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

In Re: HEALTHY ALLIANCE LIFE INSURANCE COMPANY SERFF TRACKING NUMBER ANTA-129008368	))))	**Case No. 130627388C**

ORDER DISAPPROVING FORM FILING

Upon review and consideration of the filing of Healthy Alliance Life Insurance Company, SERFF Tracking Number ANTA-129008368, specifically Form ABCBS MO – SG PPO – OFF – v01, the Director DISAPPROVES said form 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.

2. Healthy Alliance Life Insurance Company ("Anthem"), NAIC Number 78972, is a domestic life and health insurance company organized pursuant to the laws of the state of Missouri 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 section 374.075[2] with the review of forms that are filed by insurance companies.

5. Anthem filed policy forms with the Director via the System for Electronic Rate and Form Filing ("SERFF") on April 30, 2013. The SERFF Tracking Number is ANTA-129008368 ("Filing").

6. The Filing contains, in pertinent part: Form ABCBS MO – SG PPO – OFF – v01, titled "Certificate of Coverage" ("Certificate").

[1] RSMo (2000).
[2] All statutory citations are to RSMo (Supp. 2012) unless otherwise noted.

7. On page 83 of the Certificate under the heading " Notice of Claim & Proof of Loss," Anthem states:

> After you get Covered Services, we must receive written notice of your claim within 20 days in order for benefits to be paid. The claim must have the information we need to determine benefits. If the claim does not include enough information, we will ask for more details and it must be sent to us within the time listed below or no benefits will be covered, unless required by law.
>
> In certain cases, you may have some extra time to file a claim. If we did not get your claim within 20 days but it is sent in as soon as reasonably possible and within one year after the 20 day period ends (i.e., within 15 months), you may still be able to get benefits. **However, any claims, or additional information on claims, sent in more than 15 months after you get Covered services will be denied.**

(*emphasis original in Certificate*).

8. On page 13 of the Certificate, with respect to coverage for Autism services, Anthem states:

> Benefits for Applied Behavior Analysis are limited to 415 hours* per Member per Benefit Period (In-Network and Out-of-Network combined).
>
> *this maximum will be adjusted triennially for inflation by the Director of the DIFP.

9. When questioned by the Division about the hourly limit placed on Applied Behavior Analysis ("ABA") in filing ANTA-129001372,[3] Anthem stated in part:

> As an "essential health benefit" within the meaning of the Patient Protection and Affordable Care Act (PPACA), we are prohibited by federal law from placing a dollar limit on autism benefits. However, pursuant to CMS guidance issued on March 4, 2013, plans are permitted to make "actuarially equivalent substitutions" for statutory dollar limits applicable to state-mandated benefits. Through careful actuarial analysis, we have converted the current dollar limit of $42,117 to 415 hours.

[3] Cross-reference in Order Disapproving Form Filing Case No. 130627387C.

CONCLUSIONS OF LAW

10. 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.

11. "Specific" is defined as "precisely formulated or restricted; definite; explicit; of an exact or particular nature."[4] "Certain" is defined as "ascertained; precise; identified; settled; exact; definitive; clearly known; unambiguous...."[5] "An ambiguity exists when there is duplicity, indistinctness, or uncertainty in the meaning of the language in the policy. Language is ambiguous if it is reasonably open to different constructions."[6]

12. 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.

13. 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...:
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> ***
>
> (8) A provision that written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy. Failure to give notice within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible;
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> ***
>
> (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

[4] *Black's Law Dictionary* 1398 (6th ed., West 1990)
[5] *Id.* at 225.
[6] *Seeck v. Geico Gen. Ins. Co.*, 212 S.W. 3d 129, 132 (Mo. banc 2007).

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[.]

14. Anthem's Certificate is not compliant with Missouri insurance laws. Under the section titled "Notice of Claim & Proof of Loss," Anthem conflates two separate provisions of Missouri law, one dealing with deadlines for notice of claims and one dealing with deadlines for proof of loss, into one section.[7] While it may be possible to take multiple provisions of a statute and combine them into a single, coherent policy section, in this instance Anthem has created a section with language that is imprecise, inexact, and uncertain, and which omits required substance. As such, the Certificate uses words, phraseology, conditions, and provisions which are not specific, certain and unambiguous and reasonably adequate to meet needed requirements for the protection of those insured as required by §376.405.

15. Section 376.1224 states in relevant part:

    1. For purposes of this section, the following terms shall mean:

        (1) "Applied behavior analysis", the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationships between environment behavior;

        ***

    5. Coverage provided under this section for applied behavior analysis shall be subject to a maximum benefit of forty thousand dollars per calendar year for individuals through eighteen years of age. Such maximum benefit limit may be exceeded, upon prior approval by the health benefit plan, if the provision of applied behavior analysis services beyond the maximum limit is medically necessary for such individual....

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    7. Subject to the provisions set forth in subdivision (3) of subsection 4 of this section, coverage provided under this section shall not be subject to any limits on the number of visits an individual may make to an autism service provider, except that the maximum total

[7] The substance of these statutory provisions is required to be a part of the policy form. Section 376.426.

benefit for applied behavior analysis set forth in subsection 5 of this section shall apply to this subsection.

16. Anthem's Certificate is not compliant with Missouri insurance laws. With respect to autism coverage:

    a. While section 376.1224 mandates the maximum benefit shall be $40,000 per year,[8] Anthem's Certificate limits benefits for Applied Behavioral Analysis to 415 hours, as statutorily adjusted, per Member per Benefit Period. In explanation of its hourly limit, Anthem states the time limit is an actuarially derived equivalent of the statutory, yearly limit of $40,000. However, no discovered statute provides for the substitution of a maximum dollar benefit with an actuarially derived equivalent. As such, the Certificate does not comply with the laws of this state as required by §376.405.

    b. Anthem's Certificate does not provide for enrollees, with prior approval, to exceed the maximum benefit allowed if medically necessary. However, section 376.1224 allows for enrollees to exceed the limits if it is medically necessary and they obtain prior approval. As such, the Certificate does not comply with the laws of this state as required by §376.405.

17. After review and consideration of the forms included in the Anthem Filing, the company has failed to demonstrate its compliance with Missouri law as enumerated herein.

18. While there may be additional reasons as to why this policy form does not comply with Missouri's insurance laws, the reasons stated herein are sufficient to disapprove the form.

19. Anthem's Certificate is not in compliance with Missouri law. This form does not comply with Missouri's specificity standards related to the submission of claims, does not provide for the mandatory yearly limit benefit of $40,000 for Applied Behavior Analysis coverage as it relates to autism coverage, and does not allow enrollees to exceed the maximum benefit upon prior approval whenthe treatment is medically necessary. As such, the Certificate is not in the public interest.

20. This Order is in the public interest.

[8] The statute provides that the maximum is to be adjusted for inflation annually. Section 376.1224.6.

IT IS THEREFORE ORDERED that Form ABCBS MO – SG PPO – OFF – v01 is hereby **DISAPPROVED.** Healthy Alliance Life Insurance Company is hereby prohibited from delivering or issuing for delivery any policies of group health insurance utilizing said form.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 1st day of July, 2013.

JOHN M. HUFF
DIRECTOR

NOTICE

TO: Health Alliance Life Insurance Company and any unnamed persons aggrieved by this Order:

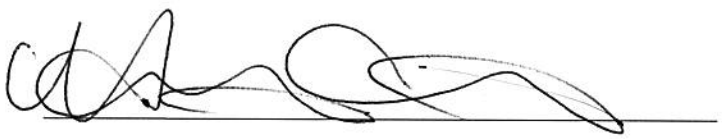
You may request a hearing on the disapproval of these forms. You may do so by filing a pleading with the Director of the Department of Insurance, Financial Institutions and Professional Registration, P.O. Box 690, Jefferson City, MO 65102, within 30 days after the mailing of this notice pursuant to 20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

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2013, a copy of the foregoing Order and Notice was

1) Delivered via electronic mail to:

   Carol Hearty
   heartyc@bcbsmo.com; and

2) Served via certified mail addressed to:

   Steve Martenet
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