

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON**

WASHINGTON STATE OFFICE OF THE  
INSURANCE COMMISSIONER,

Petitioner,

v.

SENIOR HEALTH INSURANCE COMPANY  
OF PENNSYLVANIA,

Respondent.

NO.

PETITION FOR DECLARATORY  
JUDGMENT ON VALIDITY  
OF AGENCY FINAL ORDER

Petitioner, the Washington State Office of the Insurance Commissioner, by and through its attorneys of record, ROBERT W. FERGUSON, Attorney General, and MARTA DELEON, Assistant Attorney General, makes the following petition:

**I. JURISDICTION AND VENUE**

1.1 The petition seeks a declaratory judgment that the “Order to Cease and Desist, Office of the Insurance Commissioner Order No. 22-0104” (the Final Order), Exhibit A, which ordered the Defendant to cease and desist activity that violates the Insurance Code, Title 48 RCW, issued pursuant to RCW 48.02.080(3), which Respondent has failed to comply with, is a valid and enforceable order.

1.2 This petition is filed under the authority granted to the Insurance Commissioner pursuant to RCW 48.02.060. This Court has jurisdiction under RCW 2.08.010 and RCW 7.24.010.

1 1.3 Venue is proper in Thurston County pursuant to RCW 4.12.020(1), and  
2 RCW 4.12.25(1).

## 3 II. PARTIES

4 2.1 The Washington State Insurance Commissioner (Insurance Commissioner) is the  
5 independently elected state official tasked with enforcing state insurance laws and authorized to  
6 issue penalties for violations of the Insurance Code, Title 48 RCW. The Insurance Commissioner  
7 is the head of the Office of the Insurance Commissioner, the state agency located at 5000 Capitol  
8 Boulevard SE, Tumwater, WA 98501. The Insurance Commissioner is, among other things,  
9 authorized to issue administrative orders against the entities he regulates for violations of the  
10 Insurance Code, Title 48 RCW.

11 2.2 Respondent Senior Health Insurance Company of Pennsylvania (SHIP) is a  
12 Pennsylvania domiciled life and disability insurance company that was issued a certificate of  
13 authority by the Insurance Commissioner to issue long-term care insurance (“LTC”) policies in  
14 Washington in 1989.

15 2.3 On January 29, 2020, the Commonwealth Court of Pennsylvania  
16 (the Receivership Court), entered an Order of Rehabilitation placing SHIP into Receivership in  
17 accordance with the provisions of Pennsylvania law, and appointing then Insurance  
18 Commissioner for the Commonwealth of Pennsylvania (“Pennsylvania Insurance  
19 Commissioner”) Jessica Altman, and her successors in office, as the statutory Rehabilitator of  
20 SHIP. The current Pennsylvania Insurance Commissioner, Michael Humphreys, is now serving  
21 as the statutory Rehabilitator. In addition, Specialty Deputy Rehabilitator for SHIP,  
22 Patrick Cantilo, and Counsel for SHIP, Michael J. Broadbent, have been appointed by the  
23 Pennsylvania Insurance Commissioner as part of the SHIP Receivership.

1 **III. FACTS**

2 **A. The Insurance Commissioner’s Final, Uncontestable Order**

3 3.1 On March 1, 2022, the Office of the Insurance Commissioner served the “Order  
4 to Cease and Desist, Order No. 22-0104” (the Order), Exhibit A, on SHIP via U.S. mail with  
5 proper postage affixed to the address on file with the Office of the Insurance Commissioner.

6 3.2 In addition, the Office of the Insurance Commissioner served then Acting  
7 Insurance Commissioner for the Commonwealth of Pennsylvania, Michael Humphreys,  
8 the Specialty Deputy Rehabilitator for SHIP, Patrick Cantilo, and Counsel for SHIP  
9 Michael J. Broadbent.

10 3.3 The Order also informed SHIP of its right to demand a hearing to contest the  
11 Insurance Commissioner’s Order and demand an administrative hearing. Exhibit A at p. 8.

12 3.4 At no point in time has SHIP requested an administrative hearing to challenge the  
13 validity of the Insurance Commissioner’s Order.

14 3.5 Because the deadline to demand a hearing has passed, the Insurance  
15 Commissioner’s Order is now a final, unappealable order under the Administrative Procedure  
16 Act, Chapter 34.05 RCW (APA).

17 **B. SHIP’s Deteriorating Financial Condition and Receivership**

18 3.6 Like many insurance companies offering Long Term Care insurance, SHIP has  
19 faced some difficult financial issues in recent years. On April 1, 2019, the Insurance  
20 Commissioner suspended SHIP’s authorization to sell, solicit, or issue new policies in  
21 Washington State because SHIP’s reported capital and surplus fell below the minimum amounts  
22 required in RCW 48.05.340.

23 3.7 On January 29, 2020, SHIP was placed into receivership by the Receivership  
24 Court, in keeping with the laws of Pennsylvania, where SHIP is domiciled.

25 3.8 On April 22, 2020, the Rehabilitator filed a Rehabilitation Plan with Receivership  
26 Court.

1           3.9    On September 15, 2020, the Insurance Commissioner joined the Insurance  
2 Commissioners of Maine and Massachusetts (collectively, “the Intervening States”), to intervene  
3 in the SHIP receivership matter in the Receivership Court, in order to be able to submit  
4 comments and object to the Rehabilitation Plan.

5           3.10   It is no secret that the Intervening States have serious concerns and disagreement  
6 about the Rehabilitation Plan proposed by the Pennsylvania Insurance Commissioner as the  
7 Statutory Receiver of SHIP. The main concerns that the Intervening States have about the  
8 Rehabilitation plan are:

- 9           •    The Rehabilitation Plan places nearly all of the burden of eliminating the deficit  
10           SHIP is facing on the roughly 25,000 remaining policy holders, whose average  
11           age is 88, by forcing these policy holders to substantially reduce their benefits, or  
12           pay significantly more in premiums. .
- 13           •    The Rehabilitation Plan is proposed to be accomplished in stages, but the plan  
14           filed with the Court provides virtually no information about when the second  
15           phase will occur, or what additional changes will be required of policy holders.  
16           However, it is almost entirely certain that in the first phase of the Rehabilitation  
17           Plan, SHIP will not sufficiently eliminate the over \$1 billion deficit sufficient to  
18           avoid going into liquidation.
- 19           •    The Rehabilitation Plan keeps SHIP as a going concern for the entire first phase  
20           of the plan. By keeping SHIP in a rehabilitation status, various expenses, such as  
21           commissions to producers, continue to deplete the assets of the Company.  
22           Further, by requiring policy holders to make adjustments to their benefits and  
23           premiums before the plan is put in liquidation, the Rehabilitation Plan  
24           significantly reduces the ultimate benefit many policy holders would have  
25           received from the various Guarantee Funds in each state, had SHIP been placed  
26           promptly in liquidation.

- 1 • The Rehabilitator has never demonstrated that the majority of policy holders will  
2 be no worse off in Rehabilitation than they would have been in Liquidation.
- 3 • The Rehabilitation Plan purports to eliminate review of any rates by the various  
4 state regulators, and instead allows the Receiver to unilaterally sent, review, and  
5 impose rates across the country, ignoring any state laws that would require  
6 approval of any rate or policy form before such rates and forms can be used in  
7 the state.

8 3.11 On December 21, 2020, the Insurance Commissioner suspended SHIP's authority  
9 to sell, solicit, or issue new policies or certificates of coverage for one year, on the basis that  
10 SHIP's reported capital and surplus was below the minimum required in RCW 48.05.340.  
11 The Receiver took no exception to the entry of this suspension order by the  
12 Insurance Commissioner.

13 3.12 Despite the exceptions voiced by the Intervening States, the Rehabilitation Plan  
14 was approved by a Memorandum Opinion and Order issued by the Pennsylvania Commonwealth  
15 Court on August 24, 2021, as amended on November 4, 2021.

16 3.13 Nothing in the Rehabilitation Plan strips the Insurance Commissioner of the  
17 authority and obligation to enforce the consumer protection provisions of the Insurance Code  
18 against SHIP, and nothing in the Rehabilitation Plan, or any orders issued by the Receivership  
19 Court excuse SHIP from the consumer protection requirements of the Insurance Code.

20 3.14 The Intervening States appealed the approval of the Rehabilitation Plan to the  
21 Pennsylvania Supreme Court on September 21, 2021.

22 3.15 The Pennsylvania Supreme Court affirmed the Rehabilitation Plan with no legal  
23 analysis or explanation on June 20, 2023.

#### 24 **C. The Misleading Coverage Election Packages**

25 3.16 Even though the Rehabilitation Plan has been approved, the orders approving the  
26 Rehabilitation Plan have never approved nor ruled on the form the of the notices consumers will

1 receive about the options SHIP is offering them under the Rehabilitation Plan (the “Coverage  
2 Election Package”). Prior to the Coverage Election Packages being mailed, the Rehabilitation  
3 Court never addressed whether the form of the disclosures are exempt from state laws prohibiting  
4 unfair and deceptive communications in insurance transactions.

5         3.17 In late January 2022, SHIP mailed the Coverage Election Packages to  
6 Washington policyholders, notifying policyholders of pending premium and/or benefit  
7 modifications that would be forthcoming, and giving them the option to choose one of several  
8 options. Those options generally consisted of policyholders either significantly reducing the  
9 benefits they are entitled to under their policies, or paying a substantial increase in premiums in  
10 order to maintain their current premiums. However, the election packages failed to inform  
11 policyholders that by making certain selections, they were permanently reducing the amount  
12 they would be entitled to claim from the Washington State Guarantee Fund in the event SHIP is  
13 ever placed in liquidation. In fact, the Coverage Election Packages did not disclose that the first  
14 phase of the Rehabilitation Plan was highly unlikely to sufficiently reduce the outstanding deficit  
15 in order to avoid later placing the company in liquidation.

16         3.18 After receiving complaints from consumers and producers trying to help their  
17 policyholders decide the best option for their circumstances, the OIC reviewed the Coverage  
18 Election Packages and found them to be deficient.

19         3.19 As noted in the Insurance Commissioner’s Order, the Insurance Commissioner  
20 found that the Coverage Election Packages sent to Washington consumers by Respondent  
21 violated Insurance Code provisions by containing incomplete and misleading information about  
22 the choices presented to consumers and RCW 48.17.060.

23         3.20 In addition, the Insurance Commissioner found that SHIP had failed to submit  
24 the rates it was offering to Washington Consumers to the Washington Insurance Commissioner  
25 as required by state law. *See* RCW 48.19.010(2) and RCW 48.18.100(1).

26         3.21 The Insurance Commissioner’s Order compelled SHIP to cease and desist from:

- 1 A. Disseminating, implementing, or enforcing in Washington the  
2 “Coverage Election Package” sent to Respondent’s Washington  
3 policyholders . . . ;  
4 B. Implementing any election or choice made by a Washington  
5 policyholder under the terms of the “Coverage Election Package,” or  
6 attempting to enforce such election or choice against any Washington  
7 policyholder;  
8 C. Requesting that Washington policyholders select rates or benefits  
9 different from those authorized by the Insurance Commissioner and  
10 called for under the terms of the contract;  
11 D. Charging Washington policyholders additional premium, or  
withholding, delaying or encumbering benefits in whole or in part,  
without authorization by the Insurance Commissioner; and  
E. Making, issuing, or circulating any “Coverage Election Form” or  
similar correspondence or communication for Washington policies  
that is false or deceptive; contains misrepresentations; and/or is  
untrue, deceptive, or misleading.

12 3.22 Notably, the Order did not direct the Receiver to take or refrain from any action  
13 as the Receiver for SHIP. Instead, the Order was directed exclusively to SHIP, as a regulated  
14 entity that voluntarily submitted itself to Washington laws as a condition of its authorization to  
15 sell policies to Washington Consumers. Nor did the Insurance Commissioner’s Order prohibit  
16 the Receiver from taking any action that was authorized by the Plan. Rather, the Order prohibited  
17 SHIP from holding consumers to decisions that were made based on the incomplete and  
18 misleading information SHIP provided to consumers.

19 3.23 Further, the Order did not command the Receiver to take any action contrary to  
20 the terms of the Plan. It merely required the Receiver to also comply with the requirements of  
21 Washington Law. For example, the Order did not prohibit SHIP or the Receiver from using the  
22 rates they have already determined are supported. But it does require SHIP to submit those rates  
23 and forms it intends to use in Washington State to the Insurance Commissioner.<sup>1</sup>

24 \_\_\_\_\_  
25 <sup>1</sup> The Maine Insurance Commissioner also issued a cease and desist order to SHIP concerning the  
26 Coverage Election Packages. Maine’s order was also challenged by the Receiver in the Receivership Court. Since  
this matter is only addressing the Washington Insurance Commissioner’s Order, it will refer only to the  
Washington Insurance Commissioner.

1           3.24   SHIP did not request an administrative hearing to challenge the Order within  
2 ninety (90) days of receipt of the Order. Pursuant to RCW 48.04.010(3), Respondent’s right to  
3 an administrative hearing to challenge the Order is now conclusively deemed waived.

4           3.25   Rather than request an administrative hearing, the Receiver on March 25, 2022,  
5 requested a Show Cause hearing challenging the Insurance Commissioner’s Order, in the  
6 Receivership Court. In that motion, the Receiver reiterated its previous arguments that any delay  
7 of the implementation of the plan would somehow cause irreparable harm to the receivership.  
8 Indeed, at that point the Receiver had contested two different stays of the implementation of the  
9 Plan that were requested by the Washington, Maine, and Massachusetts Commissioners as this  
10 matter was on appeal.

11          3.26   In requesting a Show Cause hearing, the Receiver also, incorrectly, claimed that  
12 the Washington State Insurance Commissioner has no jurisdiction over SHIP. He also  
13 mischaracterized the Insurance Commissioner’s Order as preventing the Plan from being  
14 implemented, rather than preventing SHIP from implementing the plan using materials that are  
15 misleading and inaccurate when discussing the plan with Washington policy holders.

16          3.27   Further, the Rehabilitator mischaracterized the Insurance Commissioner’s Order,  
17 along with communications the Insurance Commissioner has had with Washington  
18 policyholders, as misleading and inaccurate, without explaining in what way it is incorrect or  
19 inaccurate.

20          3.28   Among the relief the Receiver requested was a “termination” of the  
21 administrative proceedings in Washington. However, because SHIP has never requested an  
22 administrative hearing, no administrative proceeding in Washington was ever initiated.  
23 Therefore there was no proceeding to terminate.

24          3.29   On April 4, 2022, Insurance Commissioner was ordered to provide an answer the  
25 request for a show cause hearing.  
26

1           3.30    On May 3, 2022, the Insurance Commissioner filed a joint response with the  
2 Insurance Commissioner from Maine, objecting to the Show Cause request, and requesting a  
3 stay of the proceedings to challenge their respective orders. Part of the reason for this stay was  
4 that the Receiver had informed all the states that the Plan would not be implemented until  
5 October 1, 2022, or whenever a decision was issued by the Pennsylvania Supreme Court on the  
6 appeal challenging the implementation of the Plan. That voluntary stay by the Receiver would  
7 actually remain in effect until September of 2023.

8           3.31    Because SHIP was not implementing the plan in May of 2022, or relying on the  
9 election decisions that were based on the misleading and inaccurate, the Insurance Commissioner  
10 noted in his response that SHIP was fully complying with the Order, therefore there was no need  
11 to waste time and energy on further litigation, especially as the plan was on appeal.

12           3.32    On May 17, 2022, the Receiver filed a reply brief, again mischaracterizing the  
13 Insurance Commissioner's Order as an encroachment on the authority of the Receivership Court.

14           3.33    On June 2, 2022, the Receivership Court ordered the Insurance Commissioner to  
15 Answer why the Order was not a violation of the Court's jurisdiction, or any order of the  
16 Receivership Court.

17           3.34    On June 22, 2022, the Insurance Commissioner submitted his response, again  
18 outlining why the Order against SHIP does not interfere with an order or jurisdiction of the  
19 Receivership Court.

20           3.35    Among other things, the Insurance Commissioner noted that the Court has never  
21 reviewed the election package that was sent to consumers, and has never approved particular  
22 language for those packages. Nor has the Court ever reviewed or approved the rates contained  
23 in the election packages.

24           3.36    The Insurance Commissioner also noted that the Order is now final, and not  
25 subject to collateral attack in Pennsylvania.  
26

1           3.37    On August 25, 2022, the Court entered an order instructing the Washington  
2 Insurance Commissioner to cease and desist from interfering with the Rehabilitation Plan.  
3 Exhibit B. However, that order never identified a single action by the Insurance Commissioner  
4 that interfered with the Rehabilitation Plan. Nor did the order identify a single order issued by  
5 the Receivership Court that the Insurance Commissioner’s Order violated.

6           3.38    In addition, without citation or explanation, the Receivership Court concluded  
7 that the Orders from Maine and Washington are “nullities.” Exhibit B at 1.

8           3.39    Notwithstanding the order issued by the Receivership Court, SHIP fully complied  
9 with the Commissioner’s order until August 2023.

10          3.40    On June 20, 2023, the Pennsylvania Supreme Court affirmed the Rehabilitation  
11 Plan without any analysis or decision.

12          3.41    In August of 2023, the Insurance Commissioner was informed by consumers and  
13 insurance producers that SHIP began informing consumers that it would begin implementing  
14 coverage election decisions based on the previous misleading and inaccurate Election Packages  
15 as early as September.

16          3.42    At no point in time has SHIP provided corrected Coverage Election Packages to  
17 consumers.

18          3.43    At no point in time has SHIP submitted the rates it intends to apply to Washington  
19 Consumers to the Insurance Commissioner.

20                   **IV.    CAUSE OF ACTION CLAIM FOR DECLARATORY RELIEF**  
21                                   **(FULL FAITH AND CREDIT CLAUSE)**

22          4.1    The Insurance Commissioner incorporates the allegations above as though fully  
23 set forth herein.

24          4.2    By failing to seek an administrative appeal of the seeking an order purporting to  
25 invalidate the unchallenged and final order of the Insurance Commissioner, SHIP and the  
26 Receivership Court failed to give full faith and credit to the laws of Washington State,

1 particularly the APA, and the requirement to exhaust administrative remedies before seeking  
2 judicial review of an agency action.

3 4.3 By asking the Receivership court to issuing an order after the Insurance  
4 Commissioner's Order became a final and uncontestable order, SHIP, the Receiver, and the  
5 Receivership Court failed to give full faith and credit to the laws and orders of the State of  
6 Washington.

7 4.4 At no time did the Receivership Court have proper jurisdiction to hear SHIP's  
8 challenge to the Insurance Commissioner's administrative order.

9 4.5 Because the Receivership Court lacked jurisdiction over the Insurance  
10 Commissioner's Order, the order obtained by SHIP in Pennsylvania holding that the Insurance  
11 Commissioner's Order is a "nullity," is invalid and cannot bar the Insurance Commissioner from  
12 seeking assistance from the court to judicially enforce the Insurance Commissioner's Order.

13 **V. PRAYER FOR RELIEF**

14 Based on these allegations, and pursuant to RCW 34.05.578, Petitioner requests that:

15 1. The Court declare that the Insurance Commissioner's Order to Cease and Desist,  
16 Order No. 22-0104, dated March 1, 2022, remains a valid, final, uncontestable order under  
17 Washington law;

18 2. The Court declare that the Insurance Commissioner has authority to take any  
19 reasonable measure to require SHIP to comply with the Order to Cease and Desist, Order No.  
20 22-0104, dated March 1, 2022, and abide by the terms of said Order;

21 3. The Court allow the Commissioner to recover the Commissioner's court filing  
22 fee of \$240 and a statutory attorney fee of \$200; and

23  
24 ///

25 ///

26 ///



**PROOF OF SERVICE**

I certify that a true and correct copy of this document was served on all parties or their counsel of record on the date below as follows:

SENIOR HEALTH INSURANCE  
COMPANY OF PENNSYLVANIA  
550 CONGRESSIONAL BLVD  
SUITE 200  
CARMEL, IN 46032  
KRICKARD@SHIPLTC.COM

U.S. Mail via state Consolidated  
Mail Courtesy Service (with proper  
postage affixed)

Facsimile

Electronic mail

ABC/Legal Messenger

PATRICK H. CANTILO  
CANTILO & BENNETT, LLP  
11401 CENTURY OAKS TERRACE  
SUITE 300  
AUSTIN, TX 78758  
PHCANTILO@CB-FIRM.COM

MICHAEL JOHN BROADBENT  
COZEN O'CONNOR  
1900 MARKET STREET  
PHILADELPHIA, PA 19103  
MBROADBENT@COZEN.COM

MICHAEL HUMPHREYS  
1326 STRAWBERRY SQUARE  
HARRISBURG, PA 17120

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 6th day of November 2023, at Olympia, Washington.



\_\_\_\_\_  
DANIELLE ANDERSON  
Paralegal

# EXHIBIT A

**STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER**

*In the Matter of*

**SENIOR HEALTH INSURANCE  
COMPANY OF PENNSYLVANIA,**

Authorized Insurer.

Order No. 22-0104

WAOIC No. 69145

NAIC 76325

**ORDER TO CEASE AND DESIST**

Pursuant to RCW 48.02.080(3)(a), the Insurance Commissioner of the state of Washington (“Insurance Commissioner”) orders the above-named Respondent, and its officers, directors, trustees, employees, agents, and affiliates to immediately cease and desist from:

- A. Disseminating, implementing, or enforcing in Washington the “Coverage Election Package” sent to Respondent’s Washington policyholders, described further below;
- B. Implementing any election or choice made by a Washington policyholder under the terms of the “Coverage Election Package,” or attempting to enforce such election or choice against any Washington policyholder;
- C. Requesting that Washington policyholders select rates or benefits different from those authorized by the Insurance Commissioner and called for under the terms of the contract;
- D. Charging Washington policyholders additional premium, or withholding, delaying or encumbering benefits in whole or in part, without authorization by the Insurance Commissioner; and
- E. Making, issuing, or circulating any “Coverage Election Form” or similar correspondence or communication for Washington policies that is false or deceptive; contains misrepresentations; and/or is untrue, deceptive, or misleading.

**BASIS:**

1. Senior Health Insurance Company of Pennsylvania (“SHIP”) is a Pennsylvania-domiciled life and disability insurance company that became authorized to issue long-term care insurance (“LTC”) policies in Washington beginning in 1989.

ORDER TO CEASE AND DESIST AND  
IMPOSING FINE  
ORDER NO. 22-0104

State of Washington  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

2. In recent years, SHIP experienced financial distress and faced the possibility of insolvency. SHIP has approximately 1,204 policies remaining in force that were issued in Washington and subject to Washington law.

3. On April 1, 2019, the Insurance Commissioner issued Order No. 19-0154, suspending SHIP's authority to sell, solicit, or issue new policies or certificates of coverage for one year, on the basis that SHIP's reported capital and surplus was below the minimum required in RCW 48.05.340. The Order provides that the continuation of existing coverages to existing members is required during the term of this suspension, and that the Order does not relieve SHIP from any pending or accrued reporting, filing, or fee/tax payment required by Title 48 RCW. SHIP did not appeal or contest this Order.

4. On December 21, 2020, the Insurance Commissioner again suspended SHIP's authority to sell, solicit, or issue policies or certificates of coverage to new members for one year pursuant to Order No. 20-0879. The basis was once more that SHIP's reported capital and surplus was below the minimum required in RCW 48.05.340. The Order provides that the continuation of existing coverages to existing members is required during the term of this suspension, and that the Order does not relieve SHIP from any pending or accrued reporting, filing, or fee/tax payment required by Title 48 RCW. SHIP again did not appeal or contest Order No. 20-0879.

5. On January 29, 2020, upon the application of Jessica Altman, the Commissioner of Insurance for the Commonwealth of Pennsylvania, the Commonwealth Court of Pennsylvania, in docket number 1 SHP 2020, entered an Order of Rehabilitation placing SHIP into rehabilitation in accordance with the provisions of Pennsylvania law.

6. The Order of Rehabilitation appointed Commissioner Altman and her successors in office as statutory Rehabilitator of SHIP pursuant to the provisions of 40 P.S. § 221.14, et seq. and required the Rehabilitator to prepare a plan of rehabilitation. Commissioner Altman appointed Patrick Cantilo as Special Deputy Rehabilitator, with the power to act on the Rehabilitator's behalf.

7. On April 22, 2020, the Rehabilitator filed her Application for Approval of the Plan of Rehabilitation for SHIP and contemporaneously filed a Rehabilitation Plan.

8. On September 15, 2020, the Insurance Commissioner was granted intervention as a party in the Rehabilitation Proceeding.

9. The Rehabilitation Plan was approved by a Memorandum Opinion and Order of the Pennsylvania Commonwealth Court on August 24, 2021, as amended on November 4, 2021. However, the Commonwealth Court did not issue any order purporting to approve premium rates under the Rehabilitation Plan until February 2, 2022.

10. The Insurance Commissioner and the other intervening jurisdictions appealed the Rehabilitation Plan to the Pennsylvania Supreme Court (Middle District), No. 71 MAP 201. The appeal challenges the Commonwealth Court’s asserted authority to approve premium rates and vary contractual benefits for the policies at issue even if contrary to the statutes and regulations of the states where the policyholders are located.

11. By Order issued January 31, 2022, the Pennsylvania Supreme Court denied the insurance regulators’ request for stay pending appeal of the Rehabilitation Plan. The appeal otherwise remains pending before the Pennsylvania Supreme Court. Importantly, the Commonwealth Court has never approved nor ruled on the form the of the Coverage Election Package, nor discussed state laws and regulations regarding false or misleading communications to policyholders in the business of insurance.

12. In late-January 2022, without authorization by the Insurance Commissioner, and prior to any purported approval of premium rates by the Commonwealth Court, the SHIP Rehabilitator mailed a “Coverage Election Package” to Washington policyholders which advises them of purportedly forthcoming premium and/or benefit modifications that would begin as early as April 1, 2022. The “Coverage Election Package” requires Washington policyholders to complete and return their election form with a postmark date of no later than March 15, 2022.

13. The “Coverage Election Package” offers five coverage options to Washington policyholders, including downgrading the policy, converting to a basic policy or to an enhanced basic policy, converting to an enhanced paid-up policy, and keeping their current policy. Each of these benefit changes is also accompanied by premium rate changes relative to the benefits offered under the rates and forms currently approved for such Washington policies. If a Washington policyholder does not make a coverage election by the March 15, 2022, specified postmark date, SHIP will on its own exercise the basic policy coverage option, resulting in a significant benefit reduction under a Washington insurance policy.

14. Certain provisions of the Coverage Election Package are misleading to consumers. Specifically, so-called Option 1 – Downgrade Your Policy, and Option 4 – Keep Your Current Coverage, both advertise that their respective Maximum Lifetime Benefit is “Unlimited.” However, other materials explain that “[p]remium rate increases and policy benefit modifications may be required for policyholders who elected Option 1 (Downgrade Your Policy) or Option 4 (Keep Your Current Coverage) in Phase One,” making the claim of unlimited lifetime benefits misleading at best. The Coverage Election Package also requires consumers to state that they make any election “voluntarily” even though Option 1 is selected for all consumers who do not select their own option from the package, and when there is uncertainty regarding the legality of the Rehabilitation Plan, as discussed further below.

15. The “Coverage Election Package” fails to advise Washington policyholders that the premium rates and policy modifications under the Rehabilitation Plan are on appeal to the Pennsylvania Supreme Court. SHIP thus is requiring Washington policyholders to make final and binding coverage elections without any explanation to Washington policyholders about how their rates and benefits would be reconfigured if the Rehabilitation Plan is overturned or otherwise modified by the court in a manner that affects rates and benefits.

16. In addition to the pending appeal of the order approving the Rehabilitation Plan before the Pennsylvania Supreme Court, injunctions and administrative cease and desist orders have been issued against SHIP, enjoining the Rehabilitator from implementing the Rehabilitation Plan in multiple jurisdictions. For example, state courts in Louisiana and South Carolina have granted preliminary injunctions against SHIP upon finding that the insurance regulator’s challenges to the Rehabilitation Plan demonstrated a likelihood of success on the merits and that a preliminary injunction was necessary to prevent irreparable harm to policyholders. Similar, states such as Maine, Ohio, Connecticut, as well as the District of Columbia, have issued administrative orders to cease and desist to SHIP regarding the same conduct at issue in this matter.

17. Despite the substantial legal uncertainty surrounding these ongoing legal proceedings, the Coverage Election Package fails to disclose to Washington that pending litigation may overturn or modify the Rehabilitation Plan and options afforded to policyholders. Even so, the Coverage Election Package asserts that Washington policyholder elections and SHIP-imposed

elections are deemed irrevocable even if the Rehabilitation Plan is overturned or otherwise modified on appeal.

18. Even if the rates proposed by SHIP are approvable in Washington, the Coverage Election Package fails to adequately inform Washington policyholders that select the policy downgrade, the paid-up policy option, or their current policy terms could face more rate increases during Phase Two of the Rehabilitation Plan.

19. On February 2, 2022, the Rehabilitation Court approved SHIP's use of nationwide premium rates including in Washington. However, SHIP has not submitted to the Insurance Commissioner the premium rates that SHIP intends to use on insurance coverage provided to Washington policyholders, beginning as early as April 1, 2022, nor obtained the Insurance Commissioner's approval to such rates. SHIP has also failed to make all required regulatory filings with the Insurance Commissioner related to SHIP's transaction of insurance in this State, including the required filing of all forms prior to use.

20. Each of the coverage options offered by the Coverage Election Package represents either a reduction in the benefits offered by the Washington policies or an increase in premium rates, or some combination thereof. None of these modifications of the Washington policies for Washington policyholders has been filed with, nor approved by, the Insurance Commissioner for Washington State.

21. The most recent filings by SHIP for Washington included one rate and form filing (state tracking numbers 351565 and 351574, respectively), which were filed with the Insurance Commissioner on September 21, 2018, and subsequently withdrawn. No filings of either rates or forms have been approved for SHIP since at least September 14, 2016, and the five filings since then have either been withdrawn or rejected.

22. Less than one month since the Coverage Election Package was mailed to Washington policyholders, at least eight (8) complaints regarding the Coverage Election Package have been filed with the Insurance Commissioner on behalf of Washington policyholders, either confused by its contents or upset at SHIP's attempt to change contractual benefits, or both.

23. SHIP's effort to change one particular contractual benefit is especially troubling. Certain Washington policyholders have a Lifetime Waiver of Premium for Survivor provision in their contracts, which provides, upon death of a spouse, "the surviving person may continue the

Policy in force for the rest of his or her life and all subsequent premiums will be waived.” This provision has been triggered for some of the Washington policyholders in previous years and confirmed by the insurer. SHIP’s Coverage Election Package, wherein Option 4 – Keep Your Current Coverage, requires a billable annual premium of \$12,199, is fundamentally incompatible with this specific important contractual benefit.

24. RCW 48.19.010(2) provides that every insurer shall, with respect to disability insurance, before using file with the Insurance Commissioner its manual of classification, manual of rules and rates, and any modifications thereof except as provided under RCW 48.43.733 or rate filing requirements established by a specific statute or federal law.

25. RCW 48.18.100(1) provides that no insurance policy form or application form where written application is required and is to be attached to the policy, or printed life or disability rider or endorsement form may be issued, delivered, or used unless it has been filed with and approved by the Insurance Commissioner.

26. RCW 48.02.080(3)(a) provides if the Insurance Commissioner has cause to believe that any person is violating or is about to violate any provision of this code or any regulation or order of the Insurance Commissioner, he or she may issue a cease and desist order.

27. RCW 48.30.040 provides no person shall knowingly make, publish, or disseminate any false, deceptive or misleading representation or advertising in the conduct of the business of insurance, or relative to the business of insurance or relative to any person engaged therein.

28. RCW 48.30.090 provides no person shall make, issue or circulate, or cause to be made, issued or circulated any misrepresentation of the terms of any policy or the benefits or advantages promised thereby, or the dividends or share of surplus to be received thereon, or use any name or title of any policy or class of policies misrepresenting the nature thereof.

29. WAC 284-50-020(1) applies Chapter 284-50 WAC to every "advertisement," as that term is defined in WAC 284-50-030(1), (7), (8) and (9), unless otherwise specified in these rules, intended for presentation distribution, or dissemination in this state when such presentation, distribution, or dissemination is made either directly or indirectly by or on behalf of an insurer, or insurance producer as those terms are defined in the insurance code of this state and these rules.

30. WAC 284-50-020(2) provides that every insurer shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all

advertisements of its policies. All such advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurer for whom such advertisements are prepared.

31. WAC 284-50-030(1) provides in relevant part that an advertisement for the purpose of these rules shall include: (a) printed and published material, audio visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, television scripts, billboards, and similar displays; and (b) descriptive literature and sales aids of all kinds issued by an insurer, or insurance producer for presentation to members of the insurance buying public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters.

32. WAC 284-50-050(1) provides that the format and content of an advertisement shall be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. Whether an advertisement has a capacity or tendency to mislead or deceive shall be determined by the Insurance Commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, within the segment of the public to which it is directed.

33. WAC 284-50-050(2) provides that advertisements shall be truthful and not misleading in fact or in implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, shall not be used.

34. WAC 284-50-060(1) provides in relevant part that no advertisement shall omit information or use words, phrases, statements, references, or illustrations if the omission of such information or use of such words, phrases, statements, references, or illustrations has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, or premium payable.

35. WAC 284-50-070(1) provides that when an advertisement which is an invitation to contract refers to either a dollar amount, or a period of time for which any benefit is payable, or the cost of the policy, or specific policy benefit, or the loss for which such benefit is payable, it shall also disclose those exceptions, reductions, and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity or tendency to mislead or deceive.

36. The Respondent’s actions described herein violate Insurance Code provisions that include RCW 48.30.040 (false and misleading representations), RCW 48.30.090 (misrepresentation of policy terms and benefits), WAC 284-50-050(1) and (2), WAC 284-50-060(1), WAC 284-50-070(1) (false, misleading, deceptive advertisements), RCW 48.19.010(2) (disability rate filing required), and RCW 48.18.100(1) (form filing required).

**NOTICE OF OPPORTUNITY FOR HEARING**

Respondents have the right to demand a hearing in accordance with RCW 48.04.010, WAC 284-02-070, and WAC 10-08-110. Respondents have 90 days from the receipt of this Order to demand a hearing. **If the Insurance Commissioner does not receive a hearing demand from Respondent within 90 days from the date Respondent received this Order, Respondent’s right to a hearing is conclusively deemed to have been waived.**

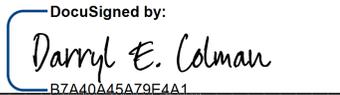
This Order shall remain in effect subject to the further order of the Insurance Commissioner.

**THIS ORDER IS EFFECTIVE IMMEDIATELY AND IS ENTERED** at Tumwater, Washington, this 1st day of March, 2022.



MIKE KREIDLER  
Insurance Commissioner

By and through his designee

DocuSigned by:  
  
B7A40A45A79E4A1

DARRYL E. COLMAN  
Attorney Manager  
Legal Affairs Division

**AMENDED CERTIFICATE OF MAILING**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing ORDER TO CEASE AND DESIST NO. 22-0104 on the following individuals by depositing in the U.S. Mail via State Consolidated Mail Service with proper postage affixed to:

Senior Health Insurance Company of Pennsylvania  
550 Congressional Blvd  
Suite 200  
Carmel, IN 46032  
[krickard@shipltc.com](mailto:krickard@shipltc.com)

Courtesy Copy To:

*Specialty Deputy Rehabilitator for Senior Health Insurance Company of Pennsylvania*  
Patrick H. Cantilo  
Cantilo & Bennett, LLP  
11401 Century Oaks Terrace  
Suite 300  
Austin, TX 78758  
[phcantilo@cb-firm.com](mailto:phcantilo@cb-firm.com)

*Counsel for Senior Health Insurance Company of Pennsylvania*  
Michael John Broadbent  
Cozen O'Connor  
1900 Market Street  
Philadelphia, PA 19103  
[mbroadbent@cozen.com](mailto:mbroadbent@cozen.com)

*Acting Insurance Commissioner for the Commonwealth of Pennsylvania*  
Michael Humphreys  
1326 Strawberry Square  
Harrisburg, PA 17120

SIGNED this 1st day of March, 2022, at Tumwater, Washington.

DocuSigned by:  
  
1DEEF54C44F9459...

---

Kimberly Shoblom  
Paralegal  
Legal Affairs Division

# EXHIBIT B



proceeding; (iv) waste of the insurer's assets; ... [and] (xi) any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders ... or the administration of the proceeding." Section 505(a) of Article V, 40 P.S. §221.5(a).



---

MARY HANNAH LEAVITT, President Judge Emerita