**BEFORE THE NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE**

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| **IN THE MATTER OF** | ) | |
| **GOSPEL LIGHT MENNONITE** | ) | **Docket No. 2021-0085** |
| **CHURCH MEDICAL AID PLAN,** | ) | |
| **DBA LIBERTY HEALTHSHARE,** | ) | |
| | ) | |
| **Respondent.** | ) | |
| _____ | ) | |

**WRITTEN DIRECT TESTIMONY OF JULIE WEINBERG**

**Q.1** Please state your current occupation and business address.
**A.1** I am the Director of the Life and Health Division at the NM Office of Superintendent of Insurance. My business address is: 120 Paseo de Peralta, Suite 428, Santa Fe, NM 87501

**Q.2** Please briefly describe your professional background.
**A.2** I have more than 31 years of experience in the field of government sponsored and government regulated health insurance including administration and operations, management information system design, development and implementation, policy development and implementation, program budgeting, and regulation development, implementation and oversight.

**Q.3** Please describe your duties and responsibilities as the Live and Health Director with the New Mexico Office of Superintendent of Insurance.
**A.3** As Director of the Life and Health Division, I oversee the day-to-day operations of the Division by working closely with the Division's leadership and staff, and with the Superintendent of Insurance. I set the Division's work priorities and set a strategic vision for the Division. I review and approve key documents, and am involved in the development of new regulations, revisions of regulations, and certain parts of the promulgation process. I work with the carriers we regulate and have frequent interactions with industry representatives.

**Q.4** Have you reviewed any other pre-filed testimony?
**A.4** Yes.

**Q.5** Do agree that one characteristic of insurance is the reallocation or shifting of risk?
**A.5** Yes.

**Q.6** What is meant by the reallocation or shifting of risk?
**A.6** Simply stated, the reallocation or shifting of risk is that the risk of loss is shifted from one person to another, or many others.

**Q.7** What is a health benefits plan?

**A.7** From the perspective of a consumer, it is a contracted agreement with an entity, where, in exchange for a payment from the consumer, the entity will arrange for, pay for, or reimburse them for some or all of the costs of the covered health care services incurred while the agreement is in effect. In New Mexico, health benefits plans must be approved by Office of Superintendent of Insurance, specifically the Life & Health Division that I supervise, before they can be issued in the state.

**Q.8** In the context of a major medical health benefits plan, how does the reallocation or shifting of risk occur?

**A.8** The person covered by the plan is subject to a risk of loss through the destruction or impairment of their health, which is an insurable interest. The destruction or impairment of their health occurs upon the happening of ascertainable risk contingencies, such as disease or accident. The provider of the health benefits plan assumes that risk of loss, that is the medical costs associated with treating the disease or injury, by spreading the loss, the medical costs, among a large group of persons bearing similar risks, the members of the health plan. As consideration for the provider of the health benefits plan assuming this risk, the person covered by the plan makes a financial contribution to the pool of resources created by the other members of the plan making a similar contribution.

**Q.9** Are you familiar with the concept of a health care sharing ministry?

**A.9** I have a basic understanding of these organizations.

**Q.10** What is your understanding of that type of program?

**A.10** Health care sharing ministries are organizations in which health care costs are shared among members within a risk-pooling framework. Members of a health care sharing ministry were exempt from the individual mandate requirement of the Affordable Care Act when it was first enacted. This means members of health care sharing ministries were not required to have major medical health insurance. The individual mandate is no longer in force.

**Q.11** How is it that members of health care sharing ministries were exempt from the individual mandate?

**A.11** When Congress passed the Affordable Care Act in 2010, which required all individuals to have health insurance coverage or pay a tax penalty for failing to comply with this requirement, Congress created an exception to the individual mandate requirement for members of existing health care sharing ministries. This exception also exempted health care sharing ministries from most other requirements of the Affordable Care Act, including offering a basic set of health benefits. This made health care sharing ministries less expensive than major medical insurance. Coupled with its exemption from the individual mandate, health care sharing ministries offered a lower-priced alternative to major medical insurance.

**Q.12** Does the Affordable Care Act exempt health care sharing ministries from state insurance regulations?

**A.12** No. However, I am aware that a number of states enacted safe harbor laws specifying that the ministries are not insurance and therefore are not subject regulation as an insurance company or project.

**Q.13** Has the State of New Mexico passed a safe harbor law?
**A.13** No.

**Q.14** Are you familiar with the program operated by the Gospel Light Mennonite Church Medical Aid Plan known as Liberty HealthShare?
**A.14** Yes.

**Q.15** Prior to your testimony, have you reviewed the Liberty HealthShare Sharing Guidelines which has been marked as Exhibit OSI-5?
**A.15** Yes.

**Q.16** Are you familiar with the definition of insurance found in the New Mexico Insurance Code?
**A.16** Yes.

**Q.17** Based on your understanding of the Liberty HealthShare program, your review of the exhibits including the Sharing Guidelines, and your professional experience, do you have an opinion whether the product being offered by Gospel Light Mennonite Church Medical Aid Plan meets the definition of insurance, and more particularly, whether the product constitutes a health benefits plan?
**A.17** Yes.

**Q.18** And what is that opinion?
**A.18** The Liberty HealthShare program substantially mirrors health benefits plans that are authorized by the Office of the Superintendent of Insurance. Regardless of whether it is called a plan or program, the purpose of the Liberty HealthShare program is to pay certain medical expenses incurred by a member when that individual suffers an illness or injury. Since the principal object of the Liberty HealthShare program is to provide a means for its members to receive compensation for their medical expenses, the program constitutes insurance as defined by the New Mexico Insurance Code, and since the compensation being paid covers medical expenses, the program constitutes a health benefits plan.

**Q.19** What are some the characteristics that you relied on in reaching this opinion?
**A.19** For starters, in order to become a member, similar to an application for a traditional health benefits plan, an individual is required to complete an application. The application specifies different levels of plan coverage that the applicant can select: Liberty Unite, Liberty Connect, and Liberty Essential. Coverage is available at the single level, couple level, and family level. A monthly premium, or what Liberty HealthShare calls a monthly share amount, is specified for each level and type of coverage. This is basically the same as the premium charged for a major medical health benefits plan. The application also discloses what the program calls the Annual Unshared Amount, which is

essentially the annual deductible that is found in most major medical health benefits plans. The application also discloses that, based on the level of coverage selected by the individual, the program will provide 100% coverage for medical expenses up to $1 million per incident, 85% coverage for medical expenses up to $1 million per incident, or 75% coverage for medical expenses up to $1 million per incident. This is essentially the same as coinsurance that is found in a major medical health benefits plan.

**Q.20** Does the application describe the consequences for failure to adequately disclose the applicant's medical history?

**A.20** Yes. The application provides that if the Liberty HealthShare program discovers that the applicant withheld material information the person's membership can be cancelled. The application also contains an authorization for release of protected health information which allows Liberty HealthShare to obtain protected health information from past medical providers to allow the program to verify or determine the accuracy of the disclosures. Major medical health benefits plans have similar provisions in their enrollment applications.

**Q.21** What about the contents of the Sharing Guidelines, did you observe any characteristics that you relied on in reaching your opinion?

**A.21** Yes, the Sharing Guidelines clearly outline a plan to pay the medical expenses of its members by distributing that expense amongst its other members. For starters, the Guidelines describe what eligible medical expenses will be shared on a per person per incident basis for illnesses or injuries incurred after an individual's membership is activated, when that expense is determined to be medically necessary and provided by or under the direction of licensed physicians, urgent care facilities, clinics, emergency rooms, or hospitals, or other approved providers of conventional or naturopathic care. These are characteristics found in major medical health benefits plans.

**Q.22** Do the Sharing Guidelines describe what types of medical expenses are eligible for sharing?

**A.22** Yes, eligible medical expenses include, but are not limited to, home health care, physician and hospital services, emergency medical care, medical testing, x-rays, emergency ambulance transportation and prescriptions. The program even provides coverage for ancillary therapies, such as acupuncture, physical therapy, speech therapy, occupational therapy, and respiratory therapy. Chiropractic treatment is covered up to $75 with a limit of 12 visits per year. Additional visits in excess of 12 require preapproval, or as the Liberty HealthShare program calls it, prenotification. Similar to major medical health benefits plans, the Liberty HealthShare program has structured its benefits to encourage preventive care. Coverage up to $400 is provided for an annual preventive wellness visit and related lab work when there are no medical symptoms or diagnosis in advance. The scope of coverage is similar to major medical health benefits plans.

**Q.23** Does the Liberty HealthShare program exclude any medical expenses from coverage?

**A.23** Yes, some of expenses excluded from coverage include abortion, contraceptives, sex changes, treatment related to the abuse and/or use of alcohol or drugs, including any

rehabilitation treatment for alcohol or drug abuse. Durable medical equipment is not covered. The program does not provide coverage for numerous elective procedures. Coverage is not provided if a member is determined to act with gross negligence or with reckless disregard to safety. Some major medical health benefits plans contain exclusions.

**Q.24** Preapproval, or prior authorization, is a characteristic found in major medical health benefits plans. Does the Liberty HealthShare program require preapproval?

**A.24** Yes, but the program calls it "Prenotification of Medical Expense". The program describes prenotification as a process by which Liberty HealthShare can assist members to avoid unnecessary services, hospitalizations, and shorten inpatient medical stays. Its stated goal is to improve quality of care and reduce expenses deemed necessary by providers and shared by the members. The Sharing Guidelines contains an extensive list of services, procedures, and diagnostics which require prenotification. Prenotification, or prior authorization, is another characteristic the program shares with major medical health benefits plans. Prior authorization the main approach that Liberty HealthShare uses to manage utilization. In addition, in its program guidelines Liberty HealthShare describes its process of monitoring a member's inpatient stay to "…make a recommendation as to the maximum days of stay" and states that the member will be responsible for any additional inpatient days that the program did not "evaluate." This is the same process that a major medical health benefits plan employs to manage the utilization of inpatient hospital services.

**Q.25** You earlier referenced something called the Annual Unshared Amount, what is that?

**A.25** The Annual Unshared Amount is effectively an annual deductible.

**Q.26** Why?

**A.26** The amount of the Annual Unshared Amount varies with plan selected and the type of coverage, single, couple or family coverage. Someone who joins at the Liberty Unite level and selects single coverage has an Annual Unshared Amount of $1,000. A couple joining at the Liberty Essential level has an Annual Unshared Amount of $8,000. Before any otherwise eligible medical expenses are paid by the program, or as Liberty HealthShare describes as being shared by other members, the member needs to incur medical expenses equal to their Annual Unshared Amount. The Annual Unshared Amount is substantially the same as a deductible found in nearly every major medical health benefits plans.

**Q.27** How is sharing accomplished?

**A.27** First and foremost, in order to obtain payment for their covered medical expenses, members are obligated to submit their monthly premium, or what Liberty HealthShare calls a monthly share. This is essentially the same as the monthly premium paid to be enrolled in a major medical health benefits plan. Failure to pay the monthly share will result in the person's membership being suspended retroactively to the first day of the month, and any medical expenses incurred during the suspension are not eligible to be paid. If the member fails to pay their monthly premium for a period of two months, that

individual needs to submit a new application. Major medical health benefits plans also disenroll members who fail to pay their premiums.

The Sharing Guidelines go on to provide that by participating in the program, and by the act of submitting their Monthly Sharing Amount, a member assigns their monthly payment to the program for distribution to other members who have incurred medical expenses. As a result of this distribution of the members' collective monthly payments, the program as a whole, in the form of all its members taken in the aggregate, assumes the risk of covered loss that any individual member may face due to some illness or injury suffered by that person. This assumption of the risk of loss by the program as a whole is furthered evidenced by the ability of the program to increase the monthly share amount paid by the members to meet the eligible medical expenses that were submitted for coverage.

**Q.28** How is this similar to a traditional health benefits plan?

**A.28** When an individual enrolls in a major medical health benefits plan, they become obligated to pay a monthly premium. The monthly premiums paid by all the members of the plan are aggregated into one large pool. This aggregated pool of financial resources is then made available to cover an individual member's costs for covered services associated with a disease or injury. This pooling shifts the risk that an individual member will be responsible for the entire medical cost associated with a disease or injury to the members as a whole. Spreading the medical costs of a particular individual across a larger pool of the members as a whole is exactly what the Liberty HealthShare program does.

**Q.29** What other characteristics found in the guidelines did you view as similar to a major medical health benefits plan?

**A.29** Similar to traditional health benefits plans, the Liberty HealthShare program provides for a dispute resolution and appeal process. Members agree to have differences of opinion be settled by mediation and, if necessary, legally binding arbitration. In addition, Liberty HealthShare tacks on a 12% administrative fee to the Monthly Sharing Amount. Monthly premiums paid by members to a major medical health benefits plan also include an administrative component, which usually comprises 10-15% of the premium.

**Q.30** Is there anything else that you would like to add to your testimony?

**A.30** No.

**Q.31** Does this conclude your testimony?

**A.31** Yes.

## UNSWORN DECLARATION

My name is Julie Weinberg and I am an employee of the New Mexico Office of the Superintendent of Insurance. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Santa Fe County, State of New Mexico, on the 13th day of September, 2022.

Julie B Weinberg Digitally signed by Julie B Weinberg
Date: 2022.09.13 14:28:56 -06'00'

Declarant