

MAY 23 2018

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY JMS

In the Matter of:

**ENTERPRISE LIFE INSURANCE
COMPANY AND NATIONAL
FOUNDATION LIFE INSURANCE
COMPANY,**

Petitioners.

No. 17A-093-INS

ORDER

On May 3, 2018, the Office of Administrative Hearings, through Administrative Law Judge Velva Moses-Thompson, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Interim Director of the Department of Insurance ("Interim Director") on May 4, 2017, a copy of which is attached and incorporated by this reference. The Interim Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The Interim Director adopts the Recommended Findings of Fact paragraphs 1 through 18.
2. The Interim Director rejects the Recommended Findings of Fact paragraph 19 because Arizona Revised Statutes ("A.R.S.") § 20-1380(D) does not require an "intent to withdraw." Instead, the statute requires that the insurer perform an act: ". . . elects to discontinue offering . . ." In this case, by failing to file rates for new ACA-compliant policies to be issued in 2018, Petitioners "elected to discontinue offering" within the meaning of the statute.
3. The Interim Director rejects the Recommended Findings of Fact paragraph 20 because the Administrative Law Judge ("ALJ") overemphasizes the importance of the word "all" in the statute which reads: "If a health care insurer elects to discontinue offering all

1 health insurance coverage in the individual market in this state, . . .” A.R.S. § 20-1380(D).

2 The purpose of the statute is to maintain a vigorous individual market and presumes an
3 insurer will be continuously offering policies to individuals for purchase, not relying on
4 renewal of its existing closed blocks of business, to be an active participant in the market.
5 The ALJ’s emphasis on “all” changes the meaning of the statute so as to substitute the
6 word “renewing” for the word “offering.”

7 4. The Interim Director adopts the Recommended Conclusions of Law,
8 Paragraphs 1 through 8.

9 5. The Interim Director rejects the phrase “and the offer to renew existing
10 policies” of Recommended Conclusion of Law, Paragraph 9 and rejects Recommended
11 Conclusion of Law, Paragraphs 10, 11 and 12 with the following justification:

12 The Department does not consider the renewal of an existing policy to constitute an
13 “offer to renew existing policies.” In the Department’s interpretation and in the
14 context of the individual health insurance market, “offering” constitutes an act by the
15 insurer calculated to procure new business, not to merely retain existing enrollees.
16 This interpretation of the statute could have devastating effects upon Arizona’s
17 already threatened individual health insurance market because it would remove any
18 incentive for companies to offer coverage to consumers who are seeking individual
19 health insurance coverage.

20 Although it is true that Petitioners continue to renew their grandfathered policies and
21 traditional health plans, those renewals alone are not enough to save them from a
22 determination that they have elected to discontinue offering all health insurance
23 coverage. The 5-year exit requirement is calculated by the legislature to be a
24 disincentive to companies who may wish to engage in exactly the type of behavior in
25 which Petitioners are engaged.
26

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MAY 04 2018

DEPT. OF INSURANCE

BY: MEK

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 17A-093-INS

Enterprise Life Insurance Company and
National Foundation Life Insurance
Company,

**ADMINISTRATIVE LAW JUDGE
DECISION**

Petitioners.

HEARING: March 16, 2018, with the record held open until April 13, 2018.

APPEARANCES: David Childers, Esq. and Tasha N. Cycholl, Esq. appeared on behalf of Enterprise Life Insurance Company and National Foundation Life Insurance Company.

ADMINISTRATIVE LAW JUDGE: Velva Moses-Thompson

FINDING OF FACT

1. Enterprise Life Insurance Company ("Enterprise Life") is a life and disability insurer, domiciled in Texas and authorized to transact insurance in Arizona since 1983.

2. National Foundation Life Insurance Company ("National Foundation") is a life and disability insurer, domiciled in Texas and authorized to transact insurance in Arizona since 1973.

3. The deadline for insurance companies to file individual health insurance market rates ("rates") with the Arizona Department of Insurance ("Department") in order to offer coverage during 2018 was June 1, 2017.

4. Enterprise Life did not file 2018 rates for new ACA-compliant policies to be issued in 2018, as Enterprise Life did not intend to offer any such new business for insurance in 2018.

1 5. Enterprise Life did not file new rates for transitional business with the
2 Department by June 1, 2017.

3
4 6. Enterprise Life previously filed rates for its previously issued transitional
5 policies.

6 7. National Foundation did not file 2018 rates for new ACA-compliant policies
7 to be issued in 2018, as National Foundation did not intend to offer any such new
8 business for insurance in 2018.

9 8. National Foundation did not file new rates for transitional business with the
10 Department by June 1, 2017.

11 9. National Foundation previously filed rates for its previously issued
12 transitional policies.

13 10. On June 2, 2017, the Department contacted Enterprise Life and National
14 Foundation to inquire if the companies intended to file rates or withdraw from the
15 Arizona individual health insurance market.

16 11. On June 5, 2017, Enterprise Life and National Foundation issued a written
17 response to the Department explaining that Enterprise Life and National Foundation had
18 no intention of withdrawing from the Arizona individual health insurance market.

19 12. On October 16, 2017, the Department ordered Enterprise Life and
20 National Foundation to submit an information filing in the System for Electronic Rate
21 and Form Filings, providing formal notice to the Director of the companies' exit from the
22 individual health insurance market effective December 31, 2017, including a copy of the
23 notice that will be sent to members.
24

25 13. On November 15, 2017, Enterprise Life and National Foundation filed an
26 appeal of the Department's order in the October 16, 2017 Letter.
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1 wholly from all reasonable doubt, is still sufficient to incline a fair
2 and impartial mind to one side of the issue rather than the other.

3 BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

4 4. Under 45 C.F.R. 147.104(h), 45 C.F.R. section 147 does not
5 apply to grandfathered health plans in accordance with §147.140.

6 5. Under 45 C.F.R. 156.80(e), the single risk pool requirements and once-
7 annual price adjustment does not apply to grandfathered health plans.

8 6. ARIZ. REV. STAT. 20-1380 (D) provides, in relevant part, as follows:

9
10 D. If a health care insurer elects to discontinue offering all health
11 insurance coverage in the individual market in this state, the health care
12 insurer may discontinue that coverage only if all of the following occur:

13 1. The health care insurer gives notice to the director at least five business
14 days before the health care insurer gives notice to each individual of the
15 intention to discontinue offering health insurance coverage in the
16 individual market in this state.

17 2. The health care insurer provides notice to each individual of that
18 discontinuation at least one hundred eighty days before the date of the
19 expiration of that coverage.

20 3. The health care insurer discontinues all individual insurance or
21 coverage that was issued or delivered for issuance in this state and does
22 not renew any coverage that was offered or sold in this state.

23 E. If the health care insurer discontinues offering health insurance
24 coverage pursuant to subsection D of this section, the health care insurer
25 shall not issue any health insurance coverage in this state in the individual
26 market for five years after the date that the last individual health insurance
27 coverage was not renewed.

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29 7. Fundamental to statutory construction is the presumption that "what the
30 Legislature means, it will say."² An agency may not disregard clear statutory directives
or legislative intent.³

² *Canon School Dist. No. 50 v. W.E.S. Constr. Co.*, 177 Ariz. 526, 529, 869 P.2d 500, 503 (1994).

³ *See, e.g., Cochise County v. Arizona Health Care Cost Containment System*, 170 Ariz. 443, 445, 825 P.2d 968, 970 (App. 1991).

1 8. "Where the language of a statute is clear and unambiguous, [the tribunal
2 is] not warranted in reading into the law words the legislature did not choose to include."
3 *Home Builders Association of Central Arizona v. City of Scottsdale*, 187 Ariz. 479, 483,
4 930 P.2d 993, 997(1997).

5 9. The plain meaning of ARIZ. REV. STAT. section 20-1380(D) is that the term
6 "offering all" health insurance coverage encompasses the offering of the sale of new
7 policies and the offer to renew existing policies.

8 10. The preponderance of the evidence presented at the hearing shows that
9 Enterprise Life and National Foundation continued to offer its grandfathered policies and
10 transitional health plans.

11 11. The Department failed to establish by a preponderance of the evidence
12 that Enterprise Life and National Foundation violated 45 C.F.R. section 147.104(a), 45
13 C.F.R. 156.80, ARIZ. REV. STAT. section 20-1380(D) and (E), Ariz. Rev. Stat. Title 20,
14 ARIZ. REV. STAT. section 20-220(A)(1) and (2).

15 12. The Department failed to establish by a preponderance of the evidence
16 that grounds exist for the Director of the Department to renew, suspend, or revoke,
17 Enterprise Life and National Foundation's certificates of authorities under ARIZ. REV.
18 STAT. section 20-220.

19 **RECOMMENDED ORDER**

20 **IT IS ORDERED** that Petitioners' appeal is granted.

21 **IT IS FURTHER ORDERED** that the Department's October 16, 2017 letter
22 requiring Petitioners to submit an information filing in the System for Electronic Rate and
23 Form Filings, providing formal notice to the Director of the companies' exit from the
24 individual health insurance market effective December 31, 2017, including a copy of the
25 notice that will be sent to members, be rescinded.

26 *In the event of certification of the Administrative Law Judge Decision by the*
27 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
28 *five days from the date of that certification.*

29 Done this day, May 3, 2018

30 /s/ Velva Moses-Thompson
Administrative Law Judge

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Transmitted electronically to:
Leslie R. Hess, Interim Director
Arizona Department of Insurance