

CONSENT ORDER No. E16-15

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of)
Banking and Insurance, State of New)
Jersey, to fine, suspend and/or)
revoke the Certificate of Authority)
of Fidelity Security Life Insurance)
Company, NAIC No. 71870.)
_____)

CONSENT ORDER

TO: Fidelity Security Life Insurance Company
3130 Broadway
Kansas City, MO 64111-2452

THIS MATTER, having been opened to the Commissioner of Banking and Insurance, ("Commissioner"), State of New Jersey, upon information that Fidelity Security Life Insurance Company ("Fidelity"), a foreign insurance company admitted to transact business in New Jersey, may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Respondent is an insurance company incorporated in Missouri and admitted to transact the business of insurance in New Jersey since January 19, 1989, pursuant to N.J.S.A. 17B:23-1 et seq.; and

WHEREAS, Respondent is subject to the provisions of the New Jersey Individual Health Insurance Reform Act ("IHIR Act"), N.J.S.A. 17B:27A-1 et seq.; and

WHEREAS, N.J.S.A. 17B:27A-2 defines individual health benefits plan as "(a) a health benefits plan for eligible persons and their dependents; and (b) a certificate issued to an eligible person which evidences coverage under a policy or contract issued to a trust or association, regardless of the situs of delivery of the policy or contract, if the eligible person pays the premium and is not being covered under the policy or contract pursuant to continuation of benefits provisions applicable under federal or State law"; and

WHEREAS, N.J.S.A. 17B:27A-2 defines an eligible person as a "person who is a resident who is not eligible to be covered under a group health benefits plan, group health plan, governmental plan, church plan, or Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. 1395, et. seq.)"; and

WHEREAS, N.J.S.A. 17B:27A-2 defines a group health benefits plan as "a health benefits plan for groups of two or more persons"; and

WHEREAS, N.J.S.A. 17B:27A-3 defines a health benefits plan as a "hospital and medical expense policy. . . delivered or issued for delivery in this State"; and

WHEREAS, coverage that satisfies the definition of individual health benefits plan at N.J.S.A. 17B:27A-2 must comply with the various requirements of the IHIR Act, including but not limited to, standard plans and minimum loss ratio; and

WHEREAS, pursuant to N.J.S.A. 17B:27A-7 and N.J.A.C. 11:20-3.1, the IHC Board establishes the standard policy and contract forms sold in the individual market and no other individual health benefit plans may be sold to New Jersey residents; and

WHEREAS, pursuant to N.J.S.A. 17B:27A-9, individual health benefit plans are subject to a minimum loss ratio requirement of either 75% or 80%, depending of date of issue, meaning that at least 75% or 80% of each premium dollar must be used to pay claims and if that percent is not reached, refunds must be issued to policyholders; and

WHEREAS, pursuant to N.J.S.A. 17B:27A-41, any carrier which violates the IHIR Act shall be subject to a penalty assessment, as determined by the Commissioner; and

WHEREAS, pursuant to N.J.S.A. 17B:27A-43, a carrier which violates any provision of the IHIR Act shall be liable to a penalty of not less than \$2,000.00 and not greater than \$5,000.00 for each violation. The penalty shall be collected by the Commissioner in the name of the State in a summary proceeding in

accordance with "the Penalty Enforcement Law," N.J.S.A. 2A:58-1 et seq.; and

IT APPEARING, that Fidelity issued a group medical indemnity policy to the United Associations of America Group Insurance Trust in Illinois with an effective date of September 1, 2006, which provided benefits for, *inter alia*, hospital confinement, outpatient physician office visits, outpatient testing and diagnostic procedures, surgery, anesthesia, medical emergencies and wellness ("out-of-state trust coverage"); and

IT FURTHER APPEARING, that in or around 2012, the Department questioned Fidelity about issuance of the out-of-state trust coverage to New Jersey residents and advised Fidelity that the out-of-state trust coverage constitutes unlawful individual health benefit plans when the covered persons are responsible for 100% of the premiums; and

IT FURTHER APPEARING, that in responding to the Department's inquiries, Fidelity asserted in January 2013 that the benefits provided by the out-of-state trust coverage are not a "health benefits plan" as defined at N.J.S.A. 17B:27A-2 because they are fixed indemnity and not expense incurred benefits; and

IT FURTHER APPEARING, that from 2007 until 2015, Fidelity provided individual health benefit plans to 14 employer groups, covering 1,676 persons, located in this State, because

the employees were responsible for 100% of the premiums, through the out-of-state trust coverage; and

IT FURTHER APPEARING, that Fidelity providing health benefits to at least 1,676 persons through their employers, and through an out-of-state trust policy where the New Jersey employees were responsible for 100% of the premium, constitutes 1,676 individual violations of N.J.S.A. 17B:27A-4b, N.J.S.A. 17B:27A-4.5, N.J.S.A. 17B:27A-6, N.J.S.A. 17B:27A-7, and N.J.S.A. 17B:27A-9; and

IT FURTHER APPEARING, that Fidelity asserts that it stopped all marketing and issuing of the out-of-state trust coverage in November 2015; and

IT FURTHER APPEARING, that in order to avoid expensive and time-consuming litigation with the Department, Fidelity desires to compromise and settle with the Department and pursuant to such settlement therefore agrees to take responsibility for the aforementioned violations; and

IT FURTHER APPEARING, that Fidelity agrees to stop issuing and non-renew the out-of-state trust coverage herein described in New Jersey, to comply with the minimum loss ratio requirements applicable to individual health benefit plans, and to pay a fine; and

IT FURTHER APPEARING, that this matter should be resolved upon the consent of the parties without resort to a formal hearing; and

IT FURTHER APPEARING, that good cause exists to enter into this Consent Order; and

IT IS ORDERED, this 18th day of MARCH, 2016, as follows:

1. Fidelity shall hereafter comply in all respects with Title 17B of the New Jersey Statutes, including, but not limited to, the Individual Health Coverage Program Act, and all regulations promulgated thereunder.
2. Fidelity shall cease issuing in New Jersey the out-of-state trust coverage herein described.
3. Fidelity shall provide a list to the Department of Banking and Insurance of all covered persons and employer groups which received, or will receive, the notice of nonrenewal letters, within thirty days of the date of this consent order.
4. Fidelity shall pay refunds to New Jersey residents covered by the out-of-state trust coverage without policy holder premium contribution at any time from 2007 through 2016 for each year or part thereof that New Jersey residents were covered by the out-of-state trust coverage, in accordance with N.J.A.C. 11:20-7.5, by refunding the difference between Fidelity's yearly

actual loss ratio and the minimum loss ratio of 75% for years 2007 and 2008, and 80% for years 2009 and thereafter.

5. Each premium refund by year, from 2007 through and including 2016, shall include simple interest calculated according to New Jersey Court Rule R. 4:42-11.
6. Premium refunds shall be paid on all coverage in force at any time between 2007 and 2016.
7. Premium refunds and interest for years 2007-2015 shall be issued within 180 days of execution of this Consent Order. Premium refunds and interest for 2016 shall be issued on or before March 31, 2017.
8. Fidelity shall provide a list to the Department of Banking and Insurance of all covered persons receiving premium refunds and the amount received per each covered person. Said list shall be provided within thirty days of the issuance of the refunds and this reporting obligation shall continue prospectively until all premium refunds are issued.
9. Fidelity shall provide a list to the Department of Banking and Insurance of all refunds returned to Fidelity as undeliverable which shall be subject to the requirements of N.J.S.A. 46:30B-1 et seq.

10. Fidelity shall pay \$200,000.00 in civil penalties to the Department of Banking and Insurance for issuing individual health benefit plans in New Jersey that do not comply with the Individual Health Coverage Act.
11. The terms of this Consent Order shall be binding on and inure to the benefit of the parties to this Consent Order and their respective legal representatives, successors, and assignors.
12. Fidelity shall continue to institute measures and monitor operations in order to identify and cure practices which may result in the violations and instances of alleged nonconformance addressed in this Consent Order.

IT IS FURTHER ORDERED AND AGREED, that said civil penalties of \$200,000.00 shall be paid by certified check or cashier's check made payable to the "**State of New Jersey, General Treasury,**" due and payable immediately upon the execution of this Consent Order by Fidelity; and

IT IS FURTHER ORDERED AND AGREED, that this signed Consent Order together with the payment of \$200,000.00 shall be remitted to:

Ryan S. Schaffer, Deputy Attorney General

State of New Jersey, Division of Law
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 117
Trenton, New Jersey 08625

IT IS FURTHER ORDERED AND AGREED, that the provisions of this Consent Order represent a final agency decision and constitute final resolution of the violations contained herein against Fidelity.



Peter L. Hartt
Director of Insurance

Consented to as to Form, Consent and Entry:



Fidelity/Security Life Insurance Company
By: Bryson L. Jones
Vice President and Asst. Treasurer


Date: 3/2/16



Matthew J. Gaul, Esq.
Attorney for Respondent

Date: 3/4/16

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY



By: Ryan S. Schaffer
Deputy Attorney General
Attorney for the New Jersey Department of Banking and Insurance

Date: 3/7/16

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