

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Alera Companies (formerly known as Alera Healthcare) **Enforcement Case No. 21-16507**
Unlicensed

Sharity Ministries, Inc. (formerly known as Trinity Healthshare, Inc.)
Unlicensed

Ensurian Agency,
Unlicensed,

Respondents.
_____ /

Issued and entered
on August 11, 2021
by Anita G. Fox
Director

ORDER TO CEASE AND DESIST WITH STATEMENT OF FINDINGS
AND NOTICE OF OPPORTUNITY FOR HEARING

Pursuant to Section 251 of the Michigan Insurance Code (Code), MCL 500.251, and after reviewing evidence of the conduct described in the attached Statement of Findings, and

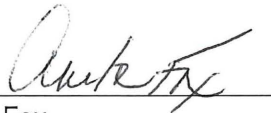
WHEREAS, the Director of the Department of Insurance and Financial Services finds that immediate action is necessary and appropriate in the public interest for the protection of the public health, safety, and welfare, and consistent with the purposes fairly intended by public policy and provisions of the Code,

IT IS THEREFORE ORDERED THAT:

1. Respondents shall immediately **CEASE AND DESIST** from all activities in violation of the Code as described in the Statement of Findings.
2. A copy of this Order shall be immediately served upon Respondents and shall be effective upon the date of service.
3. Respondents will have 30 calendar days after the service of this Order to contest it by requesting a hearing. Within 10 calendar days after receiving the request, the hearing process shall commence. This Order shall remain in effect until further order of the Director. Any request for a hearing should be addressed to the Department of Insurance and

Financial Services, Attention: Randie Swinson, Hearings Coordinator, P.O. Box 30220, Lansing, MI 48909-7720 or faxed to 517-284-8843.

4. Any such hearing held shall address the following issues:
 - a. The facts set forth in the Statement of Findings.
 - b. The continuation of the Order to Cease and Desist.
 - c. Restitution to be paid by the Respondent.
5. If a hearing is requested, an administrative law judge from the Michigan Office of Administrative Hearings and Rules shall preside over any such hearing.
6. The Director retains jurisdiction of the matters contained herein and the authority to issue such further Orders as shall be deemed just, necessary, and appropriate.
7. Pursuant to Section 251(6) of the Code, MCL 500.251(6), a person who violates or otherwise fails to comply with an Order to Cease and Desist is subject to one or more of the following:
 - a. Payment of a civil fine of not more than \$1,000 for each violation not to exceed an aggregate civil fine of \$30,000. However, if the person knew or reasonably should have known the conduct was in violation of the cease and desist order, the person shall be subject to a civil fine of not more than \$25,000 for each violation not to exceed an aggregate civil fine of \$250,000.
 - b. Suspension or revocation of the person's license or certificate of authority.
 - c. Complete restitution, in the form, amount, and within the period determined by the Director, to all persons in Michigan damaged by the violation or failure to comply.



Anita G. Fox
Director

**STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Aliera Companies (formerly known as Aliera Healthcare) **Enforcement Case No. 21-16507**
Unlicensed

Sharity Ministries, Inc. (formerly known as Trinity Healthshare, Inc.)
Unlicensed

Ensurian Agency,
Unlicensed,

Respondents.
_____ /

STATEMENT OF FINDINGS

1. Pursuant to Section 251(1) of the Code, MCL 500.251(1), the Director is empowered to issue a cease and desist order upon finding any of the following:
 - (a) A person is conducting transactions of insurance for which a certificate of authority is required by this act without having obtained a certificate of authority.
 - (b) A person is acting as an insurance agent, solicitor, adjuster, or counselor without a license as required by this act.
 - (c) A person is engaged in an act or practice in the business of insurance for which authority from or notification to the commissioner is required by this act and the person has not received authority or given notification.
 - (d) A person authorized to engage in the business of insurance under this act is engaged in conduct that presents an immediate danger to public health, safety, or welfare. MCL 500.251(1).
2. Under Section 1201a(1) of the Code, it is a violation for a person to sell, solicit, or negotiate insurance in this state for any line of insurance without first obtaining a license or qualification for that line. MCL 500.1201a(1).
 - a. "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged

in that act either sells insurance or obtains insurance from insurers for purchasers. MCL 500.1201(m).

- b. "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company. MCL 500.1201(n).
 - c. "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company. MCL 500.1201(o).
3. The definitions of an eligible entity and health care sharing ministry are set forth in MCL 550.1853 as follows:
- (a) "Eligible entity" means a faith-based, nonprofit entity that maintains tax-exempt status under section 501(c) of the internal revenue code, 26 USC 501.
 - (b) "Health care sharing ministry" or "ministry" means a program established by an eligible entity for the sharing of finances and health care in compliance with this act.
4. Pursuant to MCL 550.1865, "[a]n eligible entity may establish and operate a health care sharing ministry under this act. An eligible entity that establishes and operates a health care sharing ministry in compliance with this act is not engaged in the business of insurance in this state and the entity and ministry are not subject to the insurance laws of this state."
5. Pursuant to MCL 550.1867, in order to be considered a health care sharing ministry under Michigan law, the ministry must meet all of the following requirements:
- (a) Limit participation in the ministry to individuals who are of a similar faith.
 - (b) Provide that the ministry act as a facilitator by matching its participants who have financial or medical needs with participants who have the ability to assist in meeting those needs according to criteria established for the ministry by the eligible entity.
 - (c) Provide for the financial or medical needs of a participant through voluntary contributions by its participants.
 - (d) Provide amounts that participants may contribute with no assumption of risk or promise to pay among its participants.
 - (e) Provide financial assistance to participants who have financial or medical needs with no assumption of risk or promise to pay by the ministry to its participants.
 - (f) Provide a monthly written statement to its participants that lists the total dollar amount of qualified financial or medical needs that were submitted to the ministry, as well as the amount actually published or assigned to participants for their contribution.

(g) Provide, in substantially similar form and language, the following written disclaimer on or accompanying all applications and guideline materials distributed by or on behalf of the ministry:

"Notice: The [insert name of eligible entity] that operates this health care sharing ministry is not an insurance company and the financial assistance provided through the ministry is not insurance and is not provided through an insurance company. Whether any participant in the ministry chooses to assist another participant who has financial or medical needs is totally voluntary. A participant will not be compelled by law to contribute toward the financial or medical needs of another participant. This document is not a contract of insurance or a promise to pay for the financial or medical needs of a participant by the ministry. A participant who receives assistance from the ministry for his or her financial or medical needs remains personally responsible for the payment of all of his or her medical bills and other obligations incurred in meeting his or her financial or medical needs."

6. Respondent Alera Companies (Alera) was originally incorporated in Delaware in 2015 and is a for-profit business without religious affiliation. Alera has created several subsidiary companies, through which it markets and sells memberships in what it purports to be health care sharing plans operated by a health care sharing ministry. These health care sharing plans are marketed and sold throughout most of the U.S., including Michigan.
7. Respondent Sharity Ministries (Sharity) purports to be a health care sharing ministry (HCSM) created by an eligible entity as defined by MCL 550.1853. Sharity was formed on June 27, 2018, and, on or about August 13, 2018, it entered into a management agreement with Alera whereby it agreed that Alera would receive approximately 84% of Sharity members' sharing contributions. The management agreement was signed by Sharity's then Chairman, Mr. William Thead, who was also employed by Alera at or about the time that the agreement was executed. Although Sharity is purportedly a separate entity from Alera, it was formed for the primary purpose of allowing Alera to essentially operate as an unlicensed insurer and avoid both state and federal regulation by claiming that Sharity, which it maintained significant control over, was an HCSM and therefore exempt from state and federal insurance laws.
8. Respondent Ensurian Agency is a subsidiary of Respondent Alera that was created to market and facilitate the sale of health care sharing plans offered by Respondent Sharity.
9. Alera, Sharity, and Ensurian are collectively referred to herein as Respondents.
10. DIFS staff received information about possible unlicensed activity by Respondents. A review of DIFS' records revealed that none of the Respondents are licensed under the Code. As a result, DIFS initiated an investigation into Respondents' activities and discovered the following facts:
 - a. Respondents are currently marketing and selling memberships to Michigan residents to Respondent Sharity—a purported HCSM. These memberships provide a mechanism for members to seek reimbursement of certain medical expenses by submitting what Respondents refer to as "share requests" to Respondents who in turn refer requests that meet plan guidelines on a monthly basis to members for reimbursement. All members must

pay a mandatory monthly sharing contribution to maintain membership and their payment of this fee constitutes an opt-in for the monthly sharing request.

- b. Respondents offer three membership plans: Sharity Basic, Sharity Secure, and Sharity Spectrum. These plans are equivalent to the various tiers of health care coverage that are commonly provided as options by health care insurers that require escalating premiums the more coverage that is selected. In order to participate in any of Respondent's membership plans, consumers are required to pay an initial membership fee and monthly fees thereafter. Although Respondents refer to these mandatory monthly payments as sharing contributions, they are for all practical purposes premiums. As with coverage provided by health care insurers, Respondents' member guides outline escalating sharing contributions based on whether, basic, catastrophic, or comprehensive coverage is sought by the member.
- c. Respondents have created an electronic "ShareBox Portal" by which they send out monthly messages to members outlining the share requests that are being made that month and asking whether the member wishes to opt in or out of sharing. There is no indication that the members make any individualized determinations on monthly share requests and Respondents' member guides render it clear that participation in the healthcare sharing ministry constitutes an "opt-in" for sharing. Thus, the practical effect of the notification of share requests is not to give the members any real choice on whether to assist fellow members but instead simply a choice on whether to remain a member of the ministry. Similar to an insurance policy in which there is no coverage without payment of the required monthly premium, there is no ability to make a share request or participate in the sharing ministry without the payment of a monthly sharing contribution.
- d. As part of the enrollment process, applicants are asked to provide a detailed medical history so that Respondents are able to identify preexisting conditions, many of which are excluded from share requests, other than on a hardship basis which requires additional assessments on members. Respondent's member guides state that "[t]o be fair and equitable and not overburden the membership community, restrictions and limitations are applied to conditions occurring prior to membership, known as pre-existing conditions." Exclusion of preexisting conditions from coverage was a common feature of many health insurance plans prior to the passage of the Affordable Care Act (ACA).
- e. For all of the membership plans, the percentage of health care costs that are eligible for share requests is dependent upon whether the costs were incurred at what is commonly referred to in the insurance industry as "in-network providers," but which Respondent refers to as "recognized provider groups." For example, under the Sharity Secure Plan, hospital costs incurred at a recognized provider group are eligible for a 100% reimbursement share request while hospital costs incurred at a non-recognized provider group are eligible for a 60% reimbursement share request.
- f. Similar to healthcare coverage offered by insurance providers, for all of Respondents' membership plans, the membership costs vary based upon the ages of the applicants. For example, under the Sharity Spectrum plan, the cost of a membership plan for members aged 18-29 is \$315.00/month while the same plan for members aged 60 and over is \$715.00/month.

- g. Although Respondents state that the cost-sharing among members is based on voluntary contributions, they also informed DIFS that members “remain active participants in the HCSM programs and may submit their medical expenses for sharing as long as they adhere to the Statement of Beliefs and submit monthly voluntary gifts to share in other members’ medical expenses.” Under this plan, if a member does not “voluntarily” pay the monthly membership fee, their membership is rendered inactive, and they cannot participate in the ministry.
 - h. Similar to health insurance, all of Respondents’ plans require a deductible to be met before any payments or share requests can be made. Respondents refer to this deductible as a Member Share Responsibility Amount (MSRA). For example, under the Sharity Spectrum plan, members must meet a \$3000 MSRA for each medical expense before any portion of the medical expense can be submitted as a sharing request.
 - i. Similar to most health insurance plans prior to the passage of the ACA, Respondents’ plans include a lifetime cap on the amount of reimbursement that can be received through sharing requests. For example, under the Sharity Spectrum Plan, there is a \$600,000 lifetime maximum reimbursement limit.
 - j. Respondents actively solicit and sell the membership plans described above in the State of Michigan.
11. Based on the facts set forth above, Respondents are engaged in the unlicensed practice of insurance. At its heart, the business of insurance involves the transfer of risk whereby one party undertakes to indemnify another against loss in the event that a specified contingency occurs. The individual or entity purchasing insurance makes a payment to the insurer that essentially transfers the risk that a costly contingency will occur to the insurer by transferring the responsibility to pay for the costs associated with the contingency to the insurer. The indemnity agreement between parties almost always contains several hallmark characteristics—the payment of premiums, coverage limits, and deductibles. The amount of premium is usually determined in part by a business risk profile of the applicant as determined by the insurer.
12. Here, Respondents are accepting a transfer of risks from its members. They are receiving monthly premiums in the form of mandatory monthly sharing contributions. They have agreed to submit sharing requests to its members should certain contingencies occur. All members of the ministry are required to make monthly sharing contributions in order to remain active. Thus, a promise to submit a share request to ministry members is essentially a promise that the ministry will pay according to the terms of the membership plan.
13. Moreover, increasing the rates based upon the members’ age and the exclusion of preexisting conditions is indicative that Respondents are creating a business risk profile of its members and adjusting premiums/sharing contributions accordingly. Other indications that Respondents have merely re-labeled its actions as non-insurance in order to avoid the state and federal laws and regulations that are associated with the business of insurance are its tiered membership plans that provide more or less coverage dependent upon the amount of premium/sharing contributions that the member is willing to pay. Differing prices based on whether in network providers are used and

the imposition of deductibles/member share responsibility amounts described above are also characteristics of health insurance.

14. Respondents have done little more than relabel their actions by using different terminology than is typically used in the insurance industry, but it is the actions themselves, not the labels applied to those actions, that determine whether Respondents are engaged in the business of insurance. Based on the factors described above, Respondents' actions are properly labeled as insurance and they have failed to obtain the proper licensure and/or certificates of authority to engage in such business in the state of Michigan.
15. Respondents' attempts to avoid application of state and federal laws and regulations by labeling themselves as an HCSM are likewise without merit. Pursuant to MCL, 550.1867, in order to qualify as an HCSM, the ministry must "act as a facilitator by matching its participants who have financial or medical needs with participants who have the ability to assist in meeting those needs according to criteria established for the ministry by the eligible entity." Here, the ministry's utilization of membership plans does not operate to match participants with needs to those who have the ability to assist in meeting those needs. As indicated above, the monthly sharing contributions are mandatory in order to participate in the ministry and the ability of a member to assist is not a factor. Indeed, if a member does not have "the ability to assist," and thus does not pay their monthly contribution, they will no longer be a member of the ministry and will lose the ability to submit share requests.
16. Respondents also fail to meet the requirements of MCL 550.1867(d) which states that ministries must "[p]rovide amounts that participants may contribute with no assumption of risk or promise to pay among its participants." Here too, the mandatory nature of membership sharing contributions renders Respondents' compliance impossible. Because failure to pay a monthly sharing contribution results in the removal of the member from the ministry, the practical effect is that all members have agreed to pay the share requests. There is no discretion—indeed, the member guides state that participation in the ministry constitutes an opt-in to sharing. Thus, if you are a member, you are promising to pay the share requests.
17. Additionally, Respondents fail to meet the requirements of MCL 550.1867(e) which provides that ministries must "[p]rovide financial assistance to participants who have financial or medical needs with no assumption of risk or promise to pay by the ministry to its participants." Once again, the mandatory nature of the sharing contributions renders it impossible for the Respondents to comply. Those participants who have financial or medical needs that render them incapable of providing a monthly sharing contribution are no longer members and can receive no assistance from the ministry. Likewise, because all participants in the ministry are considered to have opted into monthly sharing, all members have essentially promised to pay share requests in accordance with the ministry guidelines.
18. Based on their failure to comply with the requirements of MCL 550.1867 set forth above, Respondents are not operating as a healthcare sharing ministry, but instead are merely claiming the HCSM exemption from state regulation in order to engage in the business of insurance without complying with the statutory and regulatory requirements that an insurer must meet to receive a certificate of authority and/or license to operate in the state of Michigan.

19. By engaging in a concerted action to enroll Michigan residents in the membership plans described above, Respondents have acted as an insurer without the required certificate of authority, in violation of Section 402 of the Code, MCL 500.402.
20. By engaging in a concerted action to solicit and sell the membership plans described above, Respondents have acted as unlicensed insurance producers in violation of Section 1201a(1) of the Code, MCL 500.1201a(1).
21. By violating Chapter 12 of the Code in the manner described above, Respondents are subject to sanctions under Section 1244 of the Code, MCL 500.1244, which may include civil fines of up to \$50,000.00 and restitution. By violating Section 402 of the Code in the manner described above, Respondent is subject to sanctions under Section 150 of the Code, MCL 500.150, which may include civil fines of up to \$50,000.00.