

IN THE MISSOURI DEPARTMENT OF COMMERCE AND INSURANCE

**In Re: THE GUARDIAN LIFE)
INSURANCE COMPANY OF)
AMERICA) Case No. 24050820M
SERFF TRACKING NUMBER)
GARD-134086788)**

ORDER DISAPPROVING FORM FILING

Upon review and consideration of the filing of The Guardian Life Insurance Company of America, SERFF Tracking Number GARD-134086788, the Director DISAPPROVES said form for the reasons stated below.

FINDINGS OF FACT

1. Chlora Lindley-Myers is the Director of the Department of Commerce and Insurance, State of Missouri.
2. The Guardian Life Insurance Company of America (“Guardian”), NAIC Number 64246 is a foreign life and health insurance company organized pursuant to the laws of the state of New York and transacting business in this state pursuant to a Certificate of Authority issued by the Director.
3. Pursuant to section 376.675¹, insurance companies licensed to transact business in this state may not deliver or issue for delivery in this state a policy of life insurance or contract of annuity unless the form has been approved by the Director.
4. The Division of Insurance Market Regulation (“Division”) is designated pursuant to section 374.075 with the review of forms that are filed by insurance companies.
5. Guardian filed a form with the Director via the System for Electronic Rate and Form Filing (“SERFF”) on September 26, 2024. The SERFF Tracking Number is GARD-134086788 (“Filing”). The filing was subsequently amended on October 29, 2024.
6. The Filing contains, in pertinent part, Form 24-WB WL MO titled “Guardian Well-being (WB) Rider.”
7. On page 1 of the “Well-being (WB) Rider” under the heading “WB Assessment Day,” Guardian states the following:

On each WB Assessment Day, we will record your Well-being Level for that calendar year. That Well-being Level may result in a Well-being

¹ All statutory citations are to RSMo (2016) unless otherwise noted.

Dividend being paid on the Policy anniversary in the following calendar year.

8. On page 1 of the “Well-being (WB) Rider” under the heading “Well-being Platform (WB Platform),” Guardian states the following:

This is the platform used to collect the data for establishing a Covered Member’s Level. There may be fees or costs associated with using the WB Platform, which is provided by the Guardian Membership Company. These fees and costs will not be reimbursed and are not considered to be a rider premium. Examples of such fees and costs include, but are not limited to, registration fees, health club fees, health equipment, health and/or activity monitoring devices, athletic attire, and online access fees. The WB Platform available on the Rider Effective Date is shown in the Rider Specifications. We may change to a new platform for administering this program at any time. We will provide advance notice prior to any such change.

9. On page 2 of the “Well-being (WB) Rider” under the heading “Well-being Levels (Levels),” Guardian states the following:

A Covered Member can ascend Levels by engaging with the WB Platform and achieving certain wellness goals set in the WB Platform. To achieve a Level higher than the lowest Level, the Covered Member must be an active user of the WB Platform, including ensuring that any associated fees are paid.

10. On page 2 of the “Well-being (WB) Rider” under the heading “Well-being (WB) Dividend,” Guardian states the following:

As described in the Dividends section of the Policy, the Policy is eligible to receive a dividend provided the Policy contributes to a divisible surplus. The Policy’s share of the divisible surplus, if any, is determined each year by Guardian at the sole discretion of its Board of Directors.

By using the WB Platform and achieving and maintaining the levels, active Covered Members may contribute a larger share to the divisible surplus. This additional contribution is paid out through a WB Dividend. For the Policy to be eligible to receive a portion of the WB Dividend, a Covered Member must have reached their 18th birthday prior to the WB Assessment Day.

On a Policy Anniversary, any WB Dividend paid will take into consideration the Covered Member’s Level earned on the WB Assessment Day from the prior calendar year. The Policy must be In Force except as extended term insurance, for any WB Dividend to be payable.

Any WB Dividend paid will be paid in the same manner as the Policy Dividend. See the Policy's Dividend provision for information about these options. There is no guarantee there will be a WB Dividend, nor is there a guaranteed method or formula for the determination or allocation of the WB Dividend. No WB Dividend will be applied during the first Policy Year.

11. When questioned by the Division as to whether there is a charge for the rider and what the charge is, Guardian stated:

Guardian is not charging a premium for the Rider. Initially a fee is not required to be paid to access the GW Platform (Guardian Well-being app). However, as the rewards platform evolves, a fee may be required to be paid to GuardianWell to cover the cost of administering the program and funding incentives. The expectation is that this fee would be no more than between \$5 and \$7 per month. Additionally, the joining of the membership company is completely voluntary. If you do not join, you will not receive the Well-being dividend and you will effectively be treated as if you do not have the Rider.

12. When questioned by the Division as to why the company does not plan to make the new rider available to current policy holders immediately after approval, and for the company's reasoning behind only planning to offer the rider to insureds with newly issued whole life policies, Guardian stated:

This is a new rider and as is typical for newly designed riders, it is going to be available for newly issued policies. We anticipate offering the Rider to in force policies in the future after the introduction to new business. Offering the Rider to newly issued policies is not discriminatory as the rider is provided to all policies and there is no discrimination in favor of individuals in this same class. All such future roll outs to other classes will be done on a nondiscriminatory basis.

13. When questioned by the Division about how the different amounts are determined and whether they are the same no matter the policyholder, Guardian stated:

For the Well-being Dividend amount, the expectation is that as insureds engage in the wellness activities that this program encourages, Guardian will see improved mortality experience and persistency thereby increasing the divisible surplus. The portion of the increased divisible surplus that is provided via the Well-Being Dividend to a specific policy depends on several factors including the cost of the program, the expected mortality and persistency of the attained Well-Being Level, the insured's age, policy duration and the policy face amount, cash value and premium. Like any dividend, we would assess all these factors each year and then declare

each policy's portion of the Well-being Dividend. The Well-being Platform is used to collect the data for establishing the Well-being Levels, however the platform is not paying any dividend. The platform is providing Guardian with the level that is then used to determine how additional divisible surplus, if any, is allocated to these policies.

14. When questioned by the Division as to whether a policyholder will be notified of fees that may arise after they have selected the rider, whether or not a policyholder will be able to terminate the rider if they choose not to pay any fees, and whether there is a charge for rider termination, Guardian stated:

The policyholder will be notified of any fees that may arise from the WB Platform. The Covered Member is not required to use the app and therefore any additional cost is optional. If the Covered Member does not become a GuardianWell member by downloading and activating the app, there will be no additional cost and no resulting impact on the policy. There is no charge for rider termination.

CONCLUSIONS OF LAW

15. Pursuant to section 376.675.1, "No policy of life insurance or contract of annuity shall be delivered or issued for delivery to any person in this state unless the policy or contract shall have been filed with and approved by the director of the department of commerce and insurance."
16. The Director shall approve only those forms that are "in compliance with the insurance laws of this state and which contain such words, phraseology, conditions, and provisions with [*sic*] are specific, certain and unambiguous and reasonably adequate to meet needed requirements for the protection of those insured," pursuant to section 376.675.3.
17. The Director may disapprove a form filed with the Department, and in doing so, "the reasons therefore shall be based upon the requirements of the laws of this state, or any regulation lawfully promulgated thereunder, and shall be stated in writing and a notification thereof shall be sent to the submitting company," pursuant to section 376.675.3.
18. Section 375.934 provides the following:

It is an unfair trade practice for any insurer to commit any practice defined in section 375.936 if:

 - (1) It is committed in conscious disregard of sections 375.930 to 375.948 or of any rules promulgated under sections 375.930 to 375.948; or
 - (2) It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.
19. Section 375.936 provides, in pertinent part, the following:

Any of the following practices, if committed in violation of section 375.934, are hereby defined as unfair trade practices in the business of insurance:

(11) "Unfair discrimination:"

(a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract;

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

20. For the reasons stated in paragraphs 7, 8, 9, 10, 11, 12, 13, and 14, Form Number 24-WB WL MO violates Missouri law because it is unlawfully discriminatory. In response to a question from the Department, the Company stated it will only offer the Well-being rider to new policyholders. Not offering the Well-being rider and the accompanying opportunity to earn a Well-being Dividend to existing policyholders who are similarly situated, but for the fact of the date they purchased the policy, arbitrarily treats similarly situated policyholders differently, in violation of section 375.936(11)(a).
21. For the reasons stated in paragraphs 7, 8, 9, 10, 11, 12, 13, and 14, Form Number 24-WB WL MO violates Missouri law by including in the Well-being Rider language related to fees that has the effect of being unfairly discriminatory. Specifically, the Well-being Rider states that there may be fees or costs associated with using the WB Platform. Such fees may include registration fees, health club fees, activity monitoring devices, and online access fees, and none of these fees are reimbursable or considered to be premium for the rider. Furthermore, members must be active users of the WB Platform to achieve a higher level than the lowest level, and being an active user includes ensuring associated fees are paid. Members receive the Well-being Dividend based on the level they achieve on the WB Assessment Day. Such fees, which must be paid in order for an individual to be considered an "active user" of the WB Platform, are essentially an indirect premium charge. These provisions are unfairly discriminatory to similarly situated individuals - who may also be engaging in healthy behaviors - but who do not utilize the WB platform and do not pay the fees associated with the WB platform. These requirements to pay fees to be a user of the WB Platform and the resulting differential impact on similarly

situated individuals who are of the same class and equal expectation of life are in violation of the provisions of section 375.936(11)(a) and (b).

22. After review and consideration of the form included in The Guardian Life Insurance Company of America Filing (SERFF Tracking Number GARD-134086788), the company has failed to demonstrate its compliance with Missouri law as enumerated herein. While there may be additional reasons as to why the form, 24-WB WL MO, does not comply with Missouri's insurance laws, the reasons stated herein are sufficient to disapprove the form. Each reason stated herein for disapproval of the form, 24-WB WL MO, is a separate and sufficient cause to disapprove such form.
23. The form, 24-WB WL MO, is not in compliance with Missouri law. This form contains words, phraseology, conditions, and provisions which are not specific, certain, and unambiguous, and are not reasonably adequate for the protection of those insured.
24. This Order is in the public interest.

IT IS THEREFORE ORDERED that form 24-WB WL MO is hereby DISAPPROVED. The Guardian Life Insurance Company of America is hereby prohibited from delivering or issuing for delivery any policies individual whole life insurance utilizing said form.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 12th day of December, 2024.




Chlora Lindley-Myers
Director

NOTICE

TO: The Guardian Life Insurance Company of America 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 Commerce and Insurance, P.O. Box 690, Jefferson City, MO 65102, within 30 days after the receipt of this notice pursuant to 20 CSR 800-1.030.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December, 2024 a copy of the foregoing Order and Notice was:

1) Delivered via UPS, signature required, to:

Andrew J. McMahon
CEO and President
The Guardian Life Insurance Company of America
10 Hudson Yards
New York, NY 10001

Tracking No. 1Z0R15W84298753222

and

Haydn Padmore
The Guardian Life Insurance Group of America
10 Hudson Yards
New York, NY 10001

Tracking No. 1Z0R15W84299705639

and

2) Courtesy Copy delivered via e-mail to:

Hadyn Padmore, haydn_padmore@glic.com
Paul Saylor, paul_saylor@glic.com



Kathryn Latimer, Paralegal
Missouri Department of Commerce and Insurance
301 West High Street, Room 530
Jefferson City, Missouri 65101
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