

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
OFFICE OF THE HEALTH INSURANCE COMMISSIONER
1511 PONTIAC AVENUE, BLDG. #69-1
CRANSTON, RHODE ISLAND 02920**

FINAL ORDER (OHIC-2010-11)

Examination of The MEGA Life and Health Insurance Company

THIS MATTER comes before the Health Insurance Commissioner (the “Commissioner”) as a result of an examination of The MEGA Life and Health Insurance Company (“MEGA”). The examination was conducted on behalf of the Commissioner by Hinckley, Allen & Tringale LP, DeWeese Consulting, Inc., and John Aloysius Cogan Jr. (collectively, the “Examiners”) pursuant to R.I. Gen Laws §§ 27-13.1-1, *et seq.* and 27-50-9. The Commissioner has reviewed the Examiners’ report dated August 6, 2007 (the “Report”) and relevant Examiner work papers, all written submissions and rebuttals, and the recommendations of the Commissioner’s staff. After full consideration of the above-referenced Report and other materials and recommendations, the Commissioner orders as follows:

FINDINGS OF FACT

1. At all relevant times MEGA was licensed by the State of Rhode Island as an insurance company.
2. In accordance with R.I. Gen Laws §§ 27-13.1-1, *et seq.*, and 27-50-9, the Examiners completed a targeted market conduct examination of MEGA.
3. The Commissioner scheduled the examination in furtherance of his statutory duty under R.I. Gen Laws § 27-50-9 to prepare a periodic market evaluation. This examination was conducted to determine the extent of MEGA’s compliance with R.I. Gen. Laws §§ 27-50-1, *et seq.*, the Small Employer Health Insurance Availability Act (“Act”), as a basis for determining the effectiveness, efficiency and fairness of the small group health insurance

marketplace and for determining whether MEGA and its producers are fairly and actively marketing or issuing health benefit plans to small employers in fulfillment of the purposes of the Act.

4. In conducting the examination the Examiners observed those guidelines and procedures set forth in the most recent available edition of the examiner's handbook adopted by the National Association of Insurance Commissioners. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to R.I. Gen Laws § 27-13.1-4(a).
5. The Examiners prepared the Report. This Report comprises only the facts appearing upon the books, records or other documents of MEGA, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and the conclusions and recommendations as the Examiners reasonably warranted from the facts.
6. The Examiners found, as discussed more fully in the Report, that MEGA failed in certain respects to meet the requirements of the Act and applicable regulations and guidance documents. Those failures included the following:
 - a.) Improper use of medical underwriting;
 - b.) Improper rating practices and failure to develop an acceptable rate manual;
 - c.) Imposition of improper administrative fees; and
 - d.) Failure to offer coverage equally to all eligible groups of 50 employees or fewer.
7. MEGA was provided an opportunity to review the Report. After that review, MEGA delivered to the Commissioner written submissions and rebuttals to the Report.
8. The Commissioner has fully reviewed and considered the Report, all of MEGA's

submissions and rebuttals, and all relevant portions of the Examiners' work papers.

9. As consequence of that review, and of discussions between the Commissioner, his Office, the Examiners and MEGA and its representatives, the Commissioner hereby adopts the facts, conclusions and recommendations contained in the Report as modified by the following Conclusions of Law and Order.
10. Any Conclusion of Law that is also a Finding of Fact is hereby adopted as a Finding of fact.

CONCLUSIONS OF LAW AND FINAL ORDER

11. The preceding sections 1 through 10 of this Final Order are incorporated into these Conclusions of Law.
12. This Office has jurisdiction in this matter pursuant to R.I. Gen Laws §§ 42-14.5-1 *et seq.*, 42-14-5(d), 27-13.1-1 *et seq.* and 27-50-1 *et seq.*
13. The examination was conducted in accordance with the provisions of R.I. Gen Laws § 27-13.1-1 *et seq.*
14. The Commissioner accepts the Examiners' Report, and hereby resolves the issues identified in the Report subject to the following terms¹:
 - 14.1 *Premium Calculation/Restitution.* MEGA agrees to make premium restitution for the period of October 1, 2004 and forward (up to and including the date the health benefit plans terminate) (the "Relevant Period") in the following categories. For each of these, MEGA will recalculate and return overcharged premium in

¹ MEGA's affiliate, Mid-West National Life Insurance Company of Tennessee ("Mid-West"), was not subject to this targeted market conduct examination. However, Mid-West also wrote some business affected by the Report, and so has agreed to abide by and cooperate with the Conclusions of Law and Final Order. The Commissioner acknowledges and expresses the appreciation of his Office for this cooperation. In view of Mid-West's inclusion in the remediation actions under this Final Order, the Commissioner agrees that no further market conduct or other regulatory action will be taken against Mid-West as a result of the issues resolved pursuant to this Final Order.

accordance with methodologies specified in the addendum to this Final Order.

14.1.1 *Five Year Age Brackets.* The Examiners recommend and the Commissioner orders that MEGA revise its rates to use age brackets of not less than five year increments and that the last five year age bracket end with age sixty-five.

14.1.2 *Family Composition.* The Examiners recommend and the Commissioner orders that MEGA change its rating methodology such that, for a given small employer group, MEGA charges the same rate for each family composition category, as required by R.I. Gen Laws § 27-50-5(a)(1) and Regulation 82(5)(A)(1).

14.1.3 *Health Status Adjustments.* The Examiners recommend and the Commissioner orders that MEGA develop and submit a list of groups that were assigned health status adjustment factors that exceeded 10% of the adjusted community rate and determine for each of the groups the excess premium charged.

14.1.4 *Tobacco Usage.* The Examiners recommend and the Commissioner orders that MEGA eliminate usage of a rating variable that is based on tobacco usage.

14.1.5 *Geographic Location.* The Examiners recommend and the Commissioner orders that MEGA eliminate usage of a rating variable that is based on geographic location.

14.1.6 *4:1 Compression Ratio.* The Examiners recommend and the Commissioner orders that MEGA revise its rates to limit the highest rate

charged for a given plan of insurance and family composition type to four times the lowest rate.

14.2 *Claims Restitution.* MEGA agrees to make claims restitution for the Relevant Period in the following categories. For each of these, MEGA will make restitution in accordance with methodologies specified in the addendum to this Final Order.

14.2.1 *Exclusionary Waivers.* The Examiners recommend and the Commissioner orders that, with respect to any claim which was incurred and subsequently denied during the Relevant Period on the basis of an exclusion for a specified condition or disease which does not meet the requirements of the Act, MEGA will review and recalculate such claims and provide any additional benefit payment that may be owed.

14.2.2 *Pre-existing Conditions.* The Examiners recommend and the Commissioner orders that, with respect to any claim which was incurred and subsequently denied during the Relevant Period on the basis of a pre-existing condition that does not meet the requirements of the Act, MEGA will review and recalculate such claims and provide any additional benefit payment that may be owed.

14.2.3 *Waiting Period – Health – Wellness Benefits.* The Examiners recommend and the Commissioner orders that, with respect to any claim for wellness benefits that was incurred and subsequently denied during the Relevant Period because of the application of a waiting period longer than 60 days, MEGA will review and recalculate such claims and provide any additional benefit payment that may be owed.

14.2.4 *Waiting Period – Dental.* The Examiners recommend and the Commissioner orders that, with respect to any claim for dental benefits which was incurred and subsequently denied during the Relevant Period because of the application of a waiting period longer than 60 days, MEGA will review and recalculate such claims and provide any additional benefit payment that may be owed.

14.3 *Subscriber Fees.* The Examiners recommend and the Commissioner orders that MEGA ensure certificate holders who were charged a one-time association fee by the Association for membership, or who were charged any monthly association dues amount by the Association for membership which exceeds the allowable monthly fee of \$5.00 per subscriber per month, are identified and reimbursed for the amount of such overcharges charged during the Relevant Period. MEGA will ensure that the recalculation and return of overcharged fees occurs in accordance with methodologies specified in the addendum to this Final Order.

14.4 *Suspension of Insurance Business in Rhode Island.* The Commissioner has determined, and MEGA agrees, that for three years from the date of this Final Order MEGA will suspend its health benefit plan business in Rhode Island and will not write any new or renewal any health benefit plans, as defined under R.I. Gen Laws §27-50-3(t), in the state.² During that three year period, MEGA will

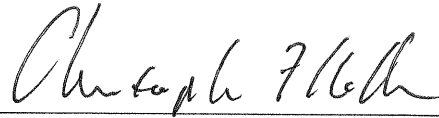
² The Commissioner and MEGA agree that the provisions of this section, as with the other sections of this Final Order, shall apply equally to MEGA's affiliate, Mid-West. The Companies will continue to renew the association group health benefit plans upon the payment of required premiums until such time as the association group health benefit plans terminate after the agreed notice of non-renewal to the affected insureds. These actions by MEGA and Mid-West do not constitute elections to discontinue offering health insurance coverage in the small group market for the purposes of title XXVII of the Public Health Service Act, section 2712(c)(2), as these actions are ordered by the Commissioner as the result of a market conduct examination and, as such, as suspensions and not elections by MEGA or Mid-West to discontinue offering health insurance coverage.

retain its license to conduct the business of insurance in Rhode Island, and shall not resume writing health benefit plans in Rhode Island until expiration of the three year period and unless MEGA submits a business plan to the Commissioner which meets with the Commissioner's approval, said approval within the sole discretion of the Commissioner and not to be unreasonably withheld. MEGA will suspend its health benefit plan business in Rhode Island in accordance with methodologies specified in the addendum to this Final Order.

- 14.5 *Continuation of non-health benefit plans.* MEGA may continue to offer and renew the following types of health insurance plans that are excepted from the definition of a "health benefit plan" under R.I. Gen Laws §27-50-3(t): accident only; dental only; vision only; hospital indemnity or other fixed indemnity insurance; specified disease or illness; disability income; and any other health insurance plan that may be now or later be excepted from the definition of "health benefit plan." In addition, the Company may continue to offer any type of life insurance for which it is licensed in Rhode Island.
- 14.6 *Non-renewal of existing health benefit plans.* MEGA shall non-renew its existing association group health benefit plans with 90-days advance written notice to the affected insureds as outlined in this Final Order and the Addendum.
- 14.7 *Penalty.* Upon consideration of all of the above-described Findings of Fact and Conclusions of Law, and as a consequence of discussions with his staff and his Examiners regarding same, the Commissioner orders that MEGA shall pay a financial penalty in the amount of \$225,000. This fine will be payable by check made out to the General Treasury of the State of Rhode Island and delivered

within ten business days of the execution of this Final Order.

15. The Commissioner retains jurisdiction over this matter to issue any and all further or supplemental Orders deemed appropriate or to take such further action necessary to dispose of this matter.



Christopher F. Koller
Health Insurance Commissioner

Dated: October 11, 2011

ADDENDUM

Premium Restitution

Premium restitution will be calculated based upon guidance from OHIC and the Examiners, based upon the following guidelines, and consistent with the methods underlying the calculations provided by MEGA¹ in an Excel file, *Sample calculations.xlsm*, provided to the Examiners on July 8, 2011, and as supported by the Premium Restitution Summary document provided by MEGA to the Examiners on June 24, 2011:

Five Year Age Brackets (Recommendation 6). MEGA must make restitution for overcharged premium due to its failure to use five-year age brackets. MEGA must calculate restitution for individual certificateholders who were overcharged regardless of whether other certificateholders were undercharged. In other words, MEGA may not net total overcharges against total undercharges. MEGA may, however, net overcharges and undercharges for individual certificateholders. Certificateholders who were undercharged during a given year based on MEGA's failure to appropriately use five-year age brackets may have their restitution under other premium rating requirements (five-year age brackets during a different year, family composition, health status, tobacco usage, geographic location, and 4:1 compression ratio) reduced to the extent of that undercharge. For example, a certificateholder who was undercharged \$100 because of the failure to use five-year age brackets, but overcharged by \$300 because of an excessive health status adjustment, would receive a net restitution of \$200.

Family Composition (Recommendation 8). MEGA must make restitution for overcharged premium due to its failure to appropriately use family composition types.

Health Status Adjustment (Recommendation 14). MEGA must make restitution for overcharged premium due to its failure to appropriately use the health status adjustment. For policies written or renewed before January 1, 2009, MEGA was allowed to use a health status adjustment of up to +/- 10% of the adjusted community rate (if MEGA had been using health status in the market prior to 2000). For policies written or renewed on or after January 1, 2009, MEGA was not allowed to use a health status adjustment.

Tobacco Usage (Recommendation 9). For the purpose of calculating restitution, MEGA may treat its tobacco usage surcharge as a health status adjustment for policies written or renewed before January 1, 2009. For policies written or renewed on or after January 1, 2009, MEGA must provide full restitution for any tobacco usage surcharges it applied. However, to the extent that MEGA treats its tobacco usage surcharge as a health status adjustment for policies written or renewed before January 1, 2009, it must do so in conjunction with any other health status adjustment applied and the total health status adjustment, including any adjustment for tobacco usage, may not exceed the ten percent limit.

Geographic location (Recommendation 10). MEGA must make restitution for overcharged premium due to rating based on geographic location.

4:1 Compression Ratio (Recommendation 12). MEGA must make restitution to any certificateholder who was charged a rate more than four (4) times the lowest rate charged to any customer during the same rating period for the same family composition and health benefit plan.

Rate manual discrepancies (Recommendation 23). MEGA investigated the rate manual discrepancies and has indicated that in every instance the discrepancy resulted in a rate more favorable to the insured. Therefore no restitution is due with regard to the rate manual discrepancies.

Based on this method, MEGA will provide a full report to OHIC detailing the total amount of premium-based restitution as specified below.

Claims Restitution

Claims restitution will be calculated based upon guidance from OHIC and the Examiners, based upon the following guidelines:

1. MEGA will re-adjudicate each claim inappropriately denied based on exclusionary waivers (Recommendation 17), pre-existing conditions (Recommendation 40), and waiting periods (Recommendation 37) and will provide restitution to each individual claimant based on any previously denied claims.

2. If a claim is less than one year old, and MEGA has an assignment of benefits on file, MEGA will honor such assignment and mail payment to the provider with a written notification to the insured that such payment has been made to the provider. If a claim is less than one year old and MEGA has no assignment of benefits on file, MEGA will mail the payment to the certificate holder.

3. If a claim is more than one year old, MEGA will mail the payment to the certificate holder and, if there is an assignment on file, MEGA will also notify the provider of the additional payment.

4. If there is no payment due after a claim has been reprocessed, MEGA will not send any notice of any kind to the certificate holder or to the provider.

Based on this method, MEGA will provide a full report to OHIC detailing the total amount of claims-based restitution within 120 day following the entry of the Final Order.

Association Fee Restitution

Restitution for association dues amounts will be calculated as the difference between the \$5.00 per subscriber per month allowable amount and the lowest association dues amount that would have provided the member with access to health benefit plan coverage with MEGA at the time that membership was requested, regardless of the actual membership level purchased by the member. For members who retain their association membership after their health benefit plan

with MEGA terminates, the obligation for refunds of excess association fees and dues ends on the date that the association group health benefit plan terminates. OHIC acknowledges that MEGA does not have the authority to terminate a certificateholder's membership in the association, and that MEGA will include in the non-renewal notice language to the effect that if the certificateholder also wishes to terminate membership in the association the insured should contact the association directly. MEGA will provide a toll-free telephone number for the Association as the contact information for members who desire to terminate their membership.

Based on this method, MEGA will provide a full report to OHIC detailing the total amount of association fee-based restitution as specified below.

Timeframes

Restitution must be completed within the following timeframes:

1. All premium restitution must be completed within sixty (60) days following the date that the last association group health benefit plan terminates pursuant to MEGA's non-renewal of business.
2. All claims restitution must be completed within ninety (90) days following the date of the Final Order.
3. All refunds for overcharges of association fees and dues must be completed within sixty (60) days following the date that the last association group health benefit plan terminates pursuant to MEGA's non-renewal of business.
4. Non-renewal notices to insureds must be mailed within 30 days after the latter of the date of the Final Order or the approval of the non-renewal letters and non-renewal process by OHIC. Certificateholders will be given 90-days notice of the non-renewal of their association group health benefit plans. Certificateholders' health benefit plans will terminate on their monthly due date for premiums following the 90 day notice of the non-renewal.
5. If after a diligent search MEGA cannot locate a certificateholder, or if a restitution check is returned or is not negotiated within six months after delivery, MEGA shall provide a report within sixty (60) days following the six-month period to OHIC all such certificateholders and amounts due to such certificateholders. Within thirty (30) days of such report, MEGA shall, unless otherwise instructed by OHIC, remit such funds to the State of Rhode Island. The funds shall be payable by check made out to the General Treasury of the State of Rhode Island.

Final Restitution Calculations:

1. MEGA agrees to provide OHIC a full report within 60 days after the last association group health benefit plan terminates of all restitution and payments due to certificateholders pursuant to this Order.
2. Restitution for *de minimus* amounts of premium refunds and association dues (*i.e.*, amounts up

to \$25 in either premium restitution or association dues that would be due to a certificateholder) shall be aggregated and paid by check made out to the General Treasury of the State of Rhode Island in lieu of making separate payments to insureds.

¹ The Commissioner and MEGA agree that the provisions of this Addendum, as with the other sections of this Final Order, shall apply equally to MEGA's affiliate, Mid-West National Life Insurance Company of Tennessee. The Companies will continue to renew the association group health benefit plans upon the payment of required premiums until the time specified for termination in the agreed notice of non-renewal for the association group health benefit plans.