

**Before the State of South Carolina
Department of Insurance**

IN THE MATTER OF:

Aetna Health and Life Insurance Company
151 Farmington Avenue MC64
Hartford, CT 06156
And
Continental Life Insurance Company of
Brentwood, Tennessee
800 Crescent Centre Drive, Suite 200,
Brentwood, Tennessee 37067

SCDOI File 19-6567

**Consent Order
SBS Company #94306028**

This matter comes before me pursuant to an agreement entered between the State of South Carolina Department of Insurance (Department) and Aetna Health and Life Insurance Company ("AHLIC") and Continental Life Insurance Company of Brentwood, Tennessee ("CLIC"), both foreign insurers licensed to transact business in the State of South Carolina. This order is entered pursuant to the authority set forth in S.C. Code Ann. §§ 38-3-10 *et seq.*

After careful review of the evidence presented, I find as follows:

FINDINGS OF FACT

1. Raymond G. Farmer, as the Director of the South Carolina Department of Insurance, has jurisdiction over the subject matter and parties to this proceeding.
2. AHLIC and CLIC are foreign insurers authorized to transact insurance business in South Carolina. The insurers are subject to the jurisdiction and regulation of the Department pursuant to the South Carolina Insurance Code.
3. Both AHLIC and CLIC sold Medicare supplement insurance policies and paid varying compensation to its appointed agents selling Medicare Supplement insurance during various time periods beginning in February 2015 through the current time period based on the type of application. The commission was the same percentage for both open enrollment and underwritten applications.
4. During this time period, AHLIC and CLIC paid bonuses for underwritten applications that were greater than bonuses paid for open enrollment applications. During the six month open enrollment period, an insured cannot be denied coverage or charged more due to their health history. Outside the Medicare Supplement open enrollment period, an insurance company may use medical underwriting guidelines when reviewing an application for Medicare Supplement insurance coverage

5. When CLIC was notified by the Department that it believed this variation was a violation of South Carolina law, CLIC voluntarily stopped the bonus program. AHLIC ceased issuing Medicare Supplement policies in 2017.

CONCLUSIONS OF LAW

1. South Carolina law provides that :

An issuer shall not deny or condition the issuance or effectiveness of any Medicare Supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare Supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

See S.C. Code Ann. Regs. 69-46(11).

2. Moreover, in Bulletin 2012-06, the Department previously determined that the practice of providing different agent compensation during the open enrollment and guaranteed issue periods constituted an unfair trade practice. Paying lower agent compensation during the open enrollment period than during the period Medicare Supplement policies can be medically underwritten creates a disincentive for agents to sell Medicare Supplement policies during the open enrollment period. This disincentive placed a condition on the issuance of Medicare Supplement policies. *See S.C. Department of Insurance Bulletin 2012-06 (2012).*

3. Moreover, S.C. Code Ann. Regs. 69-46(16) provides that :

- A. An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare Supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.
- B. The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for no fewer than five (5) renewal years.
- C. No issuer or other entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.

D. For purposes of this section, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finder's fees.

4. Under S.C. Code Ann. § 38-57-30:

No person may engage, in this State, in any trade practice which is defined in this chapter as, or determined pursuant to this chapter to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

5. Accordingly, S.C. Code Ann. § 38-2-10(2) provides that administrative penalties may be imposed for each violation of the South Carolina insurance laws as follows:

If the violator is an insurer or a health maintenance organization licensed in this State, the director or his designee shall (a) fine the violator in an amount not to exceed fifteen thousand dollars, or (b) suspend or revoke the violator's authority to do business in this State, or both. If the violation is willful, the director or his designee shall (a) fine the violator in an amount not to exceed thirty thousand dollars, or (b) suspend or revoke the violator's authority to do business in this State, or both. S.C. Code Ann. § 38-2-10 (2015).

6. Both AHLIC and CLIC were in violation of the laws of this state, specifically S.C. Code Ann. §38-57-30 and S.C. Code Ann. Regs. 69-46 by utilizing a compensation schedule for its agents selling Medicare supplement insurance that provided greater compensation for agents that sold Medicare Supplement policies during the period where the policies could be medically underwritten than during open enrollment.

ORDER

Prior to the initiation of any administrative proceedings by the Department against AHLIC and CLIC, the parties agreed to submit the entire matter to me along with their specific recommendation, for my summary decision, rather than to proceed toward a formal public hearing. The consensual recommendation was that, in lieu of the Department seeking to revoke their authority, AHLIC and CLIC would waive their right to a public hearing and pay an administrative fine in the total amount of sixteen thousand two hundred and ten dollars (\$16,210.00). **The administrative fine must be paid within thirty (30) days of receipt of this order.**

Although I can now impose the disciplinary actions set forth in South Carolina law, I hereby invoke the discretionary authority given to me and impose an administrative fine against AHLIC and CLIC in the total amount of \$16,210.00. That fine must be paid as prescribed in the preceding paragraph. Via execution of this Consent Order, the insurers agree that if that total fine

amount is not timely paid, the insurers' certificates of authority will be revoked without any further disciplinary proceedings.

AHLIC and CLIC acknowledge that this fine is conditioned upon their agreement to fully comply with all statutes and regulations of this Department. This fine includes all expenses related to investigation of this matter as provided in § 38-13-70 of the South Carolina Code. By the signature of the president of AHLIC and CLIC or his/her designee, AHLIC and CLIC acknowledge this administrative order as a public record subject to the disclosure requirements of the State of South Carolina's *Freedom of Information Act*, S.C. Code Ann. §§ 30-4-10, *et seq.* (Supp. 2016).

Nothing contained within this administrative order should be construed to limit, or to deprive any person of, any private right of action under the law. Nothing contained within this administrative order should be construed to limit, in any manner, the criminal jurisdiction of any law enforcement officer or judicial officer. Nothing contained within this administrative order should be construed to limit the statutory duty of the Director of Insurance, exercised either directly or indirectly through the Department of Insurance, to "report to the Attorney General or other appropriate law enforcement officials criminal violations of the laws relative to the business of insurance or the provisions of this title which he considers necessary to report." S.C. Code Ann. § 38-3-110 (2015).

THEREFORE, it is ORDERED that AHLIC and CLIC, shall pay the South Carolina Department of Insurance an administrative fine in the total amount of \$16,210.00, payable in the amount of \$4,180.00 by AHLIC and \$12,030.00 by CLIC.

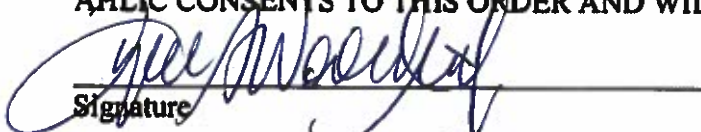
This Consent Order becomes effective as of the date of my signature below.



Raymond G. Farmer
Director of Insurance

May 7, 2019
Columbia, South Carolina

AHLIC CONSENTS TO THIS ORDER AND WILL COMPLY AS AGREED:


Signature

Tyree Woodruff
Printed Name

President
Title

Aetna Health and Life Insurance Company
151 Farmington Avenue MC64
Hartford, CT 06156

May 14, 2019

CLIC CONSENTS TO THIS ORDER AND WILL COMPLY AS AGREED:

Signature: 

Printed Name: Tyree Woodridge

Title: President

Date: May 14, 2019

Continental Life Insurance Company of Brentwood, Tennessee

800 Crescent Centre Drive, Suite 200

Franklin, TN 37067