

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

**In Re: PAN-AMERICAN)
LIFE INSURANCE COMPANY)
SERFF TRACKING NUMBER) Case No. 131126602C
ICCI-129237340)**

ORDER DISAPPROVING FORM FILING

Upon review and consideration of the filing of Pan-American Life Insurance Company, SERFF Tracking Number ICCI-129237340, specifically Form B-BTP ACC-13-P-MO, the Deputy 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 ("Director" of the "Department").
2. Pan-American Life Insurance Company ("Pan-American"), NAIC Number 67539, is a foreign life and health insurance company organized pursuant to the laws of the state of Louisiana 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. Insurance Compliance Consultants, Inc. ("ICC"), on behalf of Pan-American, filed policy forms with the Director via the System for Electronic Rate and Form Filing ("SERFF") on October 16, 2013. The SERFF Tracking Number is ICCI-129237340 ("Filing").
6. The Filing contains, in pertinent part, form B-BTP ACC-13-P-MO, identified as the Group Blanket Accident Only Policy ("Group Policy").
7. Brackets ([...]) within a policy form reviewed by the Division indicate that the language within the brackets may be in or out of the policy form.

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

8. Potentially, all benefits or coverages in brackets could be included in an issued policy form.
9. Conversely, all benefits or coverages in brackets could be excluded from an issued policy.
10. Based upon the brackets within the Group Policy, this policy could offer no benefits whatsoever.
11. Pan-American filed this Group Policy within SERFF only as a Blanket Group Accident Policy.
12. Based upon the bracketing within the Group Policy and the varied benefits provided, this policy could be described as (including but not limited to):
 - a. a travel policy;
 - b. a business travel policy;
 - c. a premises policy;
 - d. an accident only policy;
 - e. a death and dismemberment policy; or
 - f. a disability policy.

13. On page 35 of the Group Policy under the section titled "Administrative Provisions" and the subsection "Grace Period," Pan-American states:

A Policy Grace Period of 31 days will be granted for the payment of the required premiums. This Policy will remain in force during the Grace Period. If the required premiums are not paid during the Grace Period, this Policy will end on the last day of the month for which premium was paid.

14. On page 36 of the Group Policy under the section titled "General Provisions" and the subsection "Entire Contract Changes," Pan-American states:

This Policy (including any endorsements or amendments), the signed application of the Policyholder, and any individual applications of Insureds, are the entire contract. Any statements made by the Policyholder or Insureds will be treated as representations and not warranties. No such statement shall void the insurance, reduce the benefits, or be used in defense of a claim for loss incurred unless it is contained in a written application.

15. On pages 9 and 10 of the Group Policy under the section titled "Definitions," Pan-American states:

Pre-existing Condition means an illness, disease or other condition of an Insured, that in the [12-60 month] period before an Insured's coverage became effective under the Policy:

- 1) first manifested itself, worsened, became acute or exhibited symptoms that would have caused an ordinarily prudent person to seek diagnosis, care or treatment; or
- 2) required taking prescribed drugs or medicines, unless the condition for which the prescribed drugs or medicine is taken remains controlled without any change in the required prescription; or
- 3) was treated by a Doctor or treatment had been recommended by a Doctor.

16. On page 23 of the Group Policy under the section titled "Benefits" and the subsection "Age Reduction," Pan-American states:

An Insured age 65 or over will not be eligible for a Principal Sum Amount that is more than the Percentage of Principal Sum shown in the Schedule of Benefits for his or her attained age.

17. Nowhere within the Group Policy does Pan-American include a provision specifying an equitable adjustment of premiums or benefits in the case a covered person's age has been misstated.

18. Nowhere within the Group Policy does Pan-American provide that a certificate will be issued to the policyholder and each person insured.

19. On page 34 of the Group Policy under the section titled "Claim Provisions" and the subsection "Notice of Claim," Pan-American states:

A claimant must give Us or Our authorized administrator written (or authorized electronic or telephonic) notice of claim within [20-90] days after any loss covered by the Policy occurs. If notice cannot be given within that time, it must be given as soon as reasonably possible. This notice should identify the Insured and the Policy Number.

20. On page 34 of the Group Policy under the section titled "Claim Provisions" and the subsection "Proof of Loss," Pan-American states:

Written (or authorized electronic or telephonic) proof of loss must be sent to the agent authorized to receive it. Written (or authorized

electronic or telephonic) proof must be given within [60-90] days after the date of loss. If it cannot be provided within that time, it should be sent as soon as reasonably possible. In no event, except in the absence of legal capacity, should proof of loss be sent later than one year from the time proof is otherwise required.

21. On page 34 of the Group Policy under the section titled "Claim Provisions" and subsection "Time of Payment of Claims," Pan-American states "Any benefits due will be paid [immediately] [no later than 30 days] after We receive written (or authorized electronic or telephonic) proof of loss."
22. Nowhere within the Group Policy is the term "immediately" defined.
23. On page 6 of the Group Policy under the section titled "Termination Date of Insurance" and subsection "Cancellation," Pan-American states:

Cancellation: This Policy may be cancelled at any time by providing [30 - 60] days advance written notice mailed or delivered by Us to the Policyholder or by the Policyholder to Us. If We cancel, We will mail or deliver the notice to the Policyholder at the Policyholder's last address shown in our records.

24. On page 8 of the Group Policy under the section titled "Definitions," Pan-American states:

["Dependent" means an Insured's lawful spouse [under age 70][or Domestic Partner]; or an Insured's unmarried child, from the moment of birth to age 25, who is chiefly dependent on the Insured for support. A child, for eligibility purposes, includes an Insured's natural child; adopted child, beginning with any waiting period pending finalization of the child's adoption; or a stepchild who resides with the Insured or depends chiefly on the Insured for financial support. [A Dependent may also include any person related to the Insured by blood or marriage and for whom the Insured is allowed a deduction under the Internal Revenue Code.]

[Insurance will continue for any Dependent child who reaches the age limit and continues to meet the following conditions: 1) the child is handicapped, 2) is not capable of self-support and 3) depends chiefly on the Insured for support and maintenance. The Insured must send Us satisfactory proof that the child meets these conditions, when requested. We will not ask for proof more than once a year.]

CONCLUSIONS OF LAW

25. 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.
26. 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.

Pan-American's Filing Does Not Substantively Provide All Provisions Required In All Group Policies Under Section 376.426

27. 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;

* * *

(3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or, in the event of the death or incapacity of the insured person, to the individual's beneficiary or personal representative;

* * *

(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.* In no event shall such exclusion or limitation apply to loss incurred or disability commencing after the earlier of:

(a) The end of a continuous period of twelve months commencing on or after the effective date of the person's coverage during all of which the person has received no medical advice or treatment in connection with such disease or physical condition; or

(b) The end of the two-year period commencing on 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;*

(7) *A provision that the insurer shall issue to the policyholder, for delivery to each person insured, a certificate setting forth a statement as to the insurance protection to which that person is entitled, to whom the insurance benefits are payable, and a statement as to any family member's or dependent's coverage;*

(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;

* * *

(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;

(11) A provision that *all benefits payable under the policy ... shall be payable not more than thirty days* after receipt of proof and that, subject to due proof of loss...;

* * *

(15) A provision specifying the conditions under which the policy may be terminated. Such provision shall state that except for nonpayment of the required premium or the failure to meet continued underwriting standards, *the insurer may not terminate the policy prior to the first anniversary date of the effective date of the policy...*;

(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. This subdivision shall apply only to policies delivered or issued for delivery in this state on or after one hundred twenty days after September 28, 1985[.]

(Emphasis added.)

28. Pan-American's Group Policy is not compliant with Missouri insurance laws. Under the section titled "Administrative 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 "if the required premiums are not paid during the Grace Period, this Policy will end on the last day of the month for which premium was paid." 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 the policy ends the last day of the month for which the premium was paid. Because the policy is not in full force and retroactively terminates, the Group Policy 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.
29. Pan-American's Group Policy is not compliant with Missouri insurance laws. The section titled "General Provisions" and the subsection "Entire Contract Changes," does not contain a statement that a copy of the application will be attached to the policy, as required by §376.426(3). Because such statement is not within the policy, the Group Policy does not comply with §376.426(3). As such, the Group Policy does not comply with the laws of this state as required by §376.405.
30. Pan-American's Group Policy is not compliant with Missouri insurance laws. Under the subsection titled "General Provisions" and the subsection "Entire Contract Changes," the Group Policy is missing a portion of a required provision from §376.426(3). The Group Policy provides "statements made by the Policyholder or Insureds will be treated as representations and not warranties" but does not contain the remainder of the required provision:

that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or, in the event of the death or incapacity of the insured person, to the individual's beneficiary or personal representative[.]

Therefore, the Group Policy substantively modifies the requirements of §376.426(3) by omitting a portion of the provision. As such, the Group Policy does not comply with the laws of this state as required by §376.405.

31. Pan-American's Group Policy is not compliant with Missouri insurance laws. Under the section titled "Definitions," the Group Policy contains a provision defining pre-existing conditions, which includes illnesses in a bracketed range from 12 to 60 months prior to the effective date of coverage. While a provision providing a 12-month time frame, prior to the effective date of the policy, is compliant with the requirements of §376.426(5), no greater time frame is permissible. Because Pan-American's Group Policy has a range of time frames that exceed 12 months, it does not substantively provide the

- requirements of §376.426(5). As such, the Group Policy does not comply with the laws of this state as required by §376.405.
32. Pan-American's Group Policy is not compliant with Missouri insurance laws. Under the section titled "Definitions," Pan-American defines a pre-existing condition to include an illness that "first manifested itself, worsened, became acute or exhibited symptoms that would have caused an ordinarily prudent person to seek diagnosis, care or treatment." Section 376.426(5) defines a pre-existing condition as one for which the insured received medical advice or treatment; it does not say that the insured should have sought medical advice or treatment. The Group Policy's definition does 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 does not comply with the laws of this state as required by §376.405.
 33. Pan-American's Group Policy is not complaint with Missouri insurance laws. Under the section titled "Benefit" and the subsection "Age Reductions," the Group Policy notifies the insured that benefits are reduced for insureds that are 65 or older. However, the Group Policy is missing the required provision notifying the insured that if there is a misstatement of age, "an equitable adjustment of premiums or of benefits" will be made, as required by §376.426(6). As such, the Group Policy does not comply with the laws of this state as required by §376.405.
 34. Pan-American's Group Policy is not compliant with Missouri insurance laws. Section 376.426(7) requires all group policies to contain a provision that a certificate of coverage will be issued to the policyholder for delivery to each person insured. The Group Policy does not contain the required provision. As such, the Group Policy does not comply with the laws of this state as required by §376.405.
 35. Pan-American's Group Policy is not compliant with Missouri insurance laws. Under the section titled "Claim Provisions" and the subsection "Notice of Claim," the Group Policy excludes a required substantive notice provision. While the Group Policy does provide the appropriate time frame to provide notice, it does not notify the insured that failure to give notice 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(8). As such, the Group Policy does not comply with the laws of this state as required by §376.405.
 36. Pan-American's Group Policy is not compliant with Missouri insurance laws. Under the section titled "Claim Provisions" and the subsection "Proof of Loss," the Group Policy requires written proof of loss to be given within a bracketed time frame of 60 to 90 days. While a provision providing a 90-day time frame to return a proof of loss to Pan-American is compliant with the requirements of §376.426(10), no lesser time frame is permissible. Because

Pan-American's Group Policy has a range of time frames that are less than 90 days, it does not substantively provide the requirements of §376.426(10). As such, the Group Policy does not comply with the laws of this state as required by §376.405.

37. Pan-American's Group Policy is not compliant with Missouri insurance laws. Under the section titled "Claim Provisions" and the subsection "Proof of Loss," the Group Policy excludes a required substantive notice provision. The Group Policy does not notify the insured that failure to furnish 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). As such, the Group Policy does not comply with the laws of this state as required by §376.405.
38. "Specific" is defined as "precisely formulated or restricted; definite; explicit; of an exact or particular nature."² "Certain" is defined as "ascertained; precise; identified; settled; exact; definitive; clearly known; unambiguous..."³ "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."⁴
39. Pan-American's Group Policy is not compliant with Missouri insurance laws. Under the section titled "Claim Provisions" and the subsection "Time Payment of Claims," the Group Policy notifies the insured that benefits due will be paid either immediately or no later than 30 days upon receipt of the proof of such loss. Both "immediately" and "no later than 30 days" are contained within brackets and, therefore, could be included in the policy or excluded therefrom.
 - a. If Pan-American utilizes the bracketed "no later than 30 days" language, the Group Policy would be compliant with §376.426(11).
 - b. However, if Pan-American utilizes the bracketed "immediately" language, the Group Policy would not be compliant with §376.426(11). Immediately may mean that payment would occur within: a day or two, a week or two, or something else entirely. This is because immediately is not defined within the policy. In the event the time frame envisioned by Pan-American were less than the 30 days required by §376.426(11), it would be acceptable as a more favorable provision; however, because immediately is not defined and the law requires at least a specified number of days, the language is not definite, clearly known, or distinct.

² *Black's Law Dictionary* 1398 (6th ed., West 1990).

³ *Id.* at 225.

⁴ *Seeck v. Geico Gen. Ins. Co.*, 212 S.W. 3d 129, 132 (Mo. banc 2007).

As such, the Group Policy 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.

40. Pan-American's Group Policy is not compliant with Missouri insurance laws. Under the section titled "Termination Date of Insurance" and the subsection "Cancellation," the Group Policy notifies the insured the policy can be canceled by either party at any time by providing 30-60 days notice; this is not compliant. Section 376.426(15) requires a statement that substantively discloses that the insurer may not terminate the policy prior to the first anniversary of the effective date of the policy. As such, the Group Policy does not comply with the laws of this state as required by §376.405.
41. Pan-American's Group Policy is not compliant with Missouri insurance laws. Under the section titled "Definitions," the definition of dependent and the section defining dependent children who are handicapped and unable to care for themselves, are contained in two separately bracketed sections and, therefore, could be independently in or out of the policy. If the policy offers coverage of dependents, the policy must also offer continuing coverage for a child that "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," as required by §376.426(16). In the event dependent coverage is offered but the second bracketed section offering continuing coverage for disabled dependents is excluded from the policy, the policy would not be in compliance with §376.426(16). As such, the Group Policy does not comply with the laws of this state as required by §376.405.
42. After review and consideration of the policy form included in the Pan-American Filing, the company has failed to demonstrate its compliance with Missouri law as enumerated herein.
43. 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.
44. Each reason stated herein for disapproval of a policy form is a separate and sufficient cause to disapprove such form.
45. Pan-American's Group Policy does not comply with Missouri law. As such, said form is not in the public interest.
46. This Order is in the public interest.

IT IS THEREFORE ORDERED that Form B-BTP ACC-13-P-MO is hereby **DISAPPROVED**. Pan-American 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 27th day of November, 2013.



JAMES R. McADAMS
DEPUTY DIRECTOR



NOTICE

TO: Pan-American 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 27th day of November, 2013, a copy of the foregoing Order and Notice was

- 1) Delivered via electronic mail to:

Brenda Dawson
Brendadawson@inscompliance.com

- 2) Served via certified mail addressed to:

Jose Souquet
President
Pan-American Life Insurance Company
601 Poydras St., Floor 28
New Orleans, LA 70130

Daniel Lagrone
Vice President
Pan-American Life Insurance Company
601 Poydras St.
New Orleans, LA 70130


