CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION
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CALIFORNIA DEPARTMENT OF INSURANCE

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of: ALIERA HEALTHCARE, INC., dba as Aliera Companies, Inc., and TRINITY HEALTHSHARES, INC. Respondents.	File No. LA201900234 **CEASE AND DESIST; and NOTICE OF RIGHT TO HEARING and MONETARY PENALTY** (Insurance Code § 12921.8)

TO ALIERA HEALTHCARE, INC., dba as Aliera Companies, Inc., and TRINITY HEALTHSHARES, INC.:

JURISDICTION AND PARTIES

1. The California Department of Insurance, (hereafter "Department"), brings this matter against ALIERA HEALTHCARE, INC., dba as Aliera Companies, Inc., and TRINITY HEALTHSHARES, INC., before the Insurance Commissioner of the State of California, (hereafter "Insurance Commissioner").

2. ALIERA HEALTHCARE, INC. is a for-profit corporation organized under the laws of Delaware doing business in California (hereafter "Respondent Aliera").

3. Effective July 22, 2019, the name of Aliera Healthcare, Inc. changed to the Aliera

Companies, Inc. and become a holding company for multiple wholly-owned subsidiaries.

4. Respondent Aliera first incorporated on September 29, 2011.

5. Respondent Aliera does not hold a certificate of authority or other license authorizing it to transact insurance in the State of California.

6. TRINITY HEALTHSHARE INC. is a corporation organized under the laws of Delaware doing business in California (hereafter "Respondent Trinity").

7. Respondent Trinity first incorporated in Delaware on June 27, 2018.

8. Respondent Trinity does not hold a certificate of authority or other license authorizing it to transact insurance in the state of California.

9. On or about August 13, 2018, Respondent Aliera and Respondent Trinity entered into an Agreement wherein Respondent Aliera is named the administrator, exclusive marketer and program manager for Respondent Trinity.

10. Hereafter Respondent Aliera and Respondent Trinity shall be known collectively as "Respondents."

11. The Department has information and believes that Respondents have approximately 11,000 California residents as members.

FINDINGS & AUTHORITY

12. Insurance Code § 12921.8(a) authorizes the Insurance Commissioner to issue a Cease and Desist Order to a person who has acted in a capacity for which a license, registration, permit, or Certificate of Authority from the Insurance Commissioner was required but not possessed.

13. Insurance Code § 12921.8 does not require the Insurance Commissioner to hold a hearing prior to issuing a Cease and Desist Order.

14. California Insurance Code § 22 provides as follows: Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event.

15. Insurance Code section 700 provides as follows:

> a) A person shall not transact any class of insurance business in this state without first being admitted for that class. Except for the State Compensation Insurance Fund as authorized by Sections 11770 and 11778 to 11780.5, inclusive, admission is secured by procuring a certificate of authority from the commissioner. The certificate shall not be granted until the applicant conforms to the requirements of this code and of the laws of this state prerequisite to its issue.
>
> b) The unlawful transaction of insurance business in this state in willful violation of the requirement for a certificate of authority is a public offense punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by fine not exceeding one hundred thousand dollars ($100,000), or by both that fine and imprisonment, and shall be enjoined by a court of competent jurisdiction on petition of the commissioner.

16. Insurance Code section 740 provides that "[n]otwithstanding any other provision of law, and except as provided herein, any person or other entity that provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether the coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the department unless the person or other entity shows that while providing the services it is subject to the jurisdiction of another agency of this or another state or the federal government."

17. Insurance Code section 790.03 provides that the following are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

> (a) Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce the policyholder to lapse, forfeit, or surrender his or her insurance.

(b) Making or disseminating or causing to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatsoever, any statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business, which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading.

18. Insurance Code section 1631 provides that "[u]nless exempt by the provisions of this article, a person shall not solicit, negotiate, or effect contracts of insurance, or act in any of the capacities defined in Article 1 (commencing with Section 1621) unless the person holds a valid license from the commissioner authorizing the person to act in that capacity. The issuance of a certificate of authority to an insurer does not exempt an insurer from complying with this article."

19. Insurance Code section 10112.27 provides that all non-grandfathered individual and small group health insurance policies issued in California shall provide coverage for essential health benefits pursuant to the PPACA.[1] Additionally, section 10112.27(e) provides that "A health insurer, or its agent, producer, or representative, shall not issue, deliver, renew, offer, market, represent, or sell any product, policy, or discount arrangement as compliant with the essential health benefits requirement in federal law, unless it meets all of the requirements of this section. This subdivision shall be enforced in the same manner as Section 790.03, including through the means specified in Sections 790.035 and 790.05."

20. Health Care Sharing Ministries ("HCSM") are organizations in which members share a common set of religious or ethical beliefs and agree to make payments to, or share, the medical expenses of other members. Respondents represent that they are a HCSM.

21. Respondent Trinity collects fixed monthly payments from its members, payments which vary according to the level of coverage, and conducts underwriting to screen for pre-existing conditions. Additionally, Respondent Trinity has a schedule of covered and excluded services, a schedule of copayments and deductibles, a claims adjudication process, and annual and lifetime limits.

[1] Patient Protection and Affordable Care Act 42 U.S.C. § 18022(a) (2010)

22. In exchange for the fixed monthly payments, Respondents undertake to indemnify its members for loss, damage, or liability arising from a costs incurred in connection with health events.

23. Respondent Aliera markets Respondent Trinity products as alternatives to traditional health insurance to California consumers. Those products have many of the attributes of traditional health insurance products subject to Department jurisdiction, regulation, and authority.

24. Respondents' advertisements, solicitations, and other materials are deceptive and have the capacity and tendency to mislead or deceive consumers to believe they are purchasing traditional health coverage rather than a HCSM membership with no guarantee that claims will be paid and products that do not comply with the Affordable Care Act. Respondents make, issue, and circulate misleading advertisements and other materials to California consumers, in violation of Insurance Code section 790.03(a) and (b).

25. Respondents provide misleading training to sales agents concerning the nature of its products, violation of Insurance Code section 790.03(a) and (b).

26. Respondents sell products that do not cover preexisting conditions, abortion and/or contraception, or comply with the Mental Health Parity Act[2], in violation of Insurance Code section 10112.27 and the PPACA.

27. Respondents do not meet the definition of HCSMs under the Internal Revenue Code, and therefore, individuals that receive benefits through Respondents do not meet the California state individual health insurance mandate.

28. Respondents are not currently licensed or authorized by the Insurance Commissioner to act in any capacity regarding the transaction of insurance in California, and during relevant periods herein, did not hold any license, Certificate of Authority, or permit, issued by the Insurance Commissioner, to act in any capacity regarding the transaction of insurance in California.

[2] Insurance Code § 10144.5

29. The facts alleged in paragraphs 20-28 show Respondents have undertaken to indemnify California consumers against loss, damage, or liability by providing products, advertisements, and other materials to California consumers which contain information that is misleading or have misrepresented the benefits of the products offered, in violation of Insurance Code section 790.03(a) and (b).

30. The facts alleged in paragraphs 20-28 show Respondents are acting in a capacity for which a license, registration, or certificate of authority from the commissioner is required but not possessed, in violation of Insurance Code sections 1631 and 700.

31. The facts alleged in paragraphs 20-28 show Respondents did issue, deliver, renew, offer, market, represent, or sell any product, policy, or discount arrangement that are not compliant with the PPACA, in violation of Insurance Code section 10112.27.

ORDER TO CEASE AND DESIST

1. NOW THEREFORE, RESPONDENTS ARE HEREBY ORDERED to immediately CEASE AND DESIST from providing products and or benefits to California consumers which are misleading or misrepresent the benefits of such products.

2. RESPONDENTS ARE FURTHER ORDERED to immediately cease and desist from the following:

a. Transacting insurance in the State of California in any capacity, including as an insurer, insurance agent, broker, or solicitor.

b. Advertising or acting as an insurer, insurance agent, broker, or solicitor in the State of California.

c. Advertising or acting as an insurer, insurance agent, broker, or solicitor exempt from regulation in the State of California.

d. Advertising, or participating in advertising, by newspaper, telephone book or listing, mail, handout, business card, or by any other written or printed presentation, or by telephone, radio, television, Internet, public outcry or proclamation, or in any other manner or

means whatsoever, whether personally or through others, that implies that they are licensed, permitted, or authorized, or are engaged in the business of soliciting, negotiating, executing, delivering, or furnishing insurance in the State of California in any manner.

e. Receiving any money, commission, fee, rebate, payment, remuneration, or any other valuable consideration whatsoever, in connection with any insurance transactions.

NOTICE OF FINE and GROUNDS FOR MONETARY PENALTY AND POTENTIAL LIABILITY PURSUANT TO CIC §§790 *et seq*

PLEASE TAKE NOTICE that the Insurance Commissioner may, pursuant to Insurance Code § 12921.8(a)(3)(B), impose a fine of up to five thousand dollars ($5,000) for each day this Order is violated.

Additionally, the facts alleged above constitute grounds, under Insurance Code § 790.05, for the Insurance Commissioner to order Respondents to cease and desist from engaging in such unfair acts or practices and to pay a civil penalty not to exceed five thousand dollars ($5,000) for each act, or if the act or practice was willful, a civil penalty not to exceed ten thousand dollars ($10,000) for each act as set forth under Section 790.035 of the California Insurance Code

NOTICE OF RIGHT TO HEARING

Insurance Code § 12921.8(c), provides in part, as follows:

> "A person to whom a cease and desist order…has been issued, may, within seven days after service of the order…request a hearing by filing a request for the hearing with the commissioner."

If you desire a hearing in this matter, your written request for a hearing must be received within seven days after you are served with this Order. The seven day period begins on the day after you are served with this Order, and if the seventh day falls on a weekend or holiday, the

deadline is extended to the next business day. Your written request for a hearing must be directed to:

Teresa R. Campbell
Assistant Chief Counsel
California Department of Insurance,
1901 Harrison Street, 4th Floor
Oakland, California 94612

IN WITNESS THEREOF this 8th day of March, 2020.

RICARDO LARA
Insurance Commissioner

By:

TERESA R. CAMPBELL
Assistant Chief Counsel