

South Dakota Division of Insurance

Market Conduct Re-Examination Report
of Ability Insurance Company

NAIC Code 71471
415 Bedford Road
Pleasantville, NY 10570

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Salutation

April 13, 2015

Honorable Larry Deiter
Insurance Director
State of South Dakota
124 South Euclid Avenue, 2nd Floor
Pierre, South Dakota 57501

Dear Director Deiter:

In compliance with the instructions contained in the Order for Examination, dated July 25, 2014 and pursuant to statutory provisions including SDCL Ch. 58-3, a Market Conduct Re-examination has been conducted of the affairs and practices of Ability Insurance Company.

Ability Insurance Company is incorporated under the laws of the State of Nebraska. This re-examination consisted of two phases, an on-site phase and an off-site phase. The on-site phase of the re-examination was conducted at the location of the Company's TPA, TriPlus Services, Inc. formerly known as Ability Resources Inc.: 161 Worcester Road, Suite 300, Framingham, MA 01701.

The off-site examination phase was performed at the offices of the South Dakota Division of Insurance and other appropriate locations.

The report of examination thereon is respectfully submitted.

Foreword

This re-examination reflects the insurance activities of Ability Insurance Company in the State of South Dakota. This Market Conduct Re-examination Report is, in general, a report by exception. Information reviewed by the examiners may not be referenced in this written report regarding practices, procedures, or files that did not result in any errors or irregularities. Failure to comment on specific products, procedures, or files does not constitute approval thereof by the South Dakota Division of Insurance.

In performing this re-examination the Division selected a portion of the Company's operations for review. This report does not fully reflect a review of all of the practices and activities of the Company.

The following is a list of abbreviations used in this Report:

Abbreviation	Refers to
"ARSD"	South Dakota Administrative Rule
"Company"	Ability Insurance Company
"Division"	South Dakota Division of Insurance
"NAIC"	National Association of Insurance Commissioners
"SDCL"	South Dakota Codified Law
"TPA"	Third Party Administrator

Scope of Examination

The South Dakota Division of Insurance has authority to perform this re-examination pursuant to, but not limited to, SDCL Ch. 58-3. This re-examination of the Company began September 10, 2014. It covered the period of July 8, 2013, the date the prior Examination Report was adopted, through December 17, 2014, the date the last information obtained in this re-examination was reviewed. The Division's August 14, 2013 Implementation Order and Timeline provided 60 days for the implementation of the above-referenced Examination Report. As such, files reviewed were from the period of October 15, 2013 or later.

This re-examination reviewed the following categories of operations:

- Company operations and management
- Complaint handling
- Forms
- Claims

This re-examination was performed in accordance with market regulation standards established by the Division and examination procedures established by the NAIC.

Executive Summary

This Market Conduct Re-examination focused on Ability Insurance Company's business practices for its closed block of long-term care line of business. The Division adopted an Examination Report on July 8, 2013 that identified noncompliant practices in the areas of complaint handling, forms, denied claims, and withdrawn claims. The Examination Report included recommendations to address the noncompliant practices and the Company was subject to a \$325,000.00 monetary penalty.

The primary goal of the re-examination was to determine if the Company complied with the 20 recommendations made in the above-referenced Examination Report. The examiners' review found no violations of South Dakota insurance laws or regulations and found no deficiencies in the Company's implementation of the recommendations.

Explanation of the Re-Examination Process

The following is a broad overview of the re-examination process. Additional detail about information the examiners reviewed can be found in the Appendix.

Company Operations

The examiners review the operations and management of the Company. The examiners also note whether the Company facilitates the re-examination process by providing complete, accurate, and timely responses.

Complaint Handling

The examiners request and review any complaints the Company receives directly from consumers and complaints the Division submitted to the Company. Note that no complaints were filed with the Company or Division during the examination period. The examiners also review the Company's complaint handling guidelines and procedures.

Forms

The examiners review the Company's forms for compliance with South Dakota statutes and administrative rules. This review includes the Company's internal instructions and training materials regarding the interpretation and application of policy form language.

Claims

The examiners review the claim practices of the Company in order to determine efficiency of handling, accuracy of payment, adherence to contract provisions, and compliance with South Dakota statutes and administrative rules.

Review of Files

If practical, the examiners conduct a census or complete review of the population of files. In instances where a census review cannot be conducted in an expedient manner, the examiners may review a random sample of the population.

In a random sample, each unit is chosen from the population of files entirely by chance; every unit of the population has an equal probability of being included in the sample. No units have been "preselected" out of the population. Random selections may be attained through use of a random numbers table or a random numbers generator in computer software.

Background Information

A. History

Prior to September 2007, Medico Life Insurance Company was a wholly owned subsidiary of Medico Insurance Company. In September 2007, TriPlus Services, Inc. then known as Ability Resources Inc. purchased Medico Life Insurance Company, along with the closed block of long-term care business held by both Medico Insurance Company and Medico Life Insurance Company. Subsequently, TriPlus Services, Inc. changed the name of Medico Life Insurance Company to Ability Insurance Company. For a few years after the September 2007 transaction, Medico Life Insurance Company continued to administer the long-term care business through a formal Services Agreement. Over time, the Company migrated the administrative services for the long-term care business to an internal, custom developed system.

The Company was sold to Advantage Capital Holdings LLC on February 25, 2013. In conjunction with that sale, the Company executed an Administrative Services Agreement on February 25, 2013. As a term of the sale, TriPlus Services, Inc. maintains possession of the books and records of the Company relating to the long-term care policies issued by the Company to South Dakota policyholders. Under the agreement, TriPlus Services, Inc. provides third party regulatory and compliance services, services to policyholders and policy administration such as the adjudication, payment, handling and settling of policy claims, and maintains offices in the following locations:

- Omaha, Nebraska
- Framingham, Massachusetts
- Portland, Maine
- Chicago, Illinois

B. Profile

The Company is a wholly owned subsidiary of Advantage Capital Holdings LLC with executive offices located in Pleasantville, New York. The Company is licensed in all states except Connecticut, Maine, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. Following the Order of Supervision filed by its domiciliary state of Nebraska in December 2012, the Company voluntarily withdrew Certificates of Authority in Alaska, Kentucky, Nevada, and Michigan. The Order of Supervision was lifted effective July 2, 2014, and the Company has filed for reinstatement of its Certificate of Authority in Alaska, Kentucky, Nevada, and Michigan.

The Company administers a closed block of long-term care insurance business with a current policy count at or about 39,000 in 38 states. There has been no new business written since 2004.

Re-Examination Findings

The examiners conducted a thorough review of the Company's implementation of recommendations in the Examination Report adopted on July 8, 2013. This included a review of the Company's procedures and practices in the areas of operations and management, complaint handling, forms, and claims. The examiners found no violations of South Dakota insurance laws and regulations and no deficiencies in the company's implementation of the recommendations.

Prior Recommendations Reviewed for Compliance

The following is a list of the recommendations from the previous Examination Report that were reviewed by the examiners for compliance:

Recommendation 1: It is recommended that the Company ensure compliance with policies and procedures that provide complete and timely records and data to the examiners pursuant to SDCL § 58-3-7.

Recommendation 2: It is recommended that the Company retain all books and records that are subject to examination and comply with SDCL § 58-1-26.

Recommendation 3: It is recommended that the Company ensure compliance with policies and procedures which require responses in a timely fashion in compliance with SDCL § 58-33-66.

Recommendation 4: It is recommended that the Company ensure compliance with policies and procedures that recognize facility and doctor certifications and comply with ARSD 20:06:21:08.

Recommendation 5: It is recommended that when "medically necessary" is used as a condition to qualify for benefits, it may not be defined more restrictively than as requiring the certification of the insured's physician in compliance with ARSD 20:06:21:08.

Recommendation 6: It is recommended that the Company communicate in writing to each policyholder, as to how Finding 6 in the Examination Report adopted on July 8, 2013 will be addressed for purposes of claim adjudication and submit the communication to the Division for approval. It is further recommended the Company be bound by the claims adjudication communication contained in this recommendation.

Recommendation 7: It is recommended that the Company comply with the provisions of ARSD 20:06:21:08. As a remedial measure, it is recommend that the Company, for any claims processed during the examination period or subsequent claim adjudications that notwithstanding any noncompliant language in the medical necessity benefit qualification definition in the MP-LT694 and MP-LT698 policies, the Company will not require anything more than a physician's certification that covered care is medically necessary.

Recommendation 8: It is recommended that the Company communicate in writing to each policyholder as to how Finding 8 in the Examination Report adopted on July 8, 2013 will be addressed for purposes of claim adjudication and submit the communication to the Division for approval. It is further recommended that the Company will be bound by the claims adjudication

communication contained in this recommendation.

Recommendation 9: It is recommended that, notwithstanding the noncompliant policy provisions regarding a plan of care, the Company implement as part of its claim processing procedures that a plan of care may be prepared by a claimant's physician.

Recommendation 10: It is recommended that the Company communicate in writing to each policyholder as to how Finding 10 in the Examination Report adopted on July 8, 2013 will be addressed for purposes of claim adjudication and submit the communication to the Division for approval. It is further recommended that the Company be bound by the claims adjudication communication contained in this recommendation.

Recommendation 11: It is recommended that the Company take steps to ensure that no policy is contested in a manner that is not compliant with ARSD 20:06:21:49. It is recommended that the Company ensure compliance with policies and procedures that ensure that any reinstatements pursuant to SDCL § 58-17-19 will be done without underwriting.

Recommendation 12: It is recommended that the Company communicate in writing to each policyholder as to how the above-referenced finding will be addressed for purposes of claim adjudication and submit the communication to the Division for approval. It is further recommended that the Company be bound by the claims adjudication communication contained in this recommendation.

Recommendation 13: It is recommended that the Company adjudicate claims appropriate and in accordance with ARSD 20:06:21:08. It is recommended that when the Company conditions benefits based on medical necessity, that it not be more restrictive than requiring the certification of the insured's physician.

Recommendation 14: It is recommended that the Company shall, within 60 days of the date of a written request by the policyholder or certificate holder, or a representative thereof: (1) Provide a written explanation of the reasons for the denial; and (2) Make available all information directly related to the denial and comply with ARSD 20:06:21:72.

Recommendation 15: While the Company does have current procedures to address Finding 15 in the Examination Report adopted on July 8, 2013, it is recommended that the Company ensure that claim files contain detailed documentation in order to permit reconstruction of the insurer's activities relative to each claim pursuant to SDCL § 58-3-7.4. It is further recommended that the Company provide a reasonable explanation of the basis for denial of a claim or for the offer of a compromise settlement.

Recommendation 16: It is recommended that the Company acknowledge and act within 30 days upon communications with respect to claims arising under insurance policies and to adopt and adhere to reasonable standards for the prompt investigation of such claims and comply with SDCL § 58-33-67.

Recommendation 17: It is recommended that the Company acknowledge and act within 30 days upon communications with respect to claims arising under insurance policies and to adopt and

adhere to reasonable standards for the prompt investigation of such claims including investigating whether a claimant qualifies for benefits under the medical necessity standard when there is evidence indicating the claimant may qualify. It is also recommended that when "medically necessary" is used as a condition to qualify for benefits, it may not be defined more restrictively than as requiring the certification of the insured's physician. The Company should comply with ARSD 20:06:21:08.

Recommendation 18: It is recommended that the Company adjudicate claims per the contract and as required under SDCL § 58-12-1. It is further recommended that the Company not urge, persuade or otherwise coach claimants to withdraw claims and that the Company only withdraw claims upon the independent express written request of the claimant.

Recommendation 19: It is recommended that the Company adjudicate claims per the contract and as required under ARSD 20:06:21:08 and that the Company ensure compliance with policies and procedures that ensure that no misleading claims information is provided to claimants.

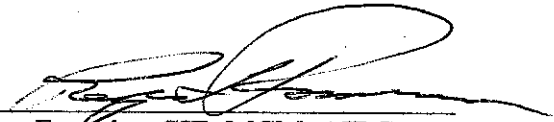
Recommendation 20: It is recommended that the Company adjudicate the claim per the contract as required under ARSD 20:06:21:04 and that the Company provide accurate information about benefit qualifications to claimants.

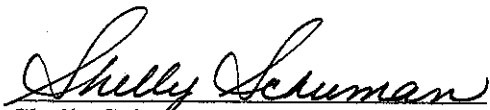
Conclusion

The report is respectfully submitted to the South Dakota Division of Insurance. The courtesy and cooperation of the officers and employees of the Ability Insurance Company and TriPlus Services, Inc. during the course of the examination are gratefully acknowledged.

The examination was conducted by Shelly Schuman, Roger Fournier, and June Coleman.

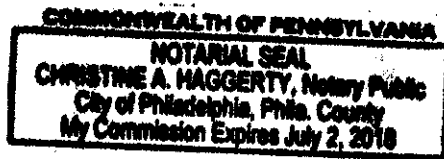
It is respectfully submitted to the Division.


Roger Fournier, CIE, MCM, AIRC
Market Conduct Examiner-in-Charge
INS Regulatory Insurance Services, Inc.


Shelly Schuman, MCM
Market Conduct Supervising Examiner
INS Regulatory Insurance Services, Inc.

Sworn to and subscribed before me
this 17th day of April, 2015





Appendix

During the course of the re-examination the examiners review included, but was not limited to, the following information:

- A. The Company's written profile of its history and management structure, which included the date, location of formation, and any significant changes since the Company's formation.
- B. The Company's written overview of its operations, which included management structure, type of carrier, jurisdictions in which the Company is licensed, as well as the Company's major lines of business.
- C. The Company's organizational charts which outlined the relationship between the Company and their TPA as well as the overall corporate management structure.
- D. Current organizational charts outlining the structure of South Dakota operations with respect to management, customer service, complaints, and claims.
- E. Information about the entities that are involved in the servicing of long-term care products.
- F. A description of the Company's implementation of all recommendations from the Examination Report adopted on July 8, 2013.
- G. A copy of the Company's internal audit reports that were performed within the re-examination period and a copy of the Company's internal audit of their TPA.
- H. A copy of the administrative services agreement between the Company and TriPlus Services, Inc. Included with this was a copy of internal memoranda and definition documentation that defines the relationship between the Company and the TPA.
- I. A copy of the Company's internal report evaluating compliance with the South Dakota examination findings.
- J. A copy of the Company's updated record retention policy with a detailed explanation of the changes made to comply with this recommendation.
- K. Signed TriPlus Services, Inc. staff acknowledgment that training has been received, understood, and will be implemented.
- L. A copy of the Company's complaint handling guidelines and/or procedures including the Company's definition of what constitutes a "complaint."
- M. A description of the type of complaint reports and summaries that are prepared, and by whom. A description of who receives and reviews these reports as well as a copy of an example of each report and/or summary document.

- N. The consumer complaint record/register/log showing all complaints since the date of the last examination was requested. In addition, the Company was to provide complete complaint files for all South Dakota complaints reported on the Complaint Record/Register/Log. If the complaint involved a claim, the Company was to include the complete claim file with any supplementary materials pertinent to the complaint. If the complaint involved an agent or a broker, the Company was to provide the investigation file. Note that no complaint files were provided as the Company had no consumer complaints during the examination period. As there were no complaints, the Company provided a sample of a complaint log it would use for South Dakota.
- O. Internal reviews, internal audits, or other studies that evaluated the Company's compliance by responding within 20 days. The Company also provided its National Complaint Trend.
- P. A detailed explanation of changes made to complaint handling procedures to ensure the Company is responding in a timely fashion.
- Q. A copy of instructions to internal staff that medical necessity is qualified exclusively by physician certification and that a plan of care may be prepared by a claimant's physician.
- R. A copy of training materials used related to the determination of medical necessity and to the provisions of a plan of care.
- S. Certifications of training from all personnel handling South Dakota claims.
- T. Claims filed in the examination period.
- U. Claim codes and the claim handling guidelines including how the Company differentiated between a recurring claim and a new claim.
- V. The process of handling claims from the date received through closure including time requirements, a description of how claim denials and appeals are handled, and a flowchart of the process.
- W. The process for all claim denials and a copy of reports to support the process. A denial and appeal flowchart was also provided for review.
- X. The Physician Based Certification Model that was developed in response to the South Dakota Market Conduct Exam findings and was implemented on December 10, 2012. Implementation of this model was also evaluated during the examiners review of claim files.
- Y. South Dakota claims handling guidelines and training material used for the training the Company's staff on the Physician Based Certification Model. Signed affidavits of training from all staff members receiving the training were also reviewed.

Z. A list of outside firms that the Company used in the past three years to assist with various aspects of the claim evaluation process.