

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

**In Re: MUTUAL OF OMAHA)
INSURANCE COMPANY) Case No. 140116069C
SERFF TRACKING NUMBER)
MUTM-129189285)**

ORDER DISAPPROVING FORM FILING

Upon review and consideration of the filing of Mutual of Omaha Insurance Company, SERFF Tracking Number MUTM-129189285, specifically Form SR2014 MO, 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 (“Director” of the “Department”).
2. Mutual of Omaha Insurance Company (“Mutual of Omaha”), NAIC Number 71412, is a foreign life and health insurance company organized pursuant to the laws of the state of Nebraska 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. Mutual of Omaha filed policy forms with the Director via the System for Electronic Rate and Form Filing (“SERFF”) on January 10, 2014. The SERFF Tracking Number is MUTM-129189285 (“Filing”).
6. The Filing contains, in pertinent part, form SR2014 MO, identified as the Limited Blanket Accident Policy (“Group Policy”).
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, or the brackets may indicate a numeric range.

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

8. Mutual of Omaha filed this Group Policy within SERFF as a Group Health-Accident Only policy.
9. On page 14 of the Group Policy under the section titled Premium Provisions and the subsection titled Grace Period, the form states:

There is a 31-day grace period for payment of each premium due after the first premium. This means that, except for the initial premium, if premium is not paid on or before the date it is due, the premium must be paid in the 31- day period that follows. We will consider premium to be paid on the date We receive it.

Insurance will stay in force during the grace period unless the [Policyholder][Sponsoring Organization] has notified Us of its intention to terminate this policy.

If We have not been notified otherwise and the premium has not been paid, this policy will end on the date premium was due.

10. Nowhere within the Group Policy does the form provide the following provisions:

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[.]

11. Nowhere within the Group Policy does the form provide the following provisions:

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[.]

12. On page 12 of the Group Policy under the section titled Claim Provisions and the subsection titled Notice of Claim, the form states:

We must receive written notice within [30] days after a loss occurs or begins, or as soon as reasonably possible. Notice can be given at Our home office or to Our authorized representative. Notice should include:

- the [Policyholder's][Sponsoring Organization's] name;
- the policy number; and
- the Insured's name and address.

13. On page 17 of the Group Policy under the section titled General Provisions and subsection titled Policy Termination, the form states:

We may terminate this policy [at any time][on or after the first anniversary][as of any premium due date]. We will give at least [31 days] notice before termination.

The [Policyholder][Sponsoring Organization] may terminate this policy [at any time][on or after the first anniversary][on any premium due date].[If the [Policyholder][Sponsoring Organization] fails to pay premiums when due or within the grace period, We will consider notice to have been given to terminate this policy on the date premium was due.]

[We will refund any unearned premium from the date of termination.]

Policy termination will not affect a claim for a loss due to an Accident that occurred while this policy was in effect.

CONCLUSIONS OF LAW

14. 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.
15. 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.

**Mutual of Omaha's Filing Does Not Substantively Provide All Provisions Required
In a Group Policy Under Section 376.426**

16. 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;

(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;

* * *

(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;

* * *

(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.)

17. Mutual of Omaha's Group Policy is not compliant with Missouri insurance laws. Under the section 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 We have not been notified otherwise and the premium has not been paid, this policy will end of the date premium was due." Section 376.426(1) requires the policy to stay in force during the grace period. The 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 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.
18. Mutual of Omaha's Group Policy is not compliant with Missouri insurance laws. All group policies are required to substantively provide each of the provisions from §376.426(2). Mutual of Omaha's Group Policy contains none of the provisions from §376.426(2). As such, the Group Policy does not comply with the laws of this state as required by §376.405.

19. Mutual of Omaha's Group Policy is not compliant with Missouri insurance laws. All group policies are required to substantively provide each of the provisions from §376.426(3). Mutual of Omaha's Group Policy contains none of the provisions from §376.426(3). As such, the Group Policy does not comply with the laws of this state as required by §376.405.
20. Mutual of Omaha'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.
21. Mutual of Omaha's Group Policy is not compliant with Missouri insurance laws. Under the section titled General Provisions and the subsection titled Policy Termination, the Group Policy properly provides that Mutual of Omaha cannot terminate the policy prior to the first anniversary, as required by §376.426(15). However, the provision is bracketed, indicating that the language within the brackets may be included or excluded of the issued policy form. The coverage under §376.426(15) is required 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.
22. After review and consideration of the policy form included in the Mutual of Omaha Filing, the company has failed to demonstrate its compliance with Missouri law as enumerated herein.
23. While there may be additional reasons as to why this form does not comply with Missouri's insurance laws, the reasons stated herein are sufficient to disapprove the form.
24. Each reason stated herein for disapproval of a policy form is a separate and sufficient cause to disapprove such form.
25. Mutual of Omaha's Group Policy does not comply with Missouri law. As such, said form is not in the public interest.
26. This Order is in the public interest.

IT IS THEREFORE ORDERED that Form SR2014 MO is hereby **DISAPPROVED**. Mutual of Omaha 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 18th
day of February, 2014.



JOHN M. HUFF
DIRECTOR



NOTICE

TO: Mutual of Omaha 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 18th day of February, 2014, a copy of the foregoing Order and Notice was

Served via certified mail addressed to:

Daniel P. Neary
Chairman/CEO
Mutual of Omaha Insurance Company
Mutual of Omaha Plaza
Omaha, NE 68175

Kendra Saylor
Senior Product & Advertising Compliance Analyst
Mutual of Omaha Insurance Company
Mutual of Omaha Plaza
Omaha, NE 68175


