondent.

Order No. 20-0335

**ORDER TO CEASE AND
DESIST**

Pursuant to RCW 48.02.080, RCW 48.15.023 and RCW 48.44.016, the Insurance Commissioner of the state of Washington ("Insurance Commissioner") orders the above-named Respondent, and its officers, directors, trustees, employees, agents, and affiliates to immediately cease and desist from:

- A. Acting as an insurer in the state of Washington;
- B. Acting as a health care service contractor in the state of Washington;
- C. Engaging in or transacting the unauthorized business of insurance in the state of Washington;
- D. Seeking, pursuing, and obtaining any insurance business in the state of Washington;
- E. Soliciting Washington residents to purchase any insurance to be issued by an unauthorized insurer; and
- F. Soliciting Washington residents to induce them to purchase any insurance contract.

BASIS:

1. Alliance for Shared Health Inc. ("ASH") is a non-profit 501(c)(3) corporation headquartered in Missouri. In September 2019, ASH filed an Application for a Certificate of Authority of a Foreign Non-Profit Corporation with the Missouri Secretary of State.

2. ASH does not hold a certificate of authority to transact insurance in Washington. ASH is also not registered with the Washington Secretary of State or the Washington State Department of Revenue.

3. ASH was originally incorporated in the U.S. Virgin Islands in June 2017. ASH provided the Insurance Commissioner's Regulatory Investigations Unit ("Investigations") with ASH's Internal Revenue Service ("IRS") non-profit organization filings. ASH submitted an application for non-profit status to the IRS in November 2018. The filings list the following ASH executive officers: Corey Durbin ("Durbin"), *President*; John Lewis ("Lewis"), *Treasurer*; and Leslie Hunsel ("Hunsel"), *Secretary*.

4. Christian Discount Alliance, LLC, dba Shared Health Alliance ("SHA"), is a business entity insurance producer licensed in Missouri since 2016. The Designated Licensed Responsible Producers for SHA's Missouri insurance producer license are also Durbin, *President, Owner*; Lewis, *Chief Operating Officer, Owner*; and Hunsel, *Secretary*. None of these individuals hold an insurance producer license in Washington. Durbin was previously licensed as a producer in Washington (WAOIC No. 255411). In October 2015, SHA registered with the Missouri Secretary of State as a limited liability company.

5. SHA is not licensed as an insurance producer in Washington or any other state. SHA is not registered with the Washington Secretary of State. SHA registered with the Washington Department of Revenue in February 2018 with the business designation of "insurance agencies and brokerages."

6. ASH refers to SHA as its "vendor consultant." ASH and SHA entered a vendor consulting agreement, effective January 1, 2019. ASH explained to Investigations that SHA "offers non-insurance solutions to help strengthen the ASH sharing programs" including "Rx Advocacy for high cost maintenance medications... 24/7/365 Telemedicine... Virtual Primary Care... National Lab Program... Discount Rx Card... Provider Discounts... Member Support Services..."

7. The Office of the Insurance Commissioner opened an investigation to determine if 1) ASH meets the statutory definition of a Health Care Sharing Ministry ("HCSM") under Washington law and Federal law and 2) if ASH is not a bona fide HCSM, whether ASH is acting as an unauthorized insurer in Washington.

8. ASH represents itself as a HCSM. HCSMs are exempt from the Affordable Care Act ("ACA") individual mandate.

ASH does not meet the legal definition of a HCSM.

9. To qualify as a health care sharing ministry under the IRS and Washington law, a HCSM must be a 501(c)(3) organization whose members share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs. A HCSM must also have been in operation and continuously sharing member health care costs since at least December 31, 1999.

10. ASH has not been in operation and continuously sharing health care costs since 1999.

11. ASH acknowledges that it does not meet the statutory requirements for an HCSM because it was not incorporated until June 2017.

12. ASH stated to Investigations: “[ASH] was not originally formed, nor does it warrant that it meets the original ACA grandfathering clause to qualify its members for the exemption to the individual mandate under federal law.” ASH provided the following explanation:

While ASH was originally formed in 2017, Hurricane Irma delayed the initial roll-out. As mentioned above, ASH as a health share solution was designed to help meet needs that the other health share programs were not/are not meeting - and do so without pre-existing condition limitations. However, participation in ASH was not available until 2019. There was no intention to introduce ASH until such time as the Federal Mandate was not being enforced - which began in January 2019. ASH did not want any participant to think that ASH alone met the ACA individual mandate. When the mandate was removed (or at least it was announced that the mandate would not be enforced at the Federal level beginning in 2019), ASH felt comfortable offering participation per the approval of the IRS as a bona fide 501(c)(3).

13. During the course of the investigation of ASH, Investigations conducted a review of ASH’s website.

14. As of May 29, 2019, ASH’s “About Us” webpage stated the following:

Alliance for Shared Health was formed to provide “health sharing” access to Americans of any faith persuasion. When Americans come together to meet challenges, there is little we can’t accomplish together... Alliance for Shared Health is a non-profit health sharing community that seeks to provide a way for its members to access specific medical needs outside of expensive, traditional health insurance. All members must agree with and attest to the statement of standards developed by the Board of ASH...

15. Additionally, ASH listed the following statement of standards:

I believe that traditional health care does not work for me anymore, and want to be a part of a moral, ethical and health-conscious community of people that shares in medical needs under the ASH Guidelines

I affirm that I understand ASH is not an insurance company but rather a non-profit benevolence organization. ASH members have committed to paying a monthly contribution in order to help share in medical expenses under the guidelines.

I do understand that ASH is not a guarantee of payment, but that ASH intends to share in the medical needs per the ASH guidelines and the sharing level selected by me.

I desire to live a healthy lifestyle and make good health decisions to be positive member of the ASH community.

I agree to refrain from the usage of any form of illegal substances and that if I do engage in use of these, any medical needs caused by or related to such shall not be eligible for sharing.

I agree to submit to mediation followed by arbitration, if needed, should a dispute arise with ASH or its affiliates. As such, I understand that ASH is not an insurance company and will not file any complaints with my state insurance department if I have a dispute on a medical need.

I agree that whether or not I sign and submit this form, submitting my application for membership in ASH is equivalent to attesting to this statement of beliefs.

(Emphasis added.) Since the Insurance Commissioner's investigation, ASH has made changes to its website and statement of standards.

ASH is acting as an unauthorized insurer in the state of Washington.

16. Because ASH is not qualified as a HCSM, it is acting as an unauthorized insurer. ASH has denied acting as an unauthorized insurer. ASH asserts it has never intended to operate as an insurer and stated it includes "all appropriate disclaimers and notifications on its materials including its website, enrollment portal, sharing guidelines, and member identification cards." ASH further asserts it is operating similarly to other health sharing entities, which are not considered insurers under state or federal law.

17. In ASH's response to Investigation, it states:

[ASH] helps its members access preventive care (the same preventive care codes that the Affordable Care Act ("ACA") mandate included), as well as virtual primary care - including the diagnosis and treatment of over 1,500 conditions - all at one member responsibility amount per episode of care -- again with no pre-existing condition limitations and shareable at 100%.

18. ASH's member guidelines discuss benefit levels as "plans" and require a set monthly contribution to maintain membership. One of ASH's member guidelines discusses four "Sharing Level" plans: Allied Basic, Allied Visit, Allied Core, and Allied Max. ASH's guidelines

state: "Make your choice wisely, because different programs offer different levels of health cost sharing support."

19. In describing the four plans, discussed above, ASH explains:

ASH shares 100 percent of bills for any medical incident exceeding the MRA (Member Responsibility Amount) as long as all other Guidelines are met and funds are available for sharing up to the agreed upon Referenced Based-Pricing Allowances for that service as agreed upon by the ASH Community. Any medical expense less than the MRA per incident is the member's responsibility.

20. One of ASH's guidelines includes a table which shows what medical care and services are covered by each of the four plans, such as "Preventive Care", "Doctor Access", "Virtual Primary Care", "PCP Visits", "Outpatient Lab", "Daily Hospital Allowance", and "Prescription Drugs...Tier 1... Tier 2...Tier 3... Specialty Drugs".

21. Another one of ASH's guidelines discusses three other plans: "SHA Premier", "SHA Preventative", and "SHA Scripts". The guidelines include a table which shows what medical care and services are covered by each of the three plans, such as "Preventive Care", "Doctor Access", "Telemedicine", "Virtual Primary Care", "PCP Visits", "Specialist", "Urgent Care", "Diagnostic X-Ray and Lab", "Cat-Scan/MRI", "Outpatient Testing", and "Prescription Drugs...Tier 1...Tier 2...Tier 3...Specialty Drugs". The guidelines of these plans also include tables regarding coverage for "Preventive Care Services" and "Preventive Immunizations".

22. Other plans provided by ASH include similar member guidelines and tables as to the ones discussed.

23. ASH also sells plans to Washington members that provide members with access to a network of providers, called "First Health." ASH provides members with "access to providers in the First Health network – A national PPO network, with more than 5,000 hospitals, over 90,000 ancillary facilities and over 1 million health care professional service locations." According to ASH, "access is wide-ranging – more than 96 percent of people in the United States are within 20 miles of a network provider." ASH's member guidelines discuss First Health, as well as include information about First Health's provider locator assistance toll-free number and First Health's provider locator website.

24. ASH provided a spreadsheet to Investigations showing ASH sold a variety of plans to Washington consumers. ASH sold twelve (12) different plans to a total of 1,411 Washington consumers and collected \$237,188.27.

25. RCW 48.01.040 states that "insurance" is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies.

26. RCW 48.01.050 states in relevant part that "insurer" as used in this code includes every person engaged in the business of making contracts of insurance.

27. RCW 48.01.060 defines insurance transaction as including any solicitation, negotiations preliminary to execution, execution of an insurance contract, transaction of matter subsequent to execution of the contract and arising out of it, and insuring.

28. RCW 48.43.009 provides that health care sharing ministries are not health carriers as defined in RCW 48.43.005 or insurers as defined in RCW 48.01.050. For purposes of this section, "health care sharing ministry" has the same meaning as in 26 U.S.C. Sec. 5000A.

29. 26 U.S.C. Sec. 5000A states the term "health care sharing ministry" means an organization—

(I) which is described in section 501(c)(3) and is exempt from taxation under section 501(a),

(II) members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the State in which a member resides or is employed,

(III) members of which retain membership even after they develop a medical condition,

(IV) which (or a predecessor of which) has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999, and

(V) which conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.

30. 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.

31. RCW 48.44.015(1) provides that a person may not in this state, by mail or otherwise, act as or hold himself or herself out to be a health care service contractor, as defined in RCW 48.44.010 without first being registered with the Insurance Commissioner.

32. RCW 48.44.180 states for the purposes of this chapter, the Insurance Commissioner shall have the same powers and duties of enforcement as are provided in RCW 48.02.080.

33. RCW 48.15.020(1) states that an insurer that is not authorized by the Insurance Commissioner may not solicit or transact insurance business in this state.

34. RCW 48.15.023(5)(a)(i) states that 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.

35. RCW 48.44.016(5)(a)(i) states if the Insurance Commissioner has cause to believe that any person has violated the provisions of RCW 48.44.015(1), the Insurance Commissioner may Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080.

36. 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 or she may issue a cease and desist order.

37. The Respondent's actions described herein violate Insurance Code provisions that include RCW 48.05.030(1) [Certificate of Authority required], RCW 48.15.020(1) [solicitation by insurer not authorized prohibited] and RCW 48.44.015(1) [registration by health care service contractor required].

IT IS FURTHER ORDERED that nothing herein shall prevent the Respondent from fulfilling the terms of contracts formed prior to the effective date of this Order pursuant to RCW 48.15.020(2)(b).

Any violation of the terms of this Order by the Respondent and its officers, directors, trustees, employees, agents, and affiliates or the Respondent's failure to fulfill or perform its contracts subject to this Order will render the violator(s) subject to the full penalties authorized by RCW 48.02.080, RCW 48.15.023, RCW 48.44.016 and other applicable sections of the Insurance Code of the state of Washington.

The Respondent has the right to demand a hearing in accordance with RCW 48.04.010, WAC 284-02-070, and WAC 10-08-110.

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 22 day of April, 2020.



MIKE KREIDLER
Insurance Commissioner

By and through his designee



SOFIA PASAROW
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 on the following individual(s) in the manner listed below:

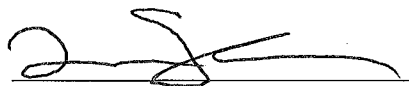
By email and by depositing in the U.S. mail via state Consolidated Mail Service with proper postage affixed to:

Alliance for Shared Health, Inc.
7600 Bolongo Bay
St. Thomas, VI 00802

John Lewis
Registered agent for Alliance for Shared Health, Inc.
3155 Sutton Blvd, Ste 201
Saint Louis, MO 63143

Courtesy copy to:
Kyle Gilster
Attorney at Law
750 17th St NW, Ste 900
Washington, DC 20006
kyle.gilster@huschblackwell.com

Dated this 23rd day of April, 2020, in Tumwater, Washington.


KIMBERLY SHOBLUM
Paralegal
Legal Affairs Division