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

In Re: HCC LIFE	)	
INSURANCE COMPANY	)	
SERFF TRACKING NUMBER	)	**Case No. 141103716C**
HARP-129771199	)	

ORDER DISAPPROVING FORM FILING

Upon review and consideration of the filing of HCC Life Insurance Company, SERFF Tracking Number HARP-129771199, specifically Forms HCCL LDI-2015 POI MO and HCCL LDI-2015 DC 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. HCC Life Insurance Company ("HCC Life"), NAIC Number 92711, is a foreign life and health insurance company organized pursuant to the laws of the state of Georgia 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. HCC Life filed forms with the Director via the System for Electronic Rate and Form Filing ("SERFF") on October 20, 2014. The SERFF Tracking Number is HARP-129771199 ("Filing").

6. The Filing contains, in pertinent part, forms HCCL LDI-2015 POI MO, identified as the Policy of Incorporation ("Group Policy") and HCCL LDI-2015 DC MO, identified as the Certificate of Insurance ("Certificate").

7. HCC Life filed the forms within SERFF as Group Health-Disability Income coverage.

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[1] All statutory citations are to RSMo (Supp. 2014).

8. On October 28, 2014, HCC Life amended the Filing and replaced the Group Policy and Certificate with amended forms. The amended forms are the subject of this Order.

9. HCC Life's Group Policy includes both life insurance and health insurance provisions.

10. Brackets ([...]) within a form reviewed by the Division indicate that the language within the brackets may be included or excluded from the form, or the brackets may indicate a numeric range.

11. All combinations of benefits, coverages, or terms in brackets could be included in an issued form.

12. Conversely, all benefits, coverages, or terms in brackets could be excluded from an issued form.

13. The Filing also contains several supporting documents individually titled Statement of Variability Language for each of the forms submitted for approval, in which HCC Life explains how it intends to utilize bracketed sections of the Group Policy and Certificate.

14. Within the Group Policy and Certificate, each bracketed section has a corresponding number (i.e., CV5, CV6, CV7, etc.), which the Statements of Variability Language cite to for explanation. Superscript, underlined designators within the Group Policy and Certificate as cited below are references to the Statements of Variability.

15. Within the Statements of Variability Language, the designator CV5 indicates that the text within the bracket may be deleted.

16. On pages 37 and 38 of the Certificate under the section titled General Provisions and the subsection titled Claim Payment, the form states:

> [$^{\underline{CV5}}$**Claim Payment:** [$^{\underline{CV5}}$*When are benefit payments issued*?]
> Periodic benefit payments will be made on a [$^{\underline{CV14}}$monthly] basis after We receive the Proof of Loss satisfactory to Us and will continue while the loss and Our liability continue. We will pay any other benefit due immediately after We receive the Proof of Loss satisfactory to Us. [$^{\underline{CV5}}$We will pay any benefit for loss of life under [$^{\underline{CV5}}$ the Accidental Death [$^{\underline{CV5}}$ and Dismemberment] Benefit] [$^{\underline{CV5}}$and/or] [$^{\underline{CV5}}$ the Survivor Income Benefit as shown in the benefit].]
> Benefits may be subject to interest payments as required by applicable law.]

17. On page 40 of the Certificate under the section titled General Provisions and the subsection titled Physical Examinations and Autopsy, the form states:

> [CV5*Will I be examined during the course of my claim?*]
> While a claim is pending We have the right at Our expense:
> 1) to have the person who has a loss examined by a Physician when and as often as We feel is necessary; and
> 2) to make an autopsy in case of death where it is not forbidden by law.

18. On page 9 of the Group Policy under the section titled Policy Provisions and the subsection titled Termination of Policy, the form states:

> [CV5**Termination of** [CV6**Policy**]
> The Company may terminate The [CV6Policy] for the following reasons by giving [CV1the Policyholder] [CV15 31 - 180] days written notice [CV16:
> 1) [CV1the Policyholder] fails to furnish any information which The Company may reasonably require;
> 2) [CV1the Policyholder] fails to perform any of its other obligations pertaining to this [CV6Policy];
> 3) Less than [CV15 10 - 100]% of the persons eligible for coverage on a Non-contributory basis are insured;
> 4) Less than [CV15 10 - 100]% of the persons eligible for coverage on a Contributory basis are insured; or
> 5) Fewer than [CV15 10 - 200] persons are insured].
>
> In addition, The Company may terminate this [CV6Policy] on any premium due date after The [CV6Policy] has been in force for [CV15 12 - 36] months by providing [CV15 31 - 180] days written notice. [CV5If The [CV6Policy] is terminated, [CV1the Policyholder] is responsible for providing notice to insureds of their right to convert under The [CV6Policy].]
>
> [CV5The Company reserves the right to terminate [CV4Dependent] Life Insurance Benefits on any premium due date on which[CV16:
> 1) there are fewer than [CV15 1 - 200] persons insured for [CV4Dependent] coverage; or
> 2) less than [CV15 25 - 85]% of the persons eligible for [CV4Dependent] coverage on a Contributory basis are insured].
>
> The Company shall give [CV1the Policyholder] [CV15 31 - 180] days' notice of its intent to terminate the [CV4Dependent] Life Insurance Benefit.]]]

19. Page 51 of the Certificate, titled Amendatory Rider, is essentially a blank form, in fact a substantially blank page, containing almost no language, other than brackets where policy language could be inserted, and which the company admits will be used with the Policy.

20. While the Amendatory Rider within the Certificate does contain superscript and underlined designators, which should explain how the language may vary, an explanation within the Statement of Variability Language is conspicuously absent.

21. The company would not issue a form that only contains brackets but no policy language unless it intended to later insert policy language into the form.

CONCLUSIONS OF LAW

22. 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.

23. "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]

24. 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.

25. 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…:
>
> ***
>
> (11) ***A provision that all benefits payable under the policy other than benefits for loss of time shall be payable not more than thirty days after receipt of proof*** and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time shall be paid not less frequently than monthly during the

[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).

continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period shall be paid as soon as possible after receipt of such proof;

***

(13) ***A provision that the insurer shall have the right and opportunity, at the insurer's own expense, to examine the person of the individual for whom claim is made when and so often as it may reasonably require during the pendency of the claim under the policy*** and also the right and opportunity, at the insurer's own expense, to make an autopsy in case of death where it is not prohibited by law;

***

(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*** as specified therein, and a notice of any intention to terminate the policy by the insurer must be given to the policyholder at least thirty-one days prior to the effective date of the termination. Any termination by the insurer shall be without prejudice to any expenses originating prior to the effective date of termination. An expense will be considered incurred on the date the medical care or supply is received[.]

(Emphasis added.)

HCC Life's Filing Does Not Substantively Provide All Provisions Required In All Group Policies Under Section 376.426

26. HCC Life's Certificate is not compliant with Missouri insurance laws. Under the bracketed subsection titled Claim Payment, the Certificate is noncompliant with §376.426(11) for the following reasons:

    a. The Certificate notifies the insured that benefits will be paid immediately. Immediately is not defined within the policy and, as such could mean a period of time less than or greater than 30 days. Section 376.426(11) requires payment within 30 days. Because immediately is not defined and the law requires payment within a maximum number of days, 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.

    b. The Certificate's Claim Payment provision is bracketed with the superscript CV5, indicating that the language within the brackets may

be included or excluded from the policy form. Pursuant to §376.426(11) a compliant claims payment provision is required to be substantively included within the policy and, thus, may not be bracketed.

As such, the Certificate does not comply with the laws of this state as required by §376.405.

27. HCC Life's Certificate is not compliant with Missouri insurance laws. Under the section titled Physical Examinations and Autopsy, the Certificate provides that "[w]hile a claim is pending We have the right at Our expense…to have the person who has a loss examined by a Physician when and as often as We feel is necessary." Section 376.426(13) allows the insurer to examine the insured as "often as it may reasonably require." The language within the Certificate allows HCC Life to examine the insured as frequently as it sees fit; this is not as favorable as the reasonableness standard set out within §376.426(13). The Certificate's provision does not comply with §376.426(13) because the Certificate's language is neither substantially similar to the statutory language nor is it more favorable to the insured. As such, the Certificate does not comply with the laws of this state as required by §376.405.

28. HCC Life's Group Policy is not compliant with Missouri insurance laws. Under the bracketed subsection titled Termination of Policy, HCC Life may provide language sufficient to satsify the statutorily required provision notifying the insured that HCC Life may not terminate the policy prior to the first anniversary date; however, the termination provision is bracketed with the superscript CV5, indicating that the language within the brackets may be included or excluded from the policy form. Pursuant to §376.426(15) the provision is required to be substantively included within the policy and, thus, may not be bracketed. As such, the Group Policy does not comply with the laws of this state as required by §376.405.

HCC Life's Certificate Contains a Blank Form

29. HCC Life's Certificate is not compliant with Missouri insurance laws. The Amendatory Rider within the Certificate was submitted as a bracketed, nearly blank page with almost no language, which would later be filled in by the company. The Certificate is noncompliant for the following specific reasons:

    a. Insurers are only allowed to provide policies of health insurance to insureds that have been approved by the Director. By submitting a nearly blank page within a form for approval and then later modifying that page, HCC Life would avoid the review process provided in §376.405 to protect insureds. Further, by later modifying a form that had been previously submitted, HCC Life would be providing an

unsubmitted and unapproved form to insureds in violation of §376.405.

b. Because this Amendatory Rider within the Certificate contains no substantive content as submitted, the provisions at the time of review are not specific, certain, or unambiguous.

c. Because this Amendatory Rider within the Certificate contains no language for the Director to review as submitted, it is per se noncompliant with Missouri law. Regardless of the language HCC Life later places in the form, because that language will not have received the Director's statutory review, the provisions are not reasonably adequate to meet the needed requirements of the insureds.

For these reasons the Certificate uses word, 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. As such, the Certificate does not comply with the laws of this state as required by §376.405.

HCC Life's Group Policy Contains Both Life and Health Provisions

30. Title 20 CSR 400-8.200(3) states in relevant part:

> Filing Requirements for All Policies, Contracts, and Related Forms
>
> * * *
>
> (E) Life insurance forms must be submitted separately from health insurance forms.

31. HCC Life's Group Policy is not compliant with Missouri insurance laws. The Group Policy is contained within a health filing and among health forms. However, the Group Policy is not only intended to serve as a health insurance form but also as a life insurance form. It contains provisions that are specific to life insurance and separate provisions that are specific to health insurance. Comingling these provisions violates 20 CSR 400-8.200(3)(E). "Duly promulgated rules of a state administrative agency have the force and effect of law."[8] As such, the Group Policy does not comply with the laws of this state as required by §376.405.

32. After review and consideration of the forms included in the HCC Life's Filing, the company has failed to demonstrate its compliance with Missouri law as enumerated herein.

[8] *Killion v. Bank Midwest, N.A.*, 886 S.W.2d 29, 32 (Mo. App. W.D. 1994).

33. While there may be additional reasons as to why the forms do not comply with Missouri's insurance laws, the reasons stated herein are sufficient to disapprove the forms.

34. Each reason stated herein for disapproval of the forms is a separate and sufficient cause to disapprove such forms.

35. HCC Life's Group Policy and Certificate do not comply with Missouri law. As such, said forms are not in the public interest.

36. This Order is in the public interest.

IT IS THEREFORE ORDERED that forms HCCL LDI-2015 POI MO and HCCL LDI-2015 DC MO are hereby **DISAPPROVED.** HCC Life 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 5th day of December, 2014.

JAMES R. MCADAMS
DEPUTY DIRECTOR

NOTICE

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

You may request a hearing on the disapproval of this form. 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 5 day of December, 2014, a copy of the foregoing Order and Notice was

Served via certified mail addressed to:

Craig J. Kelbel
President
HCC Life Insurance Company
225 TownPark Dr., Ste 350
Kennesaw, GA 30144

Mary Bielucki
HCC Life Insurance Company
200 Hopmeadow Street
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