

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



OFFICE OF
INSURANCE COMMISSIONER

OLYMPIA OFFICE:
INSURANCE BUILDING
P.O. BOX 40255
OLYMPIA, WA 98504-0255
Phone: (360) 725-7000

August 1, 2019

J. Joseph Guilkey
BakerHostetler
200 Civic Center Drive, Ste 1200
Columbus, OH 43215
jguilkey@bakerlaw.com

Re: Trinity Healthshare Inc.
Proposed Consent Order Levying a Fine and Assessing Premium Taxes and Penalty
OIC Order No. 19-0375

Dear Mr. Guilkey:

The Office of the Insurance Commissioner has found that Trinity Healthshare Inc. ("Trinity") 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 Trinity an opportunity to settle this matter by signing the attached Consent Order and paying a fine. As part of this settlement, Trinity will admit its violation, pay the imposed fine, premium taxes, and penalty, and agree to fully comply with all applicable laws of Washington State going forward.

The deadline to accept the settlement offer, pay the fine, taxes, and penalty is **September 2, 2019**. Please refer to the instructions on the next page. **Payment for the fine, and taxes and penalty, must be paid by separate payments.** Additionally, payments will not be accepted without the signed order. When we receive your signed order and separate payments for the fine, and taxes and penalty, 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 If the settlement offer is not accepted by that date, it will be withdrawn.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.

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, taxes and penalty indicated in the order by 2 separate checks or money orders. Make the checks or money orders payable to WA Office of Insurance Commissioner.
3. Mail the signed order with your 2 separate payments 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 separate payments for the fine, and taxes and penalty, 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

TRINITY HEALTHSHARE, INC.,

Unauthorized Entity/Respondent.

Order No. 19-0375

CONSENT ORDER LEVYING A FINE
AND ASSESSING PREMIUM TAXES
AND PENALTY

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 26 USC § 5000A and incorporated by reference under 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.

3. Washington adopts the Internal Revenue Service (“IRS”) definition of HCSM under RCW 48.43.009. HCSMs that comply with the required federal provisions are not considered Washington health carriers or insurers and are exempt from regulation under the Washington insurance code.

4. The Insurance Commissioner’s Investigations Unit (“Investigations”) opened an investigation following a complaint from an insurer related to the potential misrepresentation of “healthcare” products as insurance and the recruitment of prospective brokers to sell these products to Washington consumers. The complaint alleged that Trinity’s corporate partner, Alieria Healthcare, Inc. (“Alieria”), is soliciting and recruiting agents to sell misleading products to

Washington consumers by using co-branded marketing communications that use language that may lead the average consumer to believe they are purchasing healthcare insurance rather than a HCSM membership. In these products, Washington consumers agree to pay a monthly amount to Trinity, which in turn promises to pay the consumers specified amounts upon the occurrence of certain medical expenses and services.

5. 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 and federal law.

6. The Insurance Commissioner's investigation determined that Trinity does not meet the legal definition of a HCSM and is therefore acting as an unauthorized insurer in the state of Washington.

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

8. 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.

9. Trinity first incorporated in the state of Delaware on June 27, 2018. Approximately six (6) weeks later, Trinity entered into a Management and Administration Agreement ("the Agreement") with Alera. The Agreement was effective August 13, 2018, and stated Trinity's intent to partner with Alera to include Trinity's HCSM program as a component of Alera's new and existing healthcare products. Trinity also granted its corporate affiliate, Alera, the exclusive right to develop, market, and sell its HCSM plans to individuals who agree to Trinity's statement of faith and lifestyle requirements.

10. Trinity has been in existence for approximately 13 months.

11. Further, at the time of the Agreement with Alera, Trinity had zero members in its HCSM and there was no predecessor organization in which Trinity's members were sharing medical costs. Trinity, with zero members, provided that any future enrolled members would become "customers" of Alera, who would maintain ownership over the "membership roster." Trinity cannot qualify for an exemption from state insurance regulation as a HCSM because the

Company has neither been in operation nor continuously sharing member health care costs since at least December 31, 1999, as required by law.

12. To further qualify as a lawful HCSM, Trinity must be comprised of members who share a “common set of ethical or religious beliefs” and share medical burdens in accordance with those beliefs. If Trinity’s members do not share common beliefs – regardless of the content of those beliefs – Trinity cannot represent itself as a HCSM and qualify for an exemption from Washington insurance regulation.

13. The Insurance Commissioner’s investigation determined that Trinity espouses contradictory versions of the required “common set of ethical or religious beliefs” that vary based on the intended audience.

14. Trinity has communicated to state and federal regulatory authorities that it holds to a Protestant expression of the Christian faith as stated in its written bylaws (“Statement of Faith”) and requires its prospective members to affirm this Statement of Faith.

15. Trinity’s Statement of Faith, as presented to regulatory authorities, is in stark contrast to the marketing and training materials distributed by its authorized for-profit partner, Alieria. For example, according to its website, Trinity offers an alternative solution to health insurance and offers membership to individuals of “all faiths.” Likewise, 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.

16. Trinity’s representations of its written Statement of Faith are further contradicted by the express terms of its Agreement with Alieria. Specifically, Trinity grants Alieria the “exclusive license” to market HCSM plans to members of the public “who will acknowledge the standard of beliefs . . . as deemed necessary by Trinity, and agreed upon by Alieria . . .” (Emphasis

added). By delegating consent to its “common set of ethical or religious beliefs” to its for-profit corporate partner and exclusive marketing agent, Trinity contradicts its own Statement of Faith as represented to regulators and fails to meet the statutory requirement for HCSMs.

17. Trinity does not meet the legal definition of a HCSM and is therefore not exempt from regulation as an insurer and is acting as an unauthorized insurer in the state of Washington. As of June 15, 2019, 3,058 Washington consumers are actively enrolled in Trinity plans. Trinity and its for-profit partner, Alera, have collected \$3,851,997.88 from Washington consumers. Of this total, Trinity received \$2,114,430.91.

18. 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.

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

20. RCW 48.01.050 provides in relevant part that “insurer” as used in this code includes every person engaged in the business of making contracts of insurance.

21. 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.

22. 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.

23. RCW 48.05.030(1) provides 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.

24. 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.

25. RCW 48.14.020(1) provides that an insurer 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. Such tax shall be in the amount of two percent of all premiums.

26. RCW 48.14.060(1) provides that any insurer failing to file its tax statement and to pay the specified tax on premiums 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.

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

28. RCW 48.14.095 provides in relevant part that:

- (1) 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), 48.17.060, 48.36A.290(1), 48.44.015(1), or 48.46.027(1).
- (2) Except as provided in subsection (7) of this section, RCW 48.14.020, 48.14.0201, and 48.14.060 apply to insurers or taxpayers identified in subsection (1) of this section.
- (7) This section does not apply to premiums on insurance procured by a licensed surplus line broker under chapter 48.15 RCW.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. By failing to operate as a bona fide HCSM as defined by state and federal law, Trinity does not meet the requirements for an exemption from insurance regulation under RCW 48.43.009. By transacting insurance business and therefore acting as an unauthorized insurer in the state of Washington, the Company violated RCW 48.05.030(1), RCW 48.15.020(1), and RCW 48.30.040, justifying the imposition of a fine under RCW 48.15.023(5)(a)(ii).

35. By failing to remit premium taxes on policies covering 3,058 Washington consumers while unlicensed to transact insurance business, Trinity HealthShare, Inc. violated RCW 48.14.020 and RCW 48.14.095, justifying the assessment of a premium tax, tax interest and tax penalties under RCW 48.14.020, RCW 48.14.060, and RCW 48.14.095.

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 Hundred Thousand Dollars (\$100,000.00) to be paid by **September 2, 2019**.

4. By agreement of the parties, the Company will pay premium tax in the amount of \$42,289, a tax penalty in the amount of \$8,458, and interest in the amount of \$626 to the Office of the Insurance Commissioner to be paid by **September 2, 2019**.

5. 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.

6. 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.

TRINITY HEALTHSHARE, 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 Hundred Thousand Dollars (\$100,000.00), receipt of which is hereby acknowledged by the Insurance Commissioner.
2. The Company shall pay premium tax in the amount of amount of \$ 42,289, a tax penalty in the amount of \$ 8,458, and interest due in the amount of \$626, for a total of \$51,373.00.
3. 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