

**IN THE MISSOURI DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION**

In Re: KANAWHA)	
INSURANCE COMPANY)	
SERFF TRACKING NUMBER)	Case No. 140124118C
HUMA-129384397)	

ORDER DISAPPROVING FORM FILING

Upon review and consideration of the filing of Kanawha Insurance Company, SERFF Tracking Number HUMA-129384397, specifically Forms 8019 MO and 8119 MO the Deputy Director DISAPPROVES said forms for the reasons stated below.

FINDINGS OF FACT

1. John M. Huff is the Director of the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri (“Director” of the “Department”).
2. Kanawha Insurance Company (“Kanawha”), NAIC Number 65110, is a foreign life and health insurance company organized pursuant to the laws of the state of South Carolina and transacting insurance business in this state pursuant to a Certificate of Authority issued by the Director.
3. Pursuant to §376.405,¹ insurance companies licensed to transact business in this state may not deliver or issue for delivery in this state a policy of group accident or group health insurance unless the form has been approved.
4. The Division of Market Regulation (the “Division”) is designated pursuant to §374.075 with the review of forms that are filed by insurance companies.
5. Kanawha filed policy forms with the Director via the System for Electronic Rate and Form Filing (“SERFF”) on January 22, 2014. The SERFF Tracking Number is HUMA-129384397 (“Filing”).
6. The Filing contains, in pertinent part, forms 8019 MO, identified as the Group Hospital Indemnity Policy (“Group Policy”), and 8119 MO, identified as the Group Hospital Indemnity Certificate of Insurance (“Certificate”).
7. Brackets ([...]) within a policy form reviewed by the Division indicate that the language within the brackets may be included or excluded from the policy form, or the brackets may indicate a numeric range.

¹ All statutory citations are to RSMo (Supp. 2013).

8. Potentially, all benefits, coverages, or terms in brackets could be included in an issued policy form.
9. Conversely, all benefits, coverages, or terms in brackets could be excluded from an issued policy form.
10. Based upon the brackets within the Group Policy and Certificate, these forms could offer almost no benefits whatsoever.
11. Kanawha filed the Group Policy and Certificate within SERFF as a Group Health Hospital Indemnity Policy.
12. On page 24 of the Group Policy under the section titled Premium Provisions and the subsection Grace Period, the Group Policy states:

This Policy has a thirty-one (31) day Grace Period. If any required Premium is not paid on or before the due date, it may be paid subsequently during the Grace Period. During the Grace Period, the Policy will stay in force. If full payment is not received within the Grace Period, insurance will be terminated effective the first day of the Grace Period.

13. On page 26 of the Group Policy and 19 of the Certificate under the section titled General Provisions and the subsection titled Incontestability, the Group Policy and Certificate state:

We will not contest the validity of the Policy except for nonpayment of Premiums after it has been in force for two (2) years from its Date of Policy.

No statement made by any person insured shall be used in any contest unless a copy of the statement is or has been furnished to:

- the person insured; or
- in the event of death or incapacity of the person insured, to His or Her beneficiary or personal representative.

Except for Claims incurred within two (2) years after a Covered Person's Effective Date of Insurance, no statement made by any Insured when applying for insurance will be used to contest the validity of that insurance after:

- the insurance has been continuously in force for two (2) years during the lifetime of the person insured; and
- unless it is contained in a written form signed by the Insured.

This provision shall not stop Us from asserting at any time defenses based upon Policy terms that relate to eligibility for insurance.

14. On page 2 of the Group Policy, it states:

THIS POLICY DOES NOT PROVIDE BENEFITS DURING THE FIRST [0-24] MONTHS AFTER A COVERED PERSON'S EFFECTIVE DATE OF INSURANCE FOR CONDITIONS THAT WERE IN EXISTENCE PRIOR TO THE EFFECTIVE DATE OF INSURANCE.

15. On page 38 of the Group Policy and 31 of the Certificate under the section titled Definitions, Kanawha defines Pre-existing Condition as:

[A] condition which a Doctor has treated or for which a Doctor has advised treatment of the Covered Person within 12 months before the Covered Person's Effective Date of Insurance. It is also one which would cause a person to seek diagnosis or care within the same 12-month period.

16. On page 26 of the Group Policy under the section titled General Provisions and the subsection titled Data Required, the Group Policy states:

No person will be deprived of insurance to which he is otherwise entitled or have insurance to which he is not entitled, because of any misstatement of fact by the Policyholder. Any required adjustment may be made in premiums or benefits.

17. On pages 19 and 20 of the Group Policy and 14 of the Certificate under the section titled Claim Provisions and the subsection titled Proof of Loss, the Group Policy and Certificate state:

Proof of Loss must be given to us within [90-365] days after a loss occurs or starts. If it is not possible to give Proof within this time limit, it must be given as soon as reasonably possible. Proof of Loss may not be given later than one year after the time such Proof is otherwise required, except if the individual is legally unable to provide it.

18. On page 30 of the Group Policy and 23 of the Certificate under the section titled Definitions, Kanawha defines a child's eligibility as:

If a Child is covered by this Policy, the Child's Eligibility will not end if the Child is Age [19-30] and remains:

- unmarried;
 - incapable of self-sustaining employment due to mental incapacity or physical handicap; and
 - chiefly dependent on the [Employee] or Spouse for support.
19. On page 11 of the Group Policy and page 6 of the Certificate under the section titled Eligibility and the bracketed subsection titled Additional Eligibility Requirements for Eligible Dependents, the Group Policy and Certificate state:

[Children must be Age [0-365] days but not more than Age [19-30].] [A child who is an Eligible [Employee/Member] may be covered as an Insured or a Child, but not both.]

CONCLUSIONS OF LAW

20. The Director shall approve only those policy forms that are in compliance with Missouri insurance laws, and “which contain such words, phraseology, conditions, and provisions which are specific, certain and unambiguous and reasonably adequate to meet needed requirements for the protection of those insured,” pursuant to §376.405.
21. The Director may disapprove a form filed with the Department, and in doing so must state the reasons for the disapproval in writing, pursuant to §376.405.

Kanawha’s Filing Does Not Substantively Provide All Provisions Required In All Group Policies Under Section 376.426

22. Section 376.426 states in relevant part:

No policy of group health insurance shall be delivered in this state unless it contains in substance the following provisions, or provisions which ... are more favorable...:

(1) *A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the policy shall continue in force*, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period;

(2) *A provision* that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue, and *that no*

statement made by any person covered under the policy relating to insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by the person making such statement; except that, no such provision shall preclude the assertion at any time of defenses based upon the person's ineligibility for coverage under the policy or upon other provisions in the policy;

* * *

(5) A provision specifying the additional exclusions or limitations, if any, applicable under the policy with respect to a disease or physical condition of a person, not otherwise excluded from the person's coverage by name or specific description effective on the date of the person's loss, which existed prior to the effective date of the person's coverage under the policy. Any such exclusion or limitation may only apply to a disease or physical condition for which medical advice or treatment was received by the person during the twelve months prior to the effective date of the person's coverage....;

(6) If the premiums or benefits vary by age, there shall be a provision specifying an equitable adjustment of premiums or of benefits, or both, to be made in the event the age of the covered person has been misstated, such provision to contain a clear statement of the method of adjustment to be used;

* * *

(10) A provision that in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within ninety days after the commencement of the period for which the insurer is liable, and that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of claim for any other loss, written proof of such loss must be furnished to the insurer within ninety days after the date of such loss. Failure to furnish such proof within such time shall not invalidate nor reduce any claim if it was not reasonably possible to furnish such proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity of the claimant, later than one year from the time proof is otherwise required;

* * *

(16) *A provision* stating that if a policy provides that *coverage of a dependent child terminates upon attainment of the limiting age for dependent children* specified in the policy, such policy, so long as it remains in force, shall be deemed to provide that attainment of *such limiting age does not operate to terminate the hospital and medical coverage of such child while the child is and continues to be both incapable of self-sustaining employment by reason of mental or physical handicap and chiefly dependent upon the certificate holder for support and maintenance*. Proof of such incapacity and dependency must be furnished to the insurer by the certificate holder at least thirty-one days after the child's attainment of the limiting age. The insurer may require at reasonable intervals during the two years following the child's attainment of the limiting age subsequent proof of the child's incapacity and dependency. After such two-year period, the insurer may require subsequent proof not more than once each year...;

(17) *A provision* stating that if a policy provides that coverage of a dependent child terminates upon attainment of the limiting age for dependent children specified in the policy, such policy, so long as it remains in force, until the dependent child attains the limiting age, shall remain in force at the option of the certificate holder. *Eligibility for continued coverage shall be established where the dependent child is:*

- (a) Unmarried and *no more than that twenty-five years of age*; and
- (b) A resident of this state; and
- (c) Not provided coverage as a named subscriber, insured, enrollee, or covered person under any group or individual health benefit plan, or entitled to benefits under Title XVIII of the Social Security Act.[.]

(Emphasis added.)

23. Kanawha's Group Policy is not compliant with Missouri insurance laws. Under the subsection titled "Premium Provisions" and the subsection "Grace Period," the Group Policy properly provides the 31-day grace period as required by §376.426(1), but then states "[i]f full payment is not received within the Grace Period, insurance will be terminated effective the first day of the Grace Period." Section 376.426(1) requires the policy to stay in full force during the grace period. The Group Policy does not stay in full force because it ends the first day of the Grace Period. Because the Group Policy is not in full force and retroactively terminates, it does not meet the substantive

requirements of §376.426(1). As such, the Group Policy does not comply with the laws of this state as required by §376.405.

24. Both Kanawha's Group Policy and Certificate are not compliant with Missouri insurance laws. Under the subsection titled "Incontestability," neither the Group Policy nor the Certificate provide a required substantive notice provision. The Group Policy and the Certificate do not notify the insured that "no statement made by any person ... shall be used in contesting the validity of the insurance... unless it is contained in a written instrument signed by the person making such statement," as required by §376.426(2). As such, neither the Group Policy nor the Certificate comply with the laws of this state as required by §376.405.
25. Neither Kanawha's Group Policy nor its Certificate is compliant with Missouri insurance laws. Within the second page of the Group Policy and under the section titled Definitions in both the Group Policy and the Certificate, the forms fail to comply with the required provisions of §376.426(5) and are noncompliant for the following reasons:
 - a. The Group Policy contains a provision stating conditions that were in existence prior to the effective date of insurance will not be covered during the first [0-24] months. While a provision for preexisting conditions providing a 12-month time frame or less, prior to the effective date of the policy, is compliant with the requirements of §376.426(5), no greater time frame is permissible. Because Kanawha's Group Policy and Certificate have a range of times frames that exceed 12 months, it does not substantively comply with the requirements of §376.426(5).
 - b. The Group Policy and Certificate define preexisting conditions to include conditions "which would cause a person to seek diagnosis or care within the same 12-month period." Section 376.426(5) defines a preexisting condition as one for which the insured received medical advice or treatment; it does not say that the insured should have sought diagnosis or care. The Group Policy's and Certificate's definition do not comply with §376.426(5) in that the language is neither substantially similar to the statutory language nor is it more favorable to the insured.

As such, the Group Policy and Certificate do not comply with the laws of this state as required by §376.405.

26. Kanawha's Group Policy is not compliant with Missouri insurance laws. Under the section titled Data Required, the form provides that if there is a misstatement of fact (which could include misstatement of age) "[a]ny required adjustment may be made in premiums or benefits;" however, the Group Policy does not contain a clear statement of the method of adjustment to be used. Section 376.426(6) requires such a clear statement. As such, the

Group Policy does not comply with the laws of this state as required by §376.405.

27. Neither Kanawha's Group Policy nor its Certificate is compliant with Missouri insurance laws. Under the section titled Claim Provisions and the subsection titled Proof of Loss, the forms fail to substantively provide two of the required provisions from §376.426(10) and are, therefore, noncompliant for the following reasons:
- a. While the Group Policy and Certificate provide the appropriate time frame to provide proof of claim, it does not notify the insured that failure to give proof within the time frame "shall not invalidate nor reduce any claim" if it was not reasonably possible to do so as required by §376.426(10).
 - b. The Group Policy and Certificate provide proof of loss must "not be given later than one year after the time such Proof is otherwise required, except if the individual is legally unable to provide it." Section 376.426(10) requires proof of loss be given within one year "except in the absence of legal capacity." Kanawha's provision is neither substantially similar to nor more favorable than the requirements of §376.426(10) in that the reason for untimely notice need only be due to the absence of legal capacity, not whether or not the individual was legally unable to provide it.

As such, neither the Group Policy nor the Certificate complies with the laws of this state as required by §376.405.

28. Neither Kanawha's Group Policy nor its Certificate is compliant with Missouri insurance laws. Section 376.426(16) states coverage for a dependent child will continue in force while the child remains "both incapable of self-sustaining employment by reason of mental or physical handicap and chiefly dependent upon the certificate holder for support and maintenance." Under the section titled Definitions, the forms fail to substantively provide several of the required provisions from §376.426(16) and are, therefore, noncompliant for the following reasons:
- a. Kanawha's Group Policy and Certificate state a dependent child's coverage will continue for a time if the dependent child remains "unmarried; incapable of self-sustaining employment due to mental incapacity or physical handicap; and chiefly dependent on the [Employee]...." Section 376.426(16) does not provide that a handicapped dependent must remain unmarried. Because the Group Policy and Certificate add the requirement that the handicapped dependent be unmarried, the language is not substantially similar to nor more favorable to the insured than §376.426(16).

- b. Kanawha's Group Policy and Certificate provide "[i]f a Child is covered by this Policy, the Child's Eligibility will not end if the Child is Age [19-30] and remains ... incapable of self-sustaining employment due to mental incapacity or physical handicap..." Section 376.426(16) requires the insurer to continue coverage for a dependent child beyond a limiting age for the reasons stated above. The Group Policy and Certificate do not comply with §376.426(16) because coverage for a handicapped dependent child terminates at a limiting age.

As such, neither the Group Policy nor the Certificate complies with the laws of this state as required by §376.405.

29. Neither Kanawha's Group Policy nor its Certificate is compliant with Missouri insurance laws. Under both the Definition section and the Eligibility section, the forms provide that eligible children must not be more than [19-30]. Section 376.426(17) defines a dependent child as one not older than twenty-five. Because Kanawha's Group Policy and Certificate have a dependent age range that includes ages younger than 25, it does not substantively provide the requirements of §376.426(17). As such, neither the Group Policy nor the Certificate complies with the laws of this state as required by §376.405.
30. After review and consideration of the policy forms included in the Kanawha Filing, the company has failed to demonstrate its compliance with Missouri law as enumerated herein.
31. While there may be additional reasons as to why these policy forms do not comply with Missouri's insurance laws, the reasons stated herein are sufficient to disapprove the forms.
32. Each reason stated herein for disapproval of a policy form is a separate and sufficient cause to disapprove such form.
33. Kanawha's Group Policy and Certificate do not comply with Missouri law. As such, said forms are not in the public interest.
34. This Order is in the public interest.

IT IS THEREFORE ORDERED that Forms 8019 MO and 8119 MO are hereby **DISAPPROVED**. Kanawha Insurance Company is hereby prohibited from delivering or issuing for delivery any policies of group health insurance utilizing said forms.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 7^m
day of March, 2014.



**JAMES R. MCADAMS
DEPUTY DIRECTOR**



NOTICE

TO: Kanawha Insurance Company and any unnamed persons aggrieved by this Order:

You may request a hearing on the disapproval of these forms. You may do so by filing a pleading with the Director of the Department of Insurance, Financial Institutions and Professional Registration, P.O. Box 690, Jefferson City, MO 65102, within 30 days after the mailing of this notice pursuant to 20 CSR 800-1.030.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2014, a copy of the foregoing Order and Notice was

1) Served via certified mail addressed to:

Bruce D. Broussard
President
Kanawha Insurance Company
500 West Main Street
Louisville, KY 40202

Marnissia Cunningham
Compliance Analyst
Kanawha Insurance Company
210 South White Street
Lancaster, SC 29721


