



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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In the Matter of

**AMERICAN PROGRESSIVE LIFE AND HEALTH INSURANCE      No. 2019-0043-S**  
**COMPANY OF NEW YORK,**

Respondent.

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**CONSENT ORDER**

**WHEREAS**, the Department of Financial Services (the "Department") conducted an investigation (the "Investigation") into the affairs of American Progressive Life and Health Insurance Company of New York (hereinafter "Respondent") as result of a complaint received from a policyholder. The investigation covers the period from January 1, 2010 through March 18, 2019.

**WHEREAS**, this Consent Order contains the Department's findings and the relief agreed to by the Department and Respondent.

**NOW, THEREFORE**, the Department and Respondent are willing to resolve the matters cited herein in lieu of proceeding by notice and hearing.

**FINDINGS**

1. Respondent is a domestic insurance company authorized to transact life, annuities and accident and health insurance business in this State pursuant to Section 1113(a) of the New York Insurance Law.

2. Respondent, for the time period 2010 to 2019:
  - a. rescinded reduced paid-up life insurance policies with a cash value of \$500 or less and paid the cash value to the policyholder without the consent of policyholders.

### **NEW YORK RESCINDED REDUCED PAID-UP POLICIES**

3. Respondent engaged in a general business practice of rescinding reduced paid-up ("RPU") life insurance policies in New York with a cash value of \$500 or less and paid the cash value to policyholders without obtaining the consent of the policyholders in violation of Sections 4221(a)(1) and 2601 of the New York Insurance Law. In addition, the insurance policy provisions provide that a policy may be continued from the due date of the premium in default for a reduced amount of paid-up life insurance. This reduced amount of insurance is payable at the same time and under the same conditions as the face amount of the policy and may be surrendered at any time by the policyholder.
4. Respondent's violations during the aforementioned time period contravened New York Insurance Law.

### **VIOLATIONS**

5. By reason of the foregoing, as reflected in the Department's Report on the Investigation, Respondent violated:  
New York Insurance Law Sections 4221(a)(1) and 2601.

### **AGREEMENT**

**IT IS HEREBY UNDERSTOOD AND AGREED** by Respondent, its successors and assigns (on behalf of its agents, representatives, employees, parent company, holding company, and any corporation, subsidiary or division through which Respondent operates) that:

6. Respondent will correct the violations cited herein and demonstrate to the Department's satisfaction that it has taken the necessary corrective action. Respondent will also take all necessary steps to comply with the New York Insurance Law and Regulations with respect to its insurance products in the future. Within sixty (60) days from Respondent's signing of

this Consent Order, the Respondent shall provide to the Department a detailed remediation plan which provides for restitution to policyholders or their beneficiaries, where applicable, for each violation set forth in paragraph 2, of this Consent Order (the "Violations"). The remediation plan is subject to the Department's approval in its sole discretion. The Department may, as a condition of its approval, impose additional remediation requirements to a plan if necessary to satisfactorily rectify the Violations. The plan shall include provisions for, but not limited to:

- i. The Plan will require the Respondent to identify all RPU life insurance policies with a cash value of \$500 and under, during the period from 2010 to 2019, that it rescinded and paid the cash value without the consent of the policyholders and give the identified policyholders the option of choosing either to (1) put their policies back in force without seeking to recoup any monies paid out as part of the unauthorized rescissions of the policies, or (2) receive an additional payment reflecting the difference between the surrender value previously paid and the RPU death benefit. For policies in which the policyholder is deceased, the Company will pay the RPU death benefit to the beneficiary or estate. In cases where it cannot locate a beneficiary or estate or determine whether he or she is still alive, the Respondent shall escheat the RPU death benefit under the applicable state abandoned property statutes and regulations. The Respondent has identified 260 RPU life insurance policies that it rescinded and paid the cash value without the consent of the policyholders. The identified policies have a total face amount of approximately \$2,333,438, and total RPU death benefits of \$32,945.
- ii. The Plan shall require the Respondent to rectify all violations cited herein and provide full restitution where applicable on a rolling basis, with all remediation, including restitution payments, commencing no later than sixty (60) days from the approval of Plan. Monthly, the Respondent shall provide to the Department a written update reflecting its remediation progress, including all restitution payments made to policyholder and/or beneficiaries. Respondent should include in the monthly report any failure it has discovered in its adherence to the Plan along with the corrective action taken. The remediation for the Plan is to conclude no later than twelve (12) months from

the date of Respondent's signing of this Consent Order. After the completion of the Plan, the Respondent shall provide a certificate signed by an officer of the Company authorized to bind the Respondent that the Plan has been successfully completed.

#### **MONETARY PENALTY**

7. Within seven (7) days of the execution of this Consent Order, Respondent shall pay a civil penalty of Two Hundred and Sixty Thousand Dollars (\$260,000). Respondent agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.
8. The above referenced payment shall be payable to the New York State Department of Financial Services via electronic transfer in accordance with instructions provided by the Department.

#### **BREACH OF THE CONSENT ORDER**

9. In the event that the Department believes Respondent to be materially in breach of this Consent Order ("Breach"), the Department will provide written notice of such Breach to Respondent and Respondent must, within ten (10) business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Department, appear before the Department and have an opportunity to rebut the evidence, if any, of the Department that a Breach has occurred and, to the extent pertinent, to demonstrate that any such Breach is not material or has been cured.
10. Respondent understands and agrees that Respondent's failure to appear before the Department to make the required demonstration within the specified period as set forth herein is presumptive evidence of Respondent's Breach. Upon a finding of Breach, the Department has all the remedies available to it under New York or other applicable laws and may use any and all evidence available to the Department for all ensuing examinations, hearings, notices, orders, and other remedies that may be available under New York or other applicable laws.

### **OTHER PROVISIONS**

11. If Respondent defaults on any of its obligations under this Consent Order, the Department may terminate the Consent Order, at its sole discretion, upon ten (10) days' written notice to Respondent. In the event of such termination, Respondent expressly agrees and acknowledges that this Consent Order shall in no way bar or otherwise preclude the Department from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Consent Order, against Respondent or from using in any way the statements, documents, or other materials produced or provided by Respondent prior to or after the date of this Consent Order, including, without limitation, such statements, documents, or other materials, if any, provided for purposes of settlement negotiations.
12. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by Respondent and the Department's own factual investigation. To the extent that representations made by Respondent are later found to be materially incomplete or inaccurate, this Consent Order or certain provisions thereof are voidable by the Department in its sole discretion.
13. Upon the request of the Department, Respondent shall provide all documentation and information reasonably necessary for the Department to verify compliance with this Consent Order.
14. All notices, reports, requests, certifications, and other communications to the Department regarding this Consent Order shall be in writing and shall be directed as follows:

If to the Department:

New York State Department of Financial Services  
One State Street, 19<sup>th</sup> Floor  
New York, NY 10004-1511  
Attention: Laura Evangelista, Executive Deputy Superintendent for Insurance

If to the Respondent:

American Progressive Life and Health Insurance Company of New York  
c/o WellCare Health Plans, Inc  
8735 Henderson Road  
Tampa, FL 33634  
Attention: Troy Meyer, Vice President, Corporate Controller

15. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
16. Respondent waives its right to further notice and hearing in this matter as to any allegations of past violations up to and including the Effective Date and agrees that no provision of the Consent Order is subject to review in any court or tribunal outside the Department.
17. This Consent Order may not be amended except by an instrument in writing signed on behalf of all parties to this Consent Order
18. This Consent Order constitutes the entire agreement between the Department and Respondent relating to the violations identified herein and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.
19. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.
20. Upon execution by the parties to this Consent Order, no further action will be taken by the Department against Respondent for the conduct set forth in this Consent Order, subject to the terms of this Order.

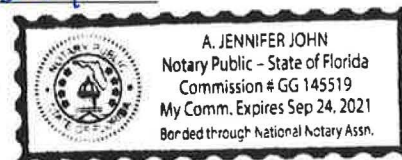
21. This Consent Order may be executed in one or more counterparts and shall become effective when such counterparts have been signed by each of the parties hereto and So Ordered by the Superintendent of Financial Services.

AMERICAN PROGRESSIVE LIFE AND HEALTH INSURANCE COMPANY  
OF NEW YORK

By: [Signature]  
Michael Troy Meyer  
Vice President, Corporate Controller

Dated: Aug 28, 2019

[Signature]



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By: [Signature]  
Laura Evangelista  
Executive Deputy Superintendent for Insurance

Dated: 8/16/19

**THE FOREGOING CONSENT ORDER IS HEREBY APPROVED.**

By: [Signature]  
Linda A. Lacewell  
~~Acting~~ Superintendent of Financial Services

Dated: 09/17/19

