

STATE OF MAINE  
BUREAU OF INSURANCE

*In re:* Senior Health Insurance Company  
of Pennsylvania (SHIP) (in rehabilitation)

VERIFIED COMPLAINT AND  
REQUEST FOR EMERGENCY CEASE  
AND DESIST ORDER

Pursuant to 24-A M.R.S. § 12-A(2-A), the Staff of the Maine Bureau of Insurance make this Verified Compliant requesting that the Superintendent of Insurance issue an immediate cease and desist order against Senior Health Insurance Company of Pennsylvania (SHIP) because SHIP is transacting insurance business in this State in a manner that is causing or is reasonably expected to cause significant, imminent, and irreparable injury to Maine policyholders, as more particularly set forth below.

FACTS ALLEGED

1. SHIP is a Pennsylvania-domiciled life and health insurance company that became authorized to issue long-term care insurance (LTC) policies in Maine beginning in 1991 (Maine License Number LHF32655).

2. Beginning in 2010, SHIP filed with the Maine Superintendent premium rate filings on various of its policyholder forms used in the State; and the Maine Superintendent approved the rate filings that were actuarially justified. From 2010 through 2019, SHIP submitted nine (9) rate filings for approval by the Maine Superintendent. (Prior to 2010, Conseco Senior Health Insurance Company was the company filing the rates and made numerous rate filings with the Maine Superintendent.) Recent disapprovals by the Maine Superintendent included SHIP rate filings in 2011 for 838 policyholders who had prior increases of 56%-202% accumulated over the years; and in 2019 for 336 policyholders where SHIP's

filing did not meet the requirements for a justified increase. An increase approved in 2018 affecting 97 policyholders was reduced from 40% to 34% and phased-in over two years.

3. In recent years, SHIP experienced financial distress and faced the possibility of insolvency.

4. 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 suit number 1 SHP 2020, entered an Order of Rehabilitation placing SHIP into rehabilitation in accordance with the provisions of Pennsylvania law.

5. 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.

6. On March 9, 2020, SHIP consented to an order of suspension of its certificate of authority in Maine which Order stipulates in relevant part that SHIP "may not transact any new insurance business in Maine, but will be allowed to continue to renew and service existing business. [SHIP] must continue to make required filings and pay all required fees and taxes."

7. SHIP currently has approximately 350 policies still in force that were issued in Maine and subject to Maine law and, upon information and belief, the average age of SHIP's Maine policyholders is over 86 years.

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

9. On September 15, 2020, the Maine Superintendent was granted intervention as a party in the Rehabilitation Proceeding.

10. 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.

11. The Maine Superintendent and the other intervening jurisdictions appealed the Rehabilitation Plan to the Pennsylvania Supreme Court (Middle District), No. 71 MAP 201. 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.

12. In late-January 2022, without first filing its rates for approval with the Maine Superintendent, upon information and belief, the SHIP Rehabilitator mailed a "Coverage Election Package" to Maine policyholders which advises them of forthcoming premium and/or benefit modifications that would begin as early as April 1, 2022. (*See Exhibit A.*) The "Coverage Election Package" requires Maine policyholders to complete and return their election form with a postmark date of no later than March 15, 2022. (*See Exhibit A hereto.*)

13. On February 2, 2022, the Rehabilitation Court approved SHIP's use of nationwide premium rates including in Maine.

14. The "Coverage Election Package" does not provide legally sufficient notice to Maine policyholders of SHIP's proposed rate increase as required by 24-A M.R.S. § 5084.

15. The "Coverage Election Package" offers five coverage options to Maine 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. If a Maine 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 Maine insurance policy.

16. The “Coverage Election Package” fails to advise Maine Policyholders that the premium rates and policy modifications under the Rehabilitation Plan are on appeal to the Pennsylvania Supreme Court. SHIP thus is requiring Maine policyholders to make final and binding coverage elections without any explanation to Maine 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. *See, e.g.*, the State of Louisiana, No. C-713794-22 (19th Judicial Dist. Ct.), and State of South Carolina, No. 2020-CP-40-05802 (S.C. C.C.P.), actions where each state court 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.

17. All Maine policyholder elections and SHIP-imposed elections are deemed irrevocable even if the Rehabilitation Plan is overturned or otherwise modified on appeal. Furthermore, any Maine policyholder that selects the policy downgrade, the paid-up policy option, or their current policy terms could face more rate increases during Phase II of the Rehabilitation Plan.

18. SHIP has not submitted to the Maine Superintendent the premium rates that SHIP intends to use on insurance coverage provided to Maine policyholders, beginning as early as April 1, 2022.

19. SHIP has not obtained regulatory approval by the Maine Superintendent for the premium rates that SHIP intends to use on insurance coverage provided to Maine policyholders, beginning as early as April 1, 2022.

20. SHIP has not made all required regulatory filings with the Maine Superintendent related to SHIP's transaction of insurance in this State, as prescribed by Order of the Superintendent issued March 9, 2020, and consented to by the Rehabilitator on behalf of SHIP.

21. Among other matters, and not by limitation, as a cumulative result of SHIP's:

(a) failure to file proposed premium rates with the Maine Superintendent for use with Maine policies;

(b) failure to provide Maine policyholders with the required advance notice of a premium rate increase for use with Maine policies, including notice of the proposed rate, an explanation that it is subject to regulatory approval, the policyholder's right to request a hearing, the policyholder's right to provide written comments on the proposed rate increase, and contact information for the Maine Bureau of Insurance;

(c) failure to provide Maine policyholders with a minimum 90-day advance notice of premium rate implementation for Maine policies;

(d) use of a "Coverage Election Form" for Maine policies that is unfair or deceptive; contains misrepresentations; and/or is untrue, deceptive, or misleading;

Maine policyholders will be harmed by SHIP forcing them to make rushed and irreversible decisions about their existing Maine long-term care insurance policies.

#### APPLICABLE LAW

22. The Maine Insurance Code, Title 24-A M.R.S., regulates entities that transact insurance in the State.

23. Pursuant to 24-A M.R.S. § 9, “transacting insurance” includes, “whether by mail or any other means,” solicitation or inducement, negotiations, effectuation of a contract of insurance, or transaction of matters subsequent to the effectuation and arising out of such a contract.

24. Pursuant to 24-A M.R.S. §§ 214 and 215, the Maine Superintendent may seek enforcement against any person who knowingly violates any order of the Superintendent.

25. Pursuant to 24-A M.R.S. § 2736(1), every insurer shall file for approval by the Maine Superintendent every rate, rating formula, classification of risks, and every modification of any formula or classification that it proposes to use in this State in connection with individual health insurance policies, including LTC policies. Every such filing must be made not less than sixty (60) days in advance of the stated effective date. The filing must contain sufficient information for the Maine Superintendent to determine whether such filing meets the requirements that rates not be excessive, inadequate, or unfairly discriminatory. *See* 24-A M.R.S. § 2736(2).

26. Pursuant to 24-A M.R.S. § 5084(1), an insurer shall notify Maine policyholders of a proposed premium rate increase within thirty (30) days of making its filing. The written notice must show the proposed rate; state that the rate is subject to regulatory approval; inform the policyholder of the right to request a hearing; inform the policyholder of the right to provide written comments on the proposed rate increase; and provide the policyholder with contact information for the Maine Bureau of Insurance.

27. Pursuant to 24-A M.R.S. § 5084(2), an insurer may not implement a premium increase for use in Maine until it is approved by the Maine Superintendent.

28. Pursuant to Maine insurance rule Ch. 420, § 8, an insurer shall provide written notice of a premium rate increase for use in Maine to all affected Maine policyholders at least ninety (90) days before the effective date of any rate increase; and “[a]n increase in premium rates may not be implemented until 90 days after the notice is provided.”

29. Pursuant to 24-A M.R.S. § 2152, no person shall engage in an unfair or deceptive act or practice in the business of insurance in this State.

30. Pursuant to 24-A M.R.S. § 2153, no person shall make, issue, or circulate, or cause to be made, issued, or circulated any estimate, illustration, circular, or statement misrepresenting the terms, benefits, or advantages of an insurance policy issued in this State.

31. Pursuant to 24-A M.R.S. § 2154, no person shall make, publish, disseminate, or circulate, or cause, directly or indirectly, to be made, published, disseminated, or circulated, in the form of a notice, circular, pamphlet, or letter, or in any other way, any statement regarding the person’s transaction of insurance business in this State that is untrue, deceptive, or misleading.

32. Pursuant to 24-A M.R.S. § 12-A(2-A), upon a verified complaint showing that a person is engaging in conduct that is causing or is reasonably expected to cause significant, imminent, and irreparable injury to Maine insurance consumers, the Maine Superintendent may immediately issue a cease and desist order, without prior notice and hearing.

33. Pursuant to 24-A M.R.S. § 12-A, following a hearing, the Maine Superintendent may assess civil penalties against any person who violates any provision of Title 24-A, any rule adopted by the Maine Superintendent, or any lawful order of the Maine Superintendent; order refunds of any overcharges for charges by an insurer to any person that are not in conformity with a filing that is required to be submitted to the Maine Superintendent for approval under Title

24-A; and order restitution for any insured injured by a violation of Title 24-A for which civil penalties may be assessed.

## VIOLATIONS ALLEGED

### Count I – Knowingly Violating Superintendent Order

34. SHIP violated and continues to violate 24-A M.R.S. §§ 214 and 215 by knowingly violating the March 9, 2020 Order of the Maine Superintendent, as consented to by the Rehabilitator on behalf of SHIP, in declining to make required Maine regulatory filings with the Maine Superintendent, including, but not limited to, premium rate filings for use with policies in Maine pursuant to 24-A M.R.S. § 2736.

### Count II – Failure to File Rates for Approval

35. SHIP violated and continues to violate 24-A M.R.S. § 2736(1) by failing to file for approval by the Maine Superintendent the rates, rating formula, classification of risks, and every modification of any formula or classification that it proposes to use with policies in Maine at least sixty (60) days in advance of the stated effective date of the modifications.

### Count III – Premium Rates: Notice of Filing

36. SHIP violated and continues to violate 24-A M.R.S. § 5084(1) by failing to provide written notice to Maine policyholders of proposed premium rate increases for use in Maine within thirty (30) days of making a rate filing. The written notice must show the proposed rate; state that the rate is subject to regulatory approval; inform the policyholder of the right to request a hearing; inform the policyholder of the right to provide written comments on the proposed rate increase; and provide the policyholder with contact information for the Maine Bureau of Insurance.



Count IV – Premium Rates: Implementation

37. SHIP violated and continues to violate 24-A M.R.S. § 5084(2) by communicating an effective date as soon as April 1, 2022 for implementation of premium rate increases under Maine insurance policies without first having obtained approval by the Maine Superintendent.

Count V – Premium Rates: 90-Day Notice

38. SHIP violated and continues to violate Maine insurance rule Ch. 420, § 8 by attempting to implement premium rate increases to Maine policyholders less than ninety (90) days before implementation of the rate increase for use in Maine, to be effective as soon as April 1, 2022.

Count VI – Policyholder Notice: Unfair or Deceptive Acts

39. SHIP violated and continues to violate 24-A M.R.S. § 2152 by mailing a “Coverage Election Package” to Maine policyholders that unfairly or deceptively discloses the premium rates and benefit modifications under a Maine insurance policy.

Count VII – Policyholder Notice: Misrepresentation

40. SHIP violated and continues to violate 24-A M.R.S. § 2153 by mailing a “Coverage Election Package” to Maine policyholders that misrepresents the premium rates and benefit modifications under a Maine insurance policy.

Count VIII – Policyholder Notice: Untrue, Deceptive, or Misleading Statements

41. SHIP violated and continues to violate 24-A M.R.S. § 2154 by mailing a “Coverage Election Package” to Maine policyholders that contains untrue, deceptive, or misleading statements regarding premium rates and benefit modifications under a Maine insurance policy.

CONCLUSION AND REQUEST FOR RELIEF

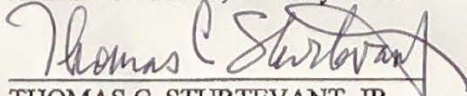
42. As set forth above in Paragraphs 1 through 41, SHIP has engaged in and is continuing to engage in the business of insurance in this State in a manner that is causing or is reasonably expected to cause significant, imminent, and irreparable injury to Maine policyholders.

43. For all the foregoing reasons, the Staff of the Bureau of Insurance request that the Maine Superintendent issue an immediate cease and desist order requiring SHIP and its principals, employees, and agents to halt all "Cover Election Package" activities in this State, including, but not limited to, premium rate or benefit modification implementation, unless and until further order of the Superintendent.

February 8, 2022

Respectfully submitted

AARON M. FREY, Attorney General



THOMAS C. STURTEVANT, JR.

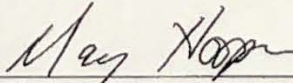
LISA A. WILSON

Assistant Attorneys General

Attorneys for Bureau of Insurance Staff

VERIFICATION

The foregoing allegations are all true to the best of my knowledge and belief.



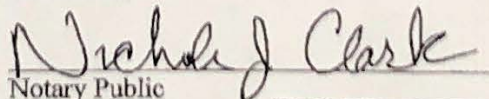
Mary Hooper, Bureau of Ins., Life and Health Actuary

STATE OF MAINE  
SOMERSET, SS.

February 8, 2022

Personally appeared the above-named Mary Hooper, Maine Bureau of Insurance, Life and Health Actuary, and made oath that the allegations in the foregoing Verified Complaint are true and correct to the best of her knowledge and belief.

Before me,



Notary Public

