



OFFICE OF
INSURANCE COMMISSIONER

August 1, 2019

Jeffrey L. Gingold, JD, LLM
Gingold Law Firm PLLC
400 Harborview Drive SE, Suite 237
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Re: Alieria Healthcare Inc.
Proposed Consent Order Levying a Fine – OIC Order No. 19-0376

Dear Mr. Gingold:

The Office of the Insurance Commissioner has found that Alieria Healthcare Inc. ("Alieria") has violated a provision of Washington State law. The violation(s) are detailed in the attachment to this letter. When a violation occurs, the Insurance Commissioner is granted the authority to take action, which includes levying a fine.

We are offering Alieria an opportunity to settle this matter by signing the attached Consent Order and paying a fine. As part of this settlement, Alieria will admit its violation, pay the imposed fine, and agree to fully comply with all applicable laws of Washington State going forward.

The deadline to accept the settlement offer and pay the fine is **September 2, 2019**. Please refer to the instructions on the next page. Payment will not be accepted without the signed order. When we receive your signed order and fine payment, the Insurance Commissioner will execute the agreement and provide you with a validated copy of the settlement agreement for your records. If the settlement offer is not accepted by that date, it will be withdrawn.

Upon withdrawal of the settlement offer, the Insurance Commissioner may request a hearing to impose the fine. Alternatively, you may request a hearing yourself. If this matter results in a hearing, the Insurance Commissioner is not bound by this settlement offer and may seek a fine in the full amount warranted for your particular situation.

If you have any questions regarding this matter, I can be reached at (360) 725-7063 or by email at KimT@oic.wa.gov.

Sincerely,

Handwritten signature of Kimberly Tocco in cursive script.

Kimberly Tocco
Insurance Enforcement Specialist
Legal Affairs Division

Enclosure: Consent Order

How do I accept this time-limited settlement offer?

By September 2, 2019, you must:

1. Sign the attached settlement order. The settlement order is called a *Consent Order* because you are agreeing or consenting to the terms of the agreement.
2. Pay the fine amount indicated in the order by check or money order. Make the check or money order payable to WA Office of Insurance Commissioner.
3. Mail the signed order with your payment to:

Office of the Insurance Commissioner
Attn: Fiscal
PO Box 40255
Olympia, WA 98504-0255

or
Office of the Insurance Commissioner
Attn: Fiscal
5000 Capitol Blvd SE
Tumwater, WA 98501

Payment will not be accepted without the signed order. When we receive your signed order and fine payment, the Insurance Commissioner will execute the agreement and provide you with a validated copy of the settlement agreement for your records. If the settlement offer is not accepted by the date given, it will be withdrawn.

How do I request an administrative hearing?

By October 30, 2019, you must fill out and sign the Demand for Hearing form online at the following location:

<https://www.insurance.wa.gov/how-file-demand-hearing>

Your Demand for Hearing can be in a separate document, but the completed Demand for Hearing form must also be filed along with your written demand.

1. If you would like to also provide a written request for an administrative hearing, your written request should include:
 - A brief statement of how you are harmed by the commissioner's proposed action.
 - A statement of the outcome you seek.
 - Your contact information: name, mailing address, email address, and phone number.
 - A copy of the commissioner's proposed order you are challenging.

Although not required, it would be helpful if you also included the following information in your written request for a hearing:

- A statement identifying the facts in the *Consent Order* you disagree with or believe are inaccurate, and why you think so.
 - A statement identifying any additional facts or information you want the Insurance Commissioner to consider.
2. Mail your written request to:

Office of the Insurance Commissioner
ATTN: Hearings Unit
PO Box 40255
Olympia, WA 98504-0255

For more information about the hearings process, please visit: <http://www.insurance.wa.gov/about-administrative-hearings>

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

In the Matter of

ALIERA HEALTHCARE INC.,

Unauthorized Entity/Respondent.

Order No. 19-0376

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 48.02.060, RCW 48.15.020, RCW 48.15.023, RCW 48.17.063 and RCW 48.155.130(1), and Alieria Healthcare 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. Alieria Healthcare Inc. (“Alieria” or “the Company”) is a nonresident corporation domiciled in Delaware and incorporated on December 18, 2015. Alieria is not licensed to sell, solicit, or negotiate insurance in the state of Washington. Alieria is also not registered as a health care service contractor or licensed as a discount plan organization in the state of Washington.

2. Trinity HealthShare, Inc. (“Trinity”) is a nonresident corporation domiciled in Delaware. Trinity first incorporated in the state of Delaware on June 27, 2018. Trinity represents itself as a health care sharing ministry (“HCSM”) as defined by 26 USC § 5000A and incorporated by reference under RCW 48.43.009. Trinity does not hold a certificate of authority in the state of Washington.

3. On May 13, 2019, the Insurance Commissioner ordered Alieria Healthcare Inc. to cease and desist from conducting the unauthorized business of insurance in the state of Washington under Order to Cease and Desist No. 19-0251.

4. To qualify as a health care sharing ministry under the Internal Revenue Service (“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.

5. Trinity is the subject of a separate but related enforcement action based on the Insurance Commissioner's determination that Trinity does not meet the legal definition of a HCSM and is therefore acting as an unauthorized insurer in the state of Washington. See Consent Order Levying A Fine No. 19-0375.

6. Following receipt of a complaint, the Insurance Commissioner investigated to determine whether Alera is accurately representing its products to Washington consumers as a HCSM in compliance with state and federal law. The complaint alleged that Alera is soliciting and recruiting agents to sell misleading products to Washington consumers by using marketing materials that may lead the average consumer to believe they are purchasing healthcare insurance rather than a HCSM membership.

7. The Insurance Commissioner's investigation determined that Alera 1) failed to accurately represent Trinity's statement of beliefs, as defined by Trinity's bylaws and communicated to regulatory authorities, 2) provided misleading training to prospective agents about the nature of its HCSM products, 3) provided misleading advertisements to the public and prospective HCSM customers about the nature of its HCSM products, 4) held itself out as health care service contractor without being registered, and 5) is conducting business as an unlicensed discount plan organization.

8. Alera is the exclusive administrator, marketer, and program manager for Trinity and is solely responsible for the development of HCSM plan designs, pricing, marketing materials, vendor management, and recruitment and maintenance of a national sales force on behalf of Trinity.

9. By the terms of their Management and Administration Agreement ("the Agreement"), Alera has the right, at its sole discretion, to develop and market "the schedule of medical services eligible for sharing under the HCSM" with other purportedly "non-insurance" health care products developed and managed by Alera. Such other products include telemedicine, discount prescription drugs, and concierge services to locate in-network providers. In order to purchase any of Alera's HCSM-inclusive plans, individuals must acknowledge Trinity's statement of faith and lifestyle requirements ("Statement of Faith"), as deemed necessary by Trinity and agreed upon by Alera.

10. Alieria's marketing and training materials fail to accurately communicate the faith-based nature of its HCSM offerings and instead pitch an alternative solution to health *insurance* that offers membership to individuals of "all faiths." For example, in a video seminar for new or prospective agents, a trainer explains:

Just to give you a general overall synopsis of what it's saying ... It basically is saying that you believe in a higher power. It doesn't necessarily have to be a Christian God, or a Buddhist God, or a Jewish God. It doesn't ... it doesn't matter as long as we all believe that there is a higher power and we're all living our life that the best way that we possibly can. We're maintaining a healthy lifestyle. We're trying to avoid those types of foods, behaviors, habits - things that, you know, cause us illness that are in our control.

As long as we're doing those types of things, we're all like-minded individuals. So if you feel that way, and you are a like-minded individual, that's all we're trying to find out. And, if you are, you're gonna say, "Yes," you believe in the five same statement of beliefs that we all do.

11. In addition to misrepresenting Trinity's Statement of Faith, Alieria engages in marketing strategies that omit any reference to the faith-based ministry aspect of its HCSM plans. For example, Alieria's web-based advertisement to recruit prospective agents to sell its HCSM products touts the opportunity to sell "the next generation Healthcare products" and suggests Alieria can offer employers "a healthcare plan that saves money." The advertisement does not refer to a required Statement of Faith. Likewise, Alieria's prospective agent training portal provides required training videos that explain Alieria's HCSM plan offerings with no reference to consumers' required Statement of Faith.

12. Alieria's repeated use of insurance terminology in its agent training and marketing materials has the capacity to deceive both prospective agents and prospective consumers into believing they are purchasing a non-traditional *insurance* plan. For example, a video seminar for prospective agents refers to Alieria's "individual alternative market" as the company's "bread and butter." The narrator/trainer states that Alieria's comprehensive HCSM plans not only "*mirrors traditional insurance*, but truly provide *comprehensive healthcare* for an individual." (Emphasis added). The narrator/trainer also describes one of Alieria's HCSM plans (InterimCare) as "our short-term medical plan."

13. Alieria’s consumer advertisements and member guides include numerous words and phrases whose meaning is only clear by reference to insurance terms. These words and phrases deceive consumers into believing they are purchasing healthcare insurance. For example, product offerings include Catastrophic, Standard, Interim, and Comprehensive plans offered at Bronze, Silver, or Gold tiers; plan descriptions refer to “medical services recommended by the USPTF and outlined in the ACA for preventive care;” defined terms include Usual, Customary and Reasonable (UCR) charges; and members receive an illustrated comparison of “cost-sharing” requirements between “network” and “non-network” care.

14. Alieria solicits and sells plans to Washington consumers that are built on an extensive network of preferred providers and include other healthcare “essentials” that may mislead consumers into thinking they are purchasing healthcare insurance. Alieria’s HCSM plans include access to telemedicine services through “FirstCall Telemedicine,” prescription drug discounts through “Rx Valet,” and access to nationwide network providers through First Choice Health Network. Alieria maintains capitated contracts with third-party providers in order to provide its members with access to health care services. These contracts are commonly used by health insurers and health maintenance organizations to mitigate financial risk by establishing an agreed-upon set of discounted rates. Alieria is not registered as a Washington health care service contractor or a licensed discount plan organization.

15. 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.

16. RCW 48.30.010(1) provides that no person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business as such methods, acts, or practices are defined pursuant to subsection (2) of this section.

17. RCW 48.30.010(2) provides that in addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the Insurance Commissioner may from time to time by regulation promulgated pursuant to chapter 34.05 RCW, define other methods of competition and other acts and practices in the conduct of such business

reasonably found by the Insurance Commissioner to be unfair or deceptive after a review of all comments received during the notice and comment rule-making period.

18. RCW 48.30.040 provides that no person shall knowingly make, publish, or disseminate any false, deceptive or misleading representation or advertising in the conduct of the business of insurance, or relative to the business of insurance or relative to any person engaged therein.

19. RCW 48.30.090 provides that no person shall make, issue or circulate, or cause to be made, issued or circulated any misrepresentation of the terms of any policy or the benefits or advantages promised thereby.

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

21. RCW 48.15.020(2)(a) provides that a person may not, in this state, represent an unauthorized insurer except as provided in this chapter.

22. RCW 48.17.060(1) provides that a person shall not sell, solicit, or negotiate insurance in this state for any line or lines of insurance unless the person is licensed for that line of authority in accordance with this chapter.

23. 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.

24. RCW 48.155.020(1) provides that, before conducting discount plan business to which this chapter applies, a person must obtain a license from the Insurance Commissioner to operate as a discount plan organization.

25. WAC 284-50-050(1) provides that the format and content of an advertisement to which these rules apply shall be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. Whether an advertisement has a capacity or tendency to mislead or deceive shall be determined by the Insurance Commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, within the segment of the public to which it is directed.

26. WAC 284-50-050(2) provides that advertisements shall be truthful and not misleading in fact or in implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, shall not be used.

27. WAC 284-50-060(1) provides that no advertisement shall omit information or use words, phrases, statements, references, or illustrations if the omission of such information or use of such words, phrases, statements, references, or illustrations has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, or premium payable. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale or an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements.

28. WAC 284-50-210 provides that a violation of these rules, WAC 284-50-010 through 284-50-230, is hereby defined to be an unfair method of competition and an unfair or deceptive act or practice in the conduct of the business of insurance, pursuant to RCW 48.30.010.

29. RCW 48.17.063 provides that if the Insurance Commissioner has cause to believe that any person has violated the provisions of RCW 48.17.060, the Insurance Commissioner may 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.

30. RCW 48.155.130(1) provides that in lieu of or in addition to suspending or revoking a discount plan organization's license under RCW 48.155.020(8), whenever the Insurance Commissioner has cause to believe that any person is violating or is about to violate any provision of this chapter or any rules adopted under this chapter or any order of the Insurance Commissioner, the Insurance Commissioner may:

- (a) Issue a cease and desist order; and
- (b) After hearing or with the consent of the discount plan organization and in addition to or in lieu of the suspension, revocation, or refusal to renew any license, impose a monetary penalty of not less than one hundred dollars for each violation and not more than ten thousand dollars for each violation.

31. RCW 48.155.130(2) provides that a person that willfully operates as or aids and abets another operating as a discount plan organization in violation of RCW 48.155.020(1) commits insurance fraud and is subject to RCW 48.15.020 and 48.15.023, as if the unlicensed discount plan organization were an unauthorized insurer, and the fees, dues, charges, or other

consideration collected from the members by the unlicensed discount plan organization or marketer were insurance premiums.

32. RCW 48.15.023(2) provides 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.

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

34. RCW 48.15.023(4) provides 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.

35. RCW 48.15.023(5)(a) provides 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.

36. By misrepresenting Trinity's statement of faith as defined by Trinity's bylaws and communicated to regulators, providing misleading training and advertisements to prospective agents and the public about the nature of its HCSM products, holding itself out as a health care service contractor without being registered, and acting as an unlicensed discount plan organization, the Company violated RCW 48.30.010, RCW 48.30.040, RCW 48.30.090, RCW 48.44.015(1), RCW 48.15.020(1), RCW 48.15.020(2)(a), RCW 48.17.060(1), RCW 48.155.020(1), WAC 284-50-050(1), WAC 284-50-050(2), WAC 284-50-060(1), and RCW 48.155.130(2), justifying the imposition of a fine under RCW 48.15.023(5), RCW 48.17.063, and RCW 48.155.130.

CONSENT TO ORDER:

The Insurance Commissioner of the state of Washington and the Company agree the best interest of the public will be served by entering into this Order. NOW, THEREFORE, the Company 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 the Company's payment of a fine, and upon such terms and conditions as are set forth below:

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

2. The Company 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 Million Dollars (\$1,000,000.00) to be paid by **September 2, 2019**.

4. The Company understands and agrees that any further failure to comply with the statutes and/or regulations that are the subject of this Order constitutes grounds for further penalties, which may be imposed in direct response to further violations.

5. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving the Company. However, the facts of this Order, and any provision, finding, or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

EXECUTED this _____ day of _____, 2019.

ALIERA HEALTHCARE INC.

By: _____

Printed Name: _____

Printed Corporate Title: _____

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. The Company shall pay a fine in the amount of One Million Dollars (\$1,000,000.00), receipt of which is hereby acknowledged by the Insurance Commissioner.

2. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving the Company. However, the facts of this Order, and any provision, finding, or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

ENTERED at Tumwater, Washington, this _____ day of _____ 2019.



MIKE KREIDLER
Insurance Commissioner

By and through his designee

KIMBERLY TOCCO
Insurance Enforcement Specialist
Legal Affairs Division