

BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of:

TRINITY HEALTHSHARE, INC.,

Appellant.

Docket No. 19-0252

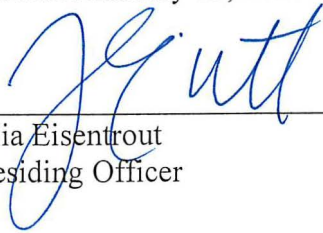
**ORDER TERMINATING
PROCEEDINGS**

On January 13, 2020, the Office of the Insurance Commissioner (“OIC”) filed with the Hearings Unit at OIC a request to cancel the hearing in this matter and all related schedule items, as Trinity Healthshare Inc. (“Trinity”) signed a Consent Order Levying A Fine (“Consent Order”) No. 19-0375. Chairman William Thead III signed the Consent Order on behalf of Trinity, and agreed to pay a fine in lieu of further administrative proceedings. The underlying facts and alleged violations outlined in the Consent Order are the same as those at issue here.

Thus, IT IS ORDERED:

This administrative proceeding is dismissed, and all future dates, including the hearing, are stricken.

DATED: January 13, 2020



Julia Eisentrout
Presiding Officer

CERTIFICATE OF SERVICE

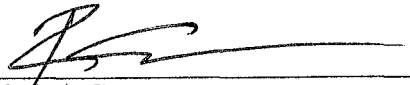
The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action,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

On the date given below I caused to be filed and served the foregoing Order Terminating Proceedings on the following people at their addresses listed below:

S. Derek Bauer
Jacqueline T. Menk
Frank Miller
Joseph Guilkey
Baker & Hostetler LLP
1170 Peachtree Street, Suite 2400
Atlanta, Georgia 30309
dbauer@bakerlaw.com
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Kim Tocco, Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255
KimT@oic.wa.gov

Dated this 13th day of January, 2020, in Tumwater, Washington.



Rebekah Carter
Paralegal
Hearings Unit

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

In the Matter of

TRINITY HEALTHSHARE, INC.,

Respondent.

Order No. 19-0375

CONSENT ORDER LEVYING A FINE

This Consent Order Levying a Fine (“Order”) is entered into by the Insurance Commissioner of the state of Washington (“Insurance Commissioner”), acting pursuant to the authority set forth in RCW 48.02.060 and RCW 48.15.023, and Trinity Healthshare, Inc. 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. Trinity Healthshare, Inc. (“Trinity” or “the Company”) is a nonresident corporation domiciled in Delaware. Trinity represents itself as a health care sharing ministry (“HCSM”) as defined by RCW 48.43.009. Trinity does not hold a certificate of authority to transact insurance in the state of Washington.

2. On May 13, 2019, the Insurance Commissioner ordered Trinity to cease and desist from the unauthorized business of insurance in the state of Washington under Order to Cease and Desist No. 19-0252 (the “Order”). Trinity fully complied with the Order and immediately stopped enrolling new Washington residents in its HCSM Sharing Program. Consistent with the Order, Trinity continued to facilitate sharing among state of Washington members who enrolled in Trinity Sharing Programs prior to May 13, 2019.

3. Under RCW 48.43.009, qualified HCSMs are not considered Washington health carriers or insurers and are exempt from regulation under the Washington insurance code.

4. The Insurance Commissioner opened this investigation following a complaint from an insurer related to the potential misrepresentation of certain “health share” products as insurance

and the recruitment of prospective brokers to sell these products to Washington consumers. The complaint alleged that Alera Healthcare, Inc. (“Alera”), which provides management and administrative services to Trinity, was soliciting and recruiting agents to sell misleading products to Washington consumers by using co-branded marketing communications containing language that may lead the average consumer to believe they are purchasing healthcare insurance rather than a HCSM membership.

5. Alera is the subject of a separate but related enforcement action. *See* Consent Order Levying A Fine No. 19-0376.

6. Following receipt of the complaint, the Insurance Commissioner investigated to determine whether Trinity is accurately representing itself to Washington consumers as a HCSM in compliance with state law.

7. As a result of this investigation, the Insurance Commissioner has cause to believe that Trinity does not qualify as a HCSM under Washington law and is acting as an unauthorized insurer in the state of Washington.

8. To meet the definition of a health care sharing ministry under Washington law, a HCSM must be a 501(c)(3) organization exempt from taxation under section 501(a), whose members share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs. A HCSM, or a predecessor of which, must also have been in existence at all times since December 31, 1999 and continuously sharing member medical expenses without interruption since at least December 31, 1999.

9. Trinity incorporated in the state of Delaware on June 27, 2018.

10. Effective August 13, 2018, Trinity entered into a Management and Administration Agreement (“the Agreement”) with Alera. The Agreement stated Trinity’s intent to include Trinity’s HCSM program as a component of Alera’s new and existing healthcare products. Trinity had no members in its HCSM program at this time.

11. As a result of the investigation, the Insurance Commissioner has cause to believe that Trinity cannot qualify for an exemption from Washington state insurance regulation as a HCSM because neither Trinity, nor a predecessor of Trinity, have been in existence at all times and continuously sharing member health care costs since at least December 31, 1999.

12. In response to the Insurance Commissioner’s investigation, Trinity stated its position that it meets the definition of a HCSM under RCW 48.43.009 and is therefore not a health

carrier as defined in RCW 48.43.005 or insurer as defined in RCW 48.01.050, and is exempt from regulation under the Washington insurance code. Trinity also stated its position that its operations do not constitute insurance under Washington law because Trinity does not promise to pay members anything or undertake any obligation to pay members.

13. As of June 15, 2019, 3,058 Washington consumers were actively enrolled in Trinity plans.

14. RCW 48.01.030 states the business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.

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

16. 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.

17. RCW 48.43.009 states 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.

18. 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.

19. RCW 48.05.030(1) states that 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.

20. 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.

21. RCW 48.15.023(2) states that for the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves an insurance contract.

22. RCW 48.15.023(3) states that any person who knowingly violates RCW 48.15.020(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

23. RCW 48.15.023(4) states that any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

24. 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:

- (i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080; and/or
- (ii) 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.

25. As a result of this investigation, the Insurance Commissioner has cause to believe that Trinity does not meet the requirements for an exemption from insurance regulation under RCW 48.43.009 and is acting as an unauthorized insurer in the state of Washington. In view of the complex issues raised and the probability that long-term litigation or administrative proceedings would be required to resolve these disputes, Trinity desires to resolve this matter by entering into this Order and does not contest that as a result of this investigation the Insurance Commissioner has cause to believe Trinity does not meet the requirements for an exemption from insurance regulation under RCW 48.43.009 and is acting as an unauthorized insurer in the state of Washington.

26. As a result of this investigation the Insurance Commissioner has cause to believe that Trinity's activities in Washington violated RCW 48.05.030(1) and RCW 48.15.020(1), justifying imposition of a fine under RCW 48.15.023(5)(a)(ii). In view of the complex issues raised

and the probability that long-term litigation or administrative proceedings would be required to resolve these disputes, Trinity desires to resolve this matter by entering into this Order and does not contest that as a result of this investigation the Insurance Commissioner has cause to believe that Trinity's activities in Washington violated RCW 48.05.030(1) and RCW 48.15.020(1).

CONSENT TO ORDER:

The Insurance Commissioner of the state of Washington and Trinity agree the best interest of the public will be served by entering into this Order. NOW, THEREFORE, Trinity consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle this matter in consideration of Trinity's payment of a fine, and upon such terms and conditions as are set forth below:

1. Trinity acknowledges its duty to comply fully with the applicable laws of the state of Washington.

2. Trinity consents to the entry of this Order, waives any and all hearing or other procedural rights, and further administrative or judicial challenges to this Order.

3. By agreement of the parties, the Insurance Commissioner will impose a fine of One Hundred Fifty Thousand Dollars (\$150,000.00) to be paid by **December 27, 2019**.

4. By agreement of the parties, Trinity will not solicit state of Washington residents to enroll in its HCSM Sharing Programs. Additionally, within ten (10) days of the entry of this Order, Trinity will notify all state of Washington residents who were enrolled in Trinity HCSM Sharing Programs prior to May 13, 2019, that Trinity will no longer be offering its Sharing Programs in the state of Washington. Trinity may continue to facilitate sharing among current state of Washington Trinity members for one (1) year after the entry of this Order such that members have sufficient time to find alternative options.

5. Trinity understands and agrees that any further findings that Trinity has failed to comply with the statutes and/or regulations that are the subject of this Order constitute grounds for further penalties, which may be imposed in direct response to further violations.

6. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Washington Insurance Commissioner involving Trinity.

7. This Order is based solely on the application of the Washington State insurance code to the specific facts of the Insurance Commissioner's investigation in this case. Trinity and the Washington Insurance Commissioner are the only parties to this Order. Therefore, this Order, and any provision, findings, or conclusions contained herein, do not, and is not intended to, determine any factual or legal issue in any other jurisdiction, or have any preclusive or collateral estoppel effects in any lawsuit or action by any person or party other than the Washington State Insurance Commissioner.

EXECUTED this 20th day of December, 2019.

TRINITY HEALTHSHARE, INC.

By: 

Printed Name: William H. Thread III

Printed Corporate Title: Chairman

AGREED ORDER:

Pursuant to the foregoing factual Basis and Consent to Order, the Insurance Commissioner of the state of Washington hereby Orders as follows:

1. Trinity shall pay a fine in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00), receipt of which is hereby acknowledged by the Insurance Commissioner.

2. Trinity will not solicit state of Washington residents to enroll in its HCSM Sharing Programs. Additionally, within ten (10) days of the entry of this Order, Trinity will notify all state of Washington residents who were enrolled in Trinity HCSM Sharing Programs prior to May 13, 2019, that Trinity will no longer be offering its Sharing Programs in the state of Washington. Trinity may continue to facilitate sharing among current state of Washington Trinity members for one (1) year after the entry of this Order such that members have sufficient time to find alternative options.

3. This Order is based solely on the application of the Washington State insurance code to the specific facts of the Insurance Commissioner's investigation in this case. Trinity and the Washington Insurance Commissioner are the only parties to this Order. Therefore, this Order, and any provision, findings, or conclusions contained herein, do not, and is not intended to, determine any factual or legal issue in any other jurisdiction, or have any preclusive or collateral estoppel effects in any lawsuit or action by any person or party other than the Washington State Insurance Commissioner.

ENTERED at Tumwater, Washington, this 30th day of DECEMBER 2019.



MIKE KREIDLER
Insurance Commissioner

By and through his designee



KIMBERLY TOCCO
Insurance Enforcement Specialist
Legal Affairs Division