

# HEALTH CARE SHARING, NOT HEALTH CARE SCARING: THE NEED TO REGULATE HEALTH CARE SHARING MINISTRIES LIKE MAINSTREAM INSURANCE

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## I. INTRODUCTION

Health care delivery in the United States is an undoubtedly broken system, but some Americans have exploited a regulatory loophole to save money on their health care to their peril. More than a few Americans have turned to Health Care Sharing Ministries (“HCSMs”) to cut their health care costs, only to end up footing the bill when they become gravely sick or injured.<sup>1</sup> HCSMs have existed in some form since the early 1900s when religious groups would “bear each other’s burdens” and pay for group members’ medical expenses.<sup>2</sup> HCSMs are legally defined as a “religious exemption” in federal law for health insurance purposes, meaning they are not actually health insurance, though they have the words “health care” in their name, and many HCSMs operate like mainstream health insurance.<sup>3</sup> To be considered an HCSM under federal law, an organization has to be a nonprofit organization in existence continually since December 31, 1999 and

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1. See, e.g., Sara Machi, “I Looked at How Much Insurance Covered, and It Said ‘Zero’” | *Fenton Mom Thought She Signed Up for Insurance. Then the Bills Came.*, KSDK-TV (Feb. 18, 2020, 7:15 PM), <https://www.ksdk.com/article/news/investigations/she-thought-she-signed-up-for-insurance-but-then-the-bills-came-now-shes-on-the-hook-for-160-k/63-294e1ebb-a96f-45a1-88b4-3ae52f0c1c7b>.

2. *Galatians* 6:2; Laura Santhanam, *1 Million Americans Pool Money in Religious Ministries to Pay For Health Care*, PBS NEWSHOUR (Jan. 16, 2018, 5:46 PM), <https://www.pbs.org/newshour/health/1-million-americans-pool-money-in-religious-ministries-to-pay-for-health-care>.

3. 26 U.S.C. § 5000A(d)(2)(B) (2022).

contain “members . . . which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the State in which a member resides or is employed.”<sup>4</sup>

With the rise of the Affordable Care Act (“ACA”) and the individual mandate that penalized Americans for not having health insurance, HCSMs took advantage of their religious exemption under federal law and doubled their membership from 200,000 to 530,000 in 2016.<sup>5</sup> In 2021, the membership of HCSMs was 865,000 Americans.<sup>6</sup> While the federal individual mandate was discontinued starting with the tax year 2019, five states and the District of Columbia have enacted their own individual mandate, making the loophole of cheaper health insurance provided by HCSMs still appealing to many Americans.<sup>7</sup>

The attraction of HCSMs is their cost savings over ACA-backed plans, with some families saving thousands of dollars a year over mainstream health insurance.<sup>8</sup> For some, the religious underpinnings of HCSMs are also appealing, as HCSMs advertise the biblical foundation of sharing others’ expenses.<sup>9</sup> However, HCSMs carry more risk than mainstream insurance plans.<sup>10</sup> While members pay into HCSMs with the hope their medical bills will be covered by other members, “there is no coverage [and] no guarantee of payment” with HCSMs.<sup>11</sup>

This means HCSM members may save money in the short term through lower healthcare-related financial contributions, but

4. *Id.*

5. Kimberly Leonard, *Christians Find Their Own Way to Replace Obamacare*, U.S. NEWS & WORLD REP. (Feb. 23, 2016), <https://www.usnews.com/news/articles/2016-02-23/membership-for-health-sharing-ministries-soars-under-obamacare>.

6. *By The Numbers*, ALL. OF HEALTH CARE SHARING MINISTRIES, <http://ahcsm.org/about-us/data-and-statistics> (last visited Sept. 8, 2022).

7. Anne Newhouse, *Status of the State Individual Health Insurance Coverage Mandates*, INT’L FOUND. OF EMP. BENEFIT PLANS (Feb. 13, 2020), <https://blog.ifebp.org/index.php/status-of-the-state-individual-health-insurance-coverage-mandates>.

8. See Mark Tosczak, *Cost-sharing Ministries Becoming Popular Alternative to ACA Plans*, N.C. HEALTH NEWS (Jan. 8, 2018), <https://www.northcarolinahealthnews.org/2018/01/08/cost-sharing-ministries-becoming-popular-alternative-aca-plans>.

9. See Reed Abelson, *It Looks Like Health Insurance, But It’s Not. “Just Trust God,” Buyers Are Told*, N.Y. TIMES, (Jan. 2, 2020), <https://www.nytimes.com/2020/01/02/health/christian-health-care-insurance.html> (highlighting the role that religion plays in HCSMs).

10. JoAnn Volk, Emily Curran, & Justin Giovannelli, *Health Care Sharing Ministries: What Are the Risks to Consumers and Insurance Markets?*, COMMONWEALTH FUND (Aug. 8, 2018), <https://www.commonwealthfund.org/publications/fund-reports/2018/aug/health-care-sharing-ministries>.

11. Abelson, *supra* note 9.

they can be saddled with thousands of dollars in medical bills for routine procedures because HCSMs can decide what they will and will not cover on a whim.<sup>12</sup> Even if medical conditions are included as covered in an HCSM's marketing materials, the HCSM can refuse to put members' shared contributions toward members' medical bills, leaving them with thousands of dollars of debt.<sup>13</sup> HCSMs exploit people who sign up thinking they will save money by joining an HCSM, causing them to foot a bill they would have never had with mainstream health insurance.<sup>14</sup> Because HCSMs are exempt from federal oversight and consumer protections of health care plans put forth by federal and state insurance regulators, HCSM members are out of luck if their organization opts not to cover their medical expenses.<sup>15</sup>

This Comment proposes that HCSMs be regulated more similarly to mainstream health insurance options, like through the actions of a state department or division of insurance ("DOI"), to increase consumer protection in the event of denial of claims or cancellation of coverage. Section II provides an overview of how the IRS regulates HCSMs similarly to more mainstream health insurance options. Section III provides a framework for how HCSMs are currently regulated on both the federal and state levels. Section IV describes how ordinary consumers are duped by the unregulated practices of HCSMs, showing that some consumers have successfully brought civil fraud actions against their HCSMs. Finally, Section V proposes a nuanced regulatory scheme for HCSMs that allows for religious freedom but provides consumers recourse if their coverage is arbitrarily denied by their HCSM, using Alaska as a case study.

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12. See, e.g., Sean P. Murphy, *She's Stuck With \$75,000 in Bills After Her "Health Care Sharing Ministry" Refuses to Pay*, THE BOSTON GLOBE (June 1, 2021, 3:43 PM), <https://www.bostonglobe.com/2021/06/01/business/shes-stuck-with-75k-bills-after-her-health-care-sharing-ministry-refuses-pay-up>.

13. See, e.g., Seaborn Larson, *Montanans Find Insurance Alternative, Pitfalls, with Health Care Sharing Ministries*, COMM'R OF SEC. AND INS., MONT. STATE AUDITOR (Aug. 9, 2021), <https://csimt.gov/news/montanans-find-insurance-alternative-pitfalls-with-health-care-sharing-ministries>.

14. See Sarah Salvadore, *Health Cost Sharing Ministries Leave Many Out in the Cold, Critics Say*, NAT'L CATH. REP. (May 13, 2020), <https://www.ncronline.org/news/justice/health-cost-sharing-ministries-leave-many-out-cold-critics-say>.

15. Simone Hussussian, *The Health-Sharing Duck*, THE REGUL. REV. (Feb. 26, 2020), <https://www.theregreview.org/2020/02/26/hussussian-health-sharing-ministries>.

## II. HCSMs AND THE IRS

In 2020, the IRS proposed a rule that permits employers to reimburse employees who pay into HCSMs for their membership, like a health insurance premium.<sup>16</sup> The IRS proposed this rule in response to an executive order signed by President Trump in 2019.<sup>17</sup> In explaining this rule, the IRS stated that “expenditures for . . . health care sharing ministry memberships are amounts paid for medical care as defined in [Internal Revenue Code] section 213(d).”<sup>18</sup> In the proposed rule, HCSMs are considered to be “insurance covering medical care.”<sup>19</sup> Though the IRS is careful to clarify that its classification of HCSMs as insurance for tax purposes does not mean HCSMs should be considered insurance under state or federal regulations, this proposed rule further muddies the waters and begs the question: should HCSMs be regulated more like mainstream insurance options?<sup>20</sup>

The IRS will take final action sometime in 2022 on the HCSM rule.<sup>21</sup> If the IRS were to finalize the rule as it stands today, Americans would be able to deduct the monthly amounts paid to HCSMs on their 2022 taxes.<sup>22</sup> The IRS proposed this rule out of a directive from President Trump to “propose regulations to treat expenses related to certain types of arrangements, potentially including direct primary care arrangements and healthcare sharing ministries, as eligible medical expenses under Section 213(d).”<sup>23</sup> While this rule has the potential to cause chaos within the limited risk pool of mainstream health insurance, if a taxpayer can deduct their HCSM payments from their taxes the same way one can

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16. Katie Keith, *New Proposed Rule On Health Care Sharing Ministries and Direct Primary Care*, HEALTH AFFS. BLOG (June 11, 2020), <https://www.healthaffairs.org/doi/10.1377/forefront.20200611.714521/full>.

17. See Exec. Order No. 13,877, 80 Fed. Reg. 30,849 (June 27, 2019).

18. Certain Medical Care Arrangements, 85 Fed. Reg. 35,399 (June 10, 2020).

19. Christina Cousart, *Proposed IRS Rule Would Incentivize Health Care Sharing Ministries and Direct Primary Care Arrangements*, THE NAT'L ACAD. FOR STATE HEALTH POL'Y (June 15, 2020), <https://www.nashp.org/proposed-irs-rule-would-incentivize-health-care-sharing-ministries-and-direct-primary-care-arrangements>.

20. See *id.*

21. RIN 1545-BP31, OFF. OF INFO. AND REGUL. AFFS., <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=1545-BP31> (last visited Sept. 27, 2022).

22. See Keith, *supra* note 16.

23. Press Release, Internal Revenue Serv., Proposed Regulations Address Direct Primary Care Arrangements and Health Care Sharing Ministry Memberships (June 8, 2020), <https://www.irs.gov/newsroom/proposed-regulations-address-direct-primary-care-arrangements-and-health-care-sharing-ministry-memberships>.

deduct health insurance premiums, it would further solidify the claim that HCSMs ought to be regulated more closely to mainstream health insurance.<sup>24</sup>

### III. HCSMS AND FEDERAL/STATE REGULATORS

On a state level, thirty out of the fifty states have “safe harbor” provisions exempting HCSMs from the state insurance code.<sup>25</sup> While some states subject HCSMs to further requirements, like annual audits or providing a written disclaimer to consumers, most states largely leave HCSMs alone.<sup>26</sup> For example, in North Carolina, the DOI does not regulate HCSMs due to “an exception in state law that allows for [HCSMs] to operate outside of state regulation if they meet the exception requirements.”<sup>27</sup> The exception requirements include that the HCSM “publishes a monthly written statement that all members have access to that lists the total dollar amount of the qualified medical needs submitted to the HCSM as well as the amount published or assigned to the members for their contribution.”<sup>28</sup> While the North Carolina DOI states multiple times on its website that HCSMs are *not* insurance, it concedes that HCSMs “may meet the needs of some consumers.”<sup>29</sup>

At the federal level, a similar laissez-faire attitude controls, though four members of Congress wrote to the Federal Trade Commission (“FTC”) Chairman in October 2021 expressing their concern about “the absence of decisive federal action” regarding HCSMs.<sup>30</sup> This letter urged the FTC to “take immediate action to protect consumers” from the deceptive marketing practices of HCSMs.<sup>31</sup>

In comparison, mainstream health insurance companies are federally regulated by the ACA.<sup>32</sup> There are grandfathered health

24. See Keith, *supra* note 16.

25. Volk et al., *supra* note 10.

26. See *id.*

27. *Alternate Plans*, N.C. DEP’T OF INS., <https://www.ncdoi.gov/consumers/health-insurance/alternate-plans> (last visited Feb. 22, 2022).

28. *Id.*

29. *Id.*

30. Letter from the Hon. Jared Huffman to Samuel Levine, Acting Chairman of the FTC, Bureau of Consumer Protection (Oct. 27, 2021), [https://huffman.house.gov/imo/media/doc/final\\_ftc\\_health\\_shares\\_letter\\_1027.2021.pdf](https://huffman.house.gov/imo/media/doc/final_ftc_health_shares_letter_1027.2021.pdf).

31. *Id.*

32. See *generally Rights and Protections*, HEALTHCARE.GOV, <https://www.healthcare.gov/health-care-law-protections/rights-and-protections> (last visited Feb. 22, 2022) (identifying consumer protections in health insurance law).

insurance plans that share similarities with HCSMs in that they had to exist before a certain date and are not required to incorporate some aspects of the ACA in their plans, like providing preventative care.<sup>33</sup> However, the grandfathered plans are still required to cover children up to age twenty-six and cannot cancel a consumer's coverage arbitrarily, making even the grandfathered plans more regulated and amiable to consumers than HCSMs.<sup>34</sup> While there are fewer federal protections to raise grievances with one's health insurance company than state-based insurance protections, there are still some in place, like the right to appeal a denial of a claim or a cancellation of coverage.<sup>35</sup> In stark contrast, claims can be denied by HCSMs at any time with no recourse for the consumer.<sup>36</sup>

#### IV. WOLF IN SHEEP'S CLOTHING: DECEPTIVE PRACTICES OF HCSMS

The health care market in the United States is complicated, to say the least.<sup>37</sup> A great deal of data shows that consumers make bad decisions concerning their health care because it is such a confusing industry.<sup>38</sup> Consequently, it is easy for the average person to fall prey to the alluring marketing of HCSMs that tout similar-seeming plans to mainstream health insurance for a lower price.<sup>39</sup> Many of the heartbreaking stories about HCSMs involve consumers who in a bind purchased an HCSM plan, and only after accruing thousands of dollars of medical bills found their expenses denied

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33. *What Is a Grandfathered Plan? How Do I Know If I Have One?*, KAISER FAM. FOUND., <https://www.kff.org/faqs/faqs-health-insurance-marketplace-and-the-aca/what-is-a-grandfathered-plan-how-do-i-know-if-i-have-one> (last visited Feb. 22, 2022).

34. *Grandfathered Health Insurance Plans*, HEALTHCARE.GOV, <https://www.healthcare.gov/health-care-law-protections/grandfathered-plans> (last visited Feb. 22, 2022).

35. *How to Appeal an Insurance Co. Decision*, HEALTHCARE.GOV, <https://www.healthcare.gov/appeal-insurance-company-decision> (last visited Feb. 22, 2022).

36. See Abelson, *supra* note 9.

37. See generally Tony Pistilli, *Health Care Sharing Ministries*, THE ACTUARY MAG. (Dec. 2021), <https://theactuarymagazine.org/health-care-sharing-ministries> (explaining the complexities of HCSMs).

38. See e.g., Margot Sanger-Katz, *It's Not Just You: Picking a Health Insurance Plan Is Really Hard*, N.Y. TIMES (Dec. 11, 2020), <https://www.nytimes.com/2020/12/11/upshot/choosing-health-insurance-is-hard.html>.

39. See, e.g., Press Release, Cal. Dep't of Ins., Dep't Issues Cease and Desist Order to Protect Cal. Consumers from Misleading Health Plans Known as "Health Care Sharing Ministries" (Mar. 10, 2020), <https://www.insurance.ca.gov/0400-news/0100-press-releases/2020/release026-2020.cfm>.

by their HCSM.<sup>40</sup> While HCSMs are, by their accounts, clear about telling consumers that the products they sell are not insurance, courts have found differently.<sup>41</sup> The following court decisions have discussed the remedies that consumers may have against some fraudulent practices of HCSMs in some jurisdictions.<sup>42</sup>

Many of the lawsuits discussed below were brought by consumers against Alera Companies (“Alera”).<sup>43</sup> As of January 2022, fourteen states have brought lawsuits against Alera, alleging it has scammed consumers out of millions of dollars.<sup>44</sup> The lawsuits allege that Alera took consumers’ money as health insurance premiums, but because it had no obligation to pay out any member claims under the auspices of an HCSM, pocketed members’ money without paying members’ bills.<sup>45</sup> Other states, short of filing a lawsuit, have issued cease and desist orders for Alera and its subsidiaries.<sup>46</sup> These states have justified the orders by asserting the state’s insurance-regulating body “has cause to believe that the acts, practices, transactions, and course of business engaged in by The Alera Companies, Inc. . . . and Trinity Healthshare, Inc. . . . may be conducted in an illegal and improper way.”<sup>47</sup>

*LeCann v. Alera Cos.* was a class-action lawsuit brought in the United States District Court in the Northern District of Georgia in

40. See, e.g., Jenna Carlesso, *Best of 2020: “I’m Relying on Prayer.” Complaints Pile Up Against Health Care Sharing Ministries as State Mounts a Defense*, THE CONN. MIRROR (Dec. 30, 2020), <https://ctmirror.org/2020/12/30/best-of-2020-im-relying-on-prayer-complaints-pile-up-against-health-care-sharing-ministries-as-state-mounts-a-defense>.

41. See, e.g., Jeremy Chisenhall, *Lexington Judge Rules Health Insurance Company Lied, Awards \$4.7 Million Judgment*, LEXINGTON HERALD-LEADER (Nov. 30, 2021, 3:33 PM), <https://www.kentucky.com/news/local/counties/fayette-county/article256219082.html>.

42. See, e.g., Emilee Larkin, *Christian Group’s Insurance Plan Called a Fraud by New York*, COURTHOUSE NEWS SERV. (Oct. 20, 2020), <https://www.courthousenews.com/christian-groups-insurance-plan-called-a-fraud-by-new-york>.

43. See Samantha Liss, *Healthcare Sharing Ministry “Sham” Faces Suit for Allegedly Defrauding Consumers in California*, HEALTHCARE DIVE (Jan. 13, 2022), <https://www.healthcaredive.com/news/healthcare-sharing-ministry-sham-lawsuit-california-aliera/617130>.

44. *Id.*

45. *Id.*; see also *Jackson v. Alera Cos.*, 462 F. Supp. 3d 1129 (W.D. Wash. 2020) (holding that plaintiffs sufficiently pled Alera and its subsidiaries were not considered HCSMs under Washington insurance regulations); *Duncan v. Alera Cos.*, No. 2:20-cv-00867-TLN-KJN, 2021 U.S. Dist. LEXIS 172376, at \*2 (E.D. Cal. Sept. 9, 2021) (alleging that Alera and its subsidiaries sold “inherently unfair and deceptive health care plans to California residents”).

46. See, e.g., *Cease and Desist Order at 1, Alera Cos., Inc. and Trinity Healthshare, Inc.*, No. MC 19-109 (Conn. Ins. Comm’r Dec. 2, 2019), [https://portal.ct.gov/-/media/CID/1\\_Orders/Order-MC-19-109.pdf?la=en](https://portal.ct.gov/-/media/CID/1_Orders/Order-MC-19-109.pdf?la=en).

47. *Id.*

2021.<sup>48</sup> Alieria was a for-profit business incorporated in 2015.<sup>49</sup> This is distinct from how HCSMs are required to operate under federal law which requires HCSMs to be nonprofit businesses for federal tax purposes.<sup>50</sup> Alieria was family-run, with Shelly Steele serving as the CEO and her son, Chase Moses, serving as its president.<sup>51</sup> Ironically, Ms. Steele's husband and Mr. Moses's father, Timothy Moses, spent seven years in federal prison for securities fraud and perjury in the early 2000s.<sup>52</sup> In their complaint, the many plaintiffs in *LeCann* alleged that at some point after Alieria's incorporation, Steele and Chase Moses planned to make money off of the HCSM exception found in federal and state laws, exploiting Georgia consumers.<sup>53</sup>

In this plan, Alieria partnered with an existing HCSM, Anabaptist HealthShare, to market and sell HCSM plans to Alieria's customers.<sup>54</sup> Anabaptist HealthShare is a recognized HCSM and has been meeting the health-sharing needs of the Anabaptist community for many years.<sup>55</sup> In 2016, Alieria and Anabaptist HealthShare formed a limited liability company, Unity Healthshare, LLC ("Unity"), which gave an exclusive license to Alieria to market and sell legitimate health sharing plans to Georgia consumers under the Unity name.<sup>56</sup> However, in 2018, when it came out that Timothy Moses was a convicted felon and that Alieria was not using the HCSM member payments for members' health care needs, the working relationship with Anabaptist HealthShare soured, and Anabaptist HealthShare ended its partnership with Alieria.<sup>57</sup>

For Alieria, the termination of its partnership with Anabaptist HealthShare meant that it could no longer market and sell HCSM plans to consumers because it was incorporated too late

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48. *LeCann v. Alieria Cos.*, No. 1:20-cv-2429, 2021 U.S. Dist. LEXIS 115827, at \*1 (N.D. Ga. June 22, 2021).

49. *Id.* at \*4.

50. 26 U.S.C. § 5000A(d)(2)(B) (2022).

51. *LeCann*, 2021 U.S. Dist. LEXIS 115827, at \*4.

52. *Atlanta Exec Headed to Jail for "Pump and Dump" Fraud Scheme*, ATLANTA BUS. CHRON. (Feb. 17, 2006), <https://www.bizjournals.com/atlanta/stories/2006/02/13/daily49.html>.

53. *LeCann*, 2021 U.S. Dist. LEXIS 115827, at \*4-5.

54. *Id.* at \*7.

55. *About AHS*, ANABAPTIST HEALTHSHARE, <https://www.sharing.health/about-us> (last visited Feb. 23, 2022).

56. *LeCann*, 2021 U.S. Dist. LEXIS 115827, at \*7.

57. *Id.* at \*7-8.

for it to be considered a legitimate HCSM on its own.<sup>58</sup> However, in ensuing litigation between Anabaptist HealthShare and Alera, Alera was able to keep “possession of the Unity membership roster, all Unity HCSM plans, all HCSM plan assets, all Unity intellectual property, including the website, and Unity’s employees” after the conclusion of its relationship with Anabaptist HealthShare.<sup>59</sup> This effectively meant that Alera could continue the operation of Unity by a different name, creating an unlicensed HCSM that consumers still paid into believing it was a legitimate health-sharing system.

After the relationship with Anabaptist HealthShare and Unity ceased, Alera created a new company, Trinity Healthshare, Inc. (“Trinity”), in June 2018.<sup>60</sup> The only employee of Trinity was William Thead III, who had been previously employed with Alera and even officiated Chase Moses’s wedding.<sup>61</sup> Because the relationship with an existing HCSM had been severed, Unity and Trinity’s continued marketing and selling of health sharing plans to consumers was illegal, as Alera’s operation of Unity and Trinity did not constitute an HCSM under either state or federal law.<sup>62</sup>

The plaintiffs in *LeCann* were individuals who, like many other HCSM members, had extensive medical bills that were not paid out by any Alera-based company though they religiously paid their “premiums” to the HCSM.<sup>63</sup> After trying to appeal their claims through some of the procedures indicated in their Alera/Unity/Trinity membership guides, they created a class of affected persons and sued in federal court.<sup>64</sup> The plaintiffs brought the following claims:

money had and received, unjust enrichment, breach of contract and breach of covenant of good faith and fair dealing, conversion, breach of fiduciary duty/confidential relationship, intentional or negligent misrepresentation, violation of the Georgia Fair Business Practices Act (“GFBPA”), O.C.G.A. 10-1-390

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58. *See id.* at \*7.

59. *Id.* at \*8.

60. *Id.* at \*9.

61. *Id.*

62. *Id.* at \*10.

63. *See id.* at \*10–12.

64. *Id.* at \*20.

et seq., violation of the Georgia Uniform Deceptive Trade Practices Act, O.C.G.A. 10-1-370 et seq.

Aliera moved to dismiss the class action because the named plaintiffs did not properly resolve their disputes per Aliera/Unity/Trinity's stated procedures and moved in the alternative to compel arbitration.<sup>65</sup> However, the district court dismissed both motions.<sup>66</sup> The court ruled that nothing in the Aliera membership guides required certain types of resolution before commencing suit and the Aliera "HCSM" contracts were *insurance contracts*, which prevented the named plaintiffs from being compelled into arbitration.<sup>67</sup> Although Aliera was not affiliated with an HCSM at the time this lawsuit was filed, Aliera's contracts were loosely based on its former relationship with an HCSM. Due to this loose connection to an HCSM, the court ruled the Aliera contracts were *insurance contracts* and not an HCSM membership agreement. The court's ruling that the Aliera contracts were insurance contracts and not a membership agreement of an HCSM would open the door to regulating HCSMs in a more similar fashion to mainstream health insurance.

*Albina v. Aliera Cos.* is a case out of the United States District Court for the Eastern District of Kentucky.<sup>68</sup> While there was no trial due to Aliera filing for bankruptcy in December 2021, the district court granted a default judgment to the plaintiffs and made several important legal conclusions.<sup>69</sup> The first is that the contract the plaintiffs signed with Aliera constituted an insurance contract under Kentucky state law.<sup>70</sup> The second was that while HCSMs are exempt from regulation under Kentucky state law, Aliera did not constitute a legal HCSM.<sup>71</sup> The court concluded this since, among other things, "Aliera did not match specific participants who have financial, physical, or medical needs with participants who choose

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65. *Id.* at \*101.

66. *Id.*

67. *Id.* at \*101–102.

68. *Albina v. Aliera Cos.*, No. 5:20-cv-496, 2021 U.S. Dist. LEXIS 149903 (E.D. Ky. Aug. 10, 2021).

69. Default Judgment Against the Aliera Cos. at 1–4, *Albina v. Aliera Cos.*, No. 5:20-cv-496, 2021 U.S. Dist. LEXIS 149903 (E.D. Ky. Aug. 10, 2021) (No. 75-1).

70. *Id.*; KY. REV. STAT. ANN. § 304.1-030 (2022) (defining "insurance" as "a contract whereby one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils called 'risks'").

71. Default Judgment Against the Aliera Cos. at 1–4, *Albina v. Aliera Cos.*, No. 5:20-cv-496, 2021 U.S. Dist. LEXIS 149903 (E.D. Ky. Aug. 10, 2021) (No. 75-1).

to assist with those needs,” as a legitimate HCSM would do.<sup>72</sup> Additionally, Alera, doing business as Trinity, did not abide by the Kentucky HCSM regulations because it failed to complete an annual independent audit.<sup>73</sup> The fiscal year 2018 was the last year it complied with this regulation.<sup>74</sup>

Moreover, the court criticized Alera’s and its subsidiaries’ business practices within the state of Kentucky. The court ruled that Alera misled the class members into entering insurance contracts with Alera when they fully believed they were joining a legal HCSM.<sup>75</sup> The court concluded that Alera’s failure to abide by Kentucky insurance regulations was “to the damage of class members.”<sup>76</sup>

Because the Alera contracts are considered valid insurance contracts under Kentucky state law, the court ruled that the plaintiffs and class members were entitled to rescind their contracts with Alera or reform them to conform with state law.<sup>77</sup> With whatever choice each class member makes, they are entitled to rescission or reformation damages, respectively.<sup>78</sup> If a class member were to reform their contract with Alera, they would be entitled to receive the amount of the total bills submitted to Alera.<sup>79</sup> This could be a lot of money, as the class total for unpaid medical bills

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72. Ky. Rev. Stat. Ann. § 304.1-120 (LexisNexis 2022) (outlining the requirements for a religious organization to be exempt from the health insurance regulation in Kentucky, notably requiring the HCSM to include the following message in at least 10-point font on all its documents: “NOTICE: UNDER KENTUCKY LAW, THE RELIGIOUS ORGANIZATION FACILITATING THE SHARING OF MEDICAL EXPENSES IS NOT AN INSURANCE COMPANY, AND ITS GUIDELINES, PLAN OF OPERATION, OR ANY OTHER DOCUMENT OF THE RELIGIOUS ORGANIZATION DO NOT CONSTITUTE OR CREATE AN INSURANCE POLICY. PARTICIPATION IN THE RELIGIOUS ORGANIZATION OR A SUBSCRIPTION TO ANY OF ITS DOCUMENTS SHALL NOT BE CONSIDERED INSURANCE. ANY ASSISTANCE YOU RECEIVE WITH YOUR MEDICAL BILLS WILL BE TOTALLY VOLUNTARY. NEITHER THE ORGANIZATION OR ANY PARTICIPANT SHALL BE COMPELLED BY LAW TO CONTRIBUTE TOWARD YOUR MEDICAL BILLS. WHETHER OR NOT YOU RECEIVE ANY PAYMENTS FOR MEDICAL EXPENSES, AND WHETHER OR NOT THIS ORGANIZATION CONTINUES TO OPERATE, YOU SHALL BE PERSONALLY RESPONSIBLE FOR THE PAYMENT OF YOUR MEDICAL BILLS.”); Default Judgement Against the Alera Cos., *supra* note 71.

73. Default Judgement Against the Alera Cos., *supra* note 71.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* at 2–3.

78. *Id.* at 3.

79. *Id.*

was over \$3 million.<sup>80</sup> The court even went so far as to exhort class members to choose the contractual remedy that nets them the greatest award.<sup>81</sup> The total class damage amount, assuming that each member of the class chose the most individually lucrative option, was \$4,696,124.<sup>82</sup> While the members of the Kentucky class may never see this full amount due to Alieria's protracted and costly bankruptcy proceedings, it is unique that a judge would take the time and effort to publicly eviscerate a company when filing a default judgment.<sup>83</sup>

These two cases show that courts have very little tolerance for the deceptive and fraudulent practices of HCSMs. The judiciary believes there is no room in the law for average consumers to believe they are paying into health insurance and then not receive the benefit of health insurance coverage.<sup>84</sup> While many of the Alieria-associated cases are stayed pending Alieria's bankruptcy proceedings, what happens when a legitimate HCSM is taken to court over its refusal to pay a member's claims?<sup>85</sup>

The Supreme Court of Kentucky heard *Commonwealth v. Reinhold* in 2010.<sup>86</sup> This case involved the Medi-Share program, which was a program run by the American Evangelistic Association for people to voluntarily join and pay the medical expenses of other members.<sup>87</sup> Each potential member was required in their application to certify they would comport their lives to biblical standards, including things like "attend[ing] church regularly, not us[ing] tobacco or illegal drugs, and refrain[ing] from abusing legal substances such as alcohol."<sup>88</sup> The Medi-Share application process included many disclaimers an applicant had to read to

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80. *Id.*

81. *Id.* at 3–4.

82. *Id.* at 4.

83. See Todd Bookman, *Former Customers of Bankrupt N.H. Health Care Sharing Ministry Unlikely to Get Large Refunds*, N.H. PUB. RADIO (Dec. 16, 2021), <https://www.nhpr.org/nh-news/2021-12-16/sharity-ministries-bankrupt-nh-refunds-trinity-health-share>.

84. See, e.g., *Default Judgment Against the Alieria Cos.*, *supra* note 71.

85. See Order at 3, *LeCann v. Alieria Cos.*, No. 1:20-cv-2429, 2021 U.S. Dist. Lexis 115827 (N.D. Ga. June 22, 2021) (No. 81) (ordering that for *LeCann v. Alieria Cos.*, "all proceedings and pending motions in this action are hereby STAYED. The Court ADMINISTRATIVELY CLOSES this case. In the event the Bankruptcy Court dismisses the Involuntary Petition or lifts the stay, or if there is some other change in the proceedings before the Bankruptcy Court, Plaintiffs may move to reopen the case at that time.").

86. *Commonwealth v. Reinhold*, 325 S.W.3d 272 (Ky. 2010).

87. *Id.* at 273.

88. *Id.* at 273–74.

know how to appeal an adverse decision and stated that a Medi-Share plan was not an insurance policy.<sup>89</sup>

Instead of a class of individuals filing suit against the HCSM due to their individualized damages, *Reinhold* is unique because it involved a state represented by its Attorney General suing an HCSM.<sup>90</sup> In its lawsuit, the state of Kentucky alleged that Medi-Share, the American Evangelistic Association, and the Christian Care Ministry (another program run by the American Evangelistic Association) were engaged in the unauthorized sale of insurance in Kentucky.<sup>91</sup> In a bench trial, the trial court ruled that Medi-Share contracts did not constitute insurance contracts under Kentucky law, and even if the agreements *could* be considered insurance, the religious organization exemption in Kentucky law would preclude them from state insurance regulations.<sup>92</sup> The Kentucky Court of Appeals agreed with the trial court that Medi-Share agreements were not insurance but did not believe that the religious organization exemption would additionally preclude them from regulation.<sup>93</sup> The issues left for the Supreme Court of Kentucky to decide were (1) whether Medi-Share agreements constituted insurance under Kentucky law, and (2) whether Medi-Share as an organization fell under the religious organization exemption from insurance regulation under Kentucky law.<sup>94</sup>

The Kentucky Supreme Court held that Medi-Share agreements were considered insurance under Kentucky law.<sup>95</sup> The Court reached its conclusion by looking at the commitment contract consumers had to agree to become a Medi-Share member.<sup>96</sup> Because members were required to pay their monthly membership share to Medi-Share to remain eligible for Medi-Share

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89. *Id.* at 274 (stating the disclaimer for appealing Medi-Share's coverage decision was as follows: "I understand that Christian Care Ministry (CCM) matches a Medi-Share member's medical need with other Members who have volunteered, in faith, to share in meeting needs through the biblical concept of Christian mutual sharing. I further understand that all money comes from the voluntary giving of Members, not from the Christian Care Ministry, and that the Christian Care Ministry is not liable for the payment of any medical bills. I will accept the decisions made during the Appeal Process by the 'Seven Member Appeal Panel' described in the Guidelines and will bring no suit, legal claim or demand of any sort against CCM for unpaid medical expenses.").

90. *Id.* at 275.

91. *Id.*

92. *Id.*

93. *Id.* at 275–76.

94. *Id.*

95. *Id.* at 278.

96. *Id.* at 274.

to cover that member's potential medical expenses, the court held there was a shifting of risk from an individual to a pool of individuals characteristic of an insurance contract.<sup>97</sup> Additionally, Medi-Share's advertising focused less on the charitable aspect of a legitimate HCSM and instead on the individual cost savings enjoyed by Medi-Share members, further obscuring its charitable and religious foundations.<sup>98</sup>

The court further held that Medi-Share did not meet the religious organization exemption under Kentucky law.<sup>99</sup> There are many requirements in Kentucky law for a religious organization to be exempted from insurance regulation with which Medi-Share did not comply.<sup>100</sup> The *Reinhold* court held that for an organization to qualify for the exemption, it had to meet *every element* of KRS 304.1-120(7).<sup>101</sup> Because members' shares are paid directly to Medi-Share who then pays them out to members who have medical expenses, the "direct sharing" provision in KRS § 304.1-120(7)(d) was not satisfied, preventing Medi-Share from falling under the Kentucky religious organization exception.<sup>102</sup>

Courts have not expressed particular appreciation for the place that HCSMs hold in the health insurance system in the United States.<sup>103</sup> Consequently, it is important to consider how, if at all, HCSMs could be brought in line with the more legally comfortable regulations of mainstream health insurance. The next section details what greater regulation at the state level could look like. Alaska is used as a basis for a case study because of its nuanced health care delivery landscape.

## V. NEXT STEPS: PROPOSED REGULATION OF HCSMS – AN ALASKA CASE STUDY

When looking at a jurisdiction that would benefit from greater regulation of HCSMs, Alaska is a clear choice. Due to the

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97. *Id.* at 277.

98. *Id.* at 278.

99. *Id.* at 279.

100. Ky. Rev. Stat. Ann. § 304.1-20(7) (LexisNexis 2022).

101. *Reinhold*, 325 S.W.3d at 279 (citing *Harris v. Commonwealth*, 793 S.W.2d 802, 809 (Ky. 1990) (Leibson, J., dissenting)).

102. *Id.*

103. See Ann Neumann, *The Patient Body: The Politics of Healthcare Sharing Ministries*, THE REVEALER (July 25, 2017), <https://wp.nyu.edu/therevealer/2017/07/25/the-patient-body-the-politics-of-health-care-sharing-ministries> (discussing efforts of courts in Kentucky, Washington, and Oklahoma to shut down HCSMs).

remote location of the state, only one mainstream insurer is available on the ACA Marketplace for Alaskans.<sup>104</sup> Consequently, mainstream health care premiums are very high, causing many Alaskans to either have paid the federal penalty for not having health insurance when it was in place or enroll in a cheaper but riskier HCSM.<sup>105</sup> HCSMs have used Alaskans as success stories for all the bills the HCSM was able to cover, making the last frontier of Alaska seem like an appealing environment for HCSMs.<sup>106</sup>

In Alaska, mainstream health insurance companies are regulated by the Alaska DOI.<sup>107</sup> The DOI's "most important function is consumer protection" by ensuring Alaskan consumers are not taken advantage of by insurers.<sup>108</sup> The DOI received eighty-nine complaints about health and accident insurers in 2020, which was the largest amount of complaints for any type of insurer.<sup>109</sup> The DOI assists Alaskans in claim-handling delays, claim denials, cancellations, and seven other consumer complaints areas pertaining to health insurers.<sup>110</sup> However, none of these protections extend to Alaskans enrolled in HCSMs because they do not meet the federal definition of health insurance.<sup>111</sup>

It is certainly important and constitutional to respect the religious foundation and autonomous nature of HCSMs. However, if HCSMs are going to continue to operate alongside mainstream health insurance, consumers must be afforded at least some of the consumer protections other health insurers have to abide by. It is

104. Press Release, Lisa Murkowski, Sen. from Alaska, United States Senate, Murkowski Speaks to Alaskan Perspective of Short-Term Health Insurance Plans (Oct. 11, 2018), <https://www.murkowski.senate.gov/press/release/murkowski-speaks-to-alaskan-perspective-of-short-term-health-insurance-plans>.

105. *Id.*

106. *See Member Almost Loses Hand After Car Crash in Hazardous Alaska Weather*, Kathy Beach, *Homer, Alaska*, CHRISTIAN HEALTHCARE MINISTRIES, <https://chministries.org/testimonials/member-almost-loses-hand-after-car-crash-in-hazardous-alaska-weather> (last visited Feb. 22, 2022).

107. *About Us*, ALASKA DIV. OF INS., [https://www.commerce.alaska.gov/web/ins/AboutUs/AbouttheDivision.aspx?TSPD\\_101\\_R0=0890181cafab200064476462751592d4092b4498ca90ed0bf7ffbad2eaa46058fa937a9d1f75b6dc086a5a93f5143000fa06c28477125e5bd9c9043dec5b6f040be29171b2becb24348248a39b3442fba9401742cc8506c5c0f81373aea1d72d](https://www.commerce.alaska.gov/web/ins/AboutUs/AbouttheDivision.aspx?TSPD_101_R0=0890181cafab200064476462751592d4092b4498ca90ed0bf7ffbad2eaa46058fa937a9d1f75b6dc086a5a93f5143000fa06c28477125e5bd9c9043dec5b6f040be29171b2becb24348248a39b3442fba9401742cc8506c5c0f81373aea1d72d) (last visited Feb. 22, 2022).

108. *Id.*

109. Lori Wing-Heier, 2021 ANNUAL REPORT: ALASKA DIV. OF INS., [https://www.commerce.alaska.gov/web/Portals/11/Pub/INS\\_AnnualReport\\_2021.pdf](https://www.commerce.alaska.gov/web/Portals/11/Pub/INS_AnnualReport_2021.pdf) (last visited Feb. 23, 2022).

110. *How We Can Help*, ALASKA DIV. OF INS., <https://www.commerce.alaska.gov/web/ins/Consumers/Complaints.aspx> (last visited Feb. 22, 2022).

111. Volk et al., *supra* note 10.

possible to be faithful to an organization's religious foundations *and* provide avenues for consumers to seek recourse if their outcome is not as they hoped. Below is a proposed idea for what greater state regulation of HCSMs might look like in the state of Alaska and should be considered by other states.

The DOI in Alaska derives its power from Title 21 of the Alaska Statutes.<sup>112</sup> Title 21 has a provision that exempts HCSMs from being regulated as insurance in Alaska that was added in 2016.<sup>113</sup> The exemption was sponsored by a state senator who wrote the bill after realizing nothing in the Alaska Statutes prevented the State of Alaska from treating HCSMs like mainstream health insurance.<sup>114</sup> This statutory provision explicitly states “[t]his title does not apply to a health care sharing ministry.”<sup>115</sup> Thus, the Alaska Legislature would have to amend Alaska's statutes to strike this provision from law to regulate HCSMs like other health insurance. As the original state senator feared, that legislative act would create the opportunity for HCSMs to be treated and regulated like health insurance in Alaska, as HCSMs would then be subject to Title 21.<sup>116</sup>

There are four main benefits of regulating HCSMs under Title 21: the ability to resolve coverage disputes in court, the mandatory coverage of preexisting conditions, coverage of mental health and substance abuse treatment, and the ability for state prosecutors to seek criminal charges against HCSMs if they were to defraud Alaskans.<sup>117</sup>

When a person joins an HCSM, they do not sign a legally enforceable contract but rather a “voluntary agreement” to pay into the cost-sharing pool.<sup>118</sup> This means there are no legal avenues for

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112. See ALASKA STAT. § 21.03.010 (2022).

113. § 21.03.021(k).

114. Jennifer Ransom, *Legislation Aims to Free Up Faith-Based Health Care Options in Alaska*, CATH. ANCHOR – NEWSPAPER OF THE ARCHDIOCESE OF ANCHORAGE (Feb. 2015), [http://www.akleg.gov/basis/get\\_documents.asp?session=29&docid=1353](http://www.akleg.gov/basis/get_documents.asp?session=29&docid=1353).

115. § 21.03.021(k).

116. Ransom, *supra* note 114.

117. See Alaska Stat. § 21.07.005(2) (2022) (providing that health insurers ensure that covered individuals have the opportunity to resolve grievances); § 21.54.110 (requiring health insurance providers to cover some pre-existing conditions and providing when not covering those conditions is permissible); § 21.54.151 (providing that insurers cover mental health and substance abuse problems when covered by Title 21); § 21.36.360(a-c) (providing the right to bring criminal charges against fraudulent and criminal insurers and providing definitions for fraudulent and criminal activity by insurers).

118. Amy Livingston, *Health Care Sharing Ministries: A Good Alternative to Health Insurance?*, MONEY CRASHERS (Mar. 11, 2021), <https://www.moneycrashers.com/health-care-sharing-ministries-alternative-insurance>.

recourse if an HCSM member has their medical bills denied by the company, save filing a lawsuit for fraudulent business practices.<sup>119</sup> This lack of legal remedy is based partly on the religious foundation of HCSMs.<sup>120</sup> At least one HCSM has the requirement in their membership agreement that all members must “[a]gree that when you have a dispute with a fellow Christian, and your fellow Christian is willing to submit that dispute to fellow believers for resolution, you are not to sue each other in the civil courts or other government agencies.”<sup>121</sup> If HCSMs fell under the purview of Title 21, Alaskans could enjoy the consumer protections available under other sections of Title 21, like having an opportunity to resolve grievances with their HCSM.<sup>122</sup> This is perhaps one of the most important protections afforded by state insurance regulators, as consumers who join HCSMs have no outside assistance if their claims are denied.<sup>123</sup>

Additionally, making HCSMs subject to Title 21 of Alaska’s statutes protects consumers from being denied coverage due to some preexisting conditions.<sup>124</sup> While HCSMs deny ever turning potential members away due to preexisting conditions, they will not cover any expenses related to a preexisting condition in most circumstances.<sup>125</sup> When preexisting conditions can be as common as diabetes or sleep apnea, the refusal to cover expenses relating to those conditions like insulin and anticonvulsants can make life very

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119. *Id.*

120. The religious cost-sharing principle stated by many Christian-based HCSMs comes out of the Apostle Paul’s first letter to the church in Corinth, where he exhorts the believers to settle disputes among themselves and not take them into the secular court system: “When any of you has a grievance against another, do you dare to take it to court before the unrighteous, instead of taking it before the saints?” *1 Corinthians* 6:1 (NRSV). This was likely less a commentary about the secular court system in Corinth but rather about settling disagreements among church members, not individuals trying to settle disagreements with large nonprofit organizations.

121. *Member Requirements*, SAMARITAN MINISTRIES, <https://samaritanministries.org/resources/requirements> (last visited Feb. 22, 2022).

122. See ALASKA STAT. § 21.07.005 (2022).

123. See, e.g., Jenny Deam, *Buyer Beware: When Religion, Politics, Health Care and Money Collide*, HOUSTON CHRON. (July 6, 2019), <https://www.houstonchronicle.com/business/article/Buyer-Beware-When-religion-politics-health-14065418.php>.

124. See ALASKA STAT. § 21.54.110 (2022).

125. Mike Miller, *HCSM Myth #9: People with Pre-existing Conditions Are Turned Away*, SAMARITAN MINISTRIES (Sept. 1, 2011), <https://samaritanministries.org/blog/hcsm-myth-9-people-with-pre-existing-conditions-are-turned-away>.

expensive for HCSM members with chronic conditions.<sup>126</sup> Under the ACA, no non-grandfathered health insurance plan can deny coverage to a consumer based on preexisting conditions.<sup>127</sup> This consumer protection is mostly repeated in Title 21, which states “[a] health care insurance plan offered, issued for delivery, delivered, or renewed in the group market may not contain a preexisting condition exclusion.”<sup>128</sup> Denying coverage due to a preexisting condition is another dangerously unregulated aspect of HCSMs that can leave a consumer responsible for thousands of dollars in medical bills.<sup>129</sup>

Another positive impact of regulating HCSMs under Title 21 is coverage of mental health and substance abuse treatment for Alaskans.<sup>130</sup> Title 21 states that “[a] health care insurer that offers a health care insurance plan in the group market shall comply with the mental health or substance use disorder benefit requirements established under 42 U.S.C. 300gg-26.” Thus, if HCSMs were regulated under Title 21, they would be required to provide mental health and substance abuse treatment to the point of the annual limits specified in the HCSM plan.<sup>131</sup> HCSMs are not currently required to provide any coverage for mental health and substance use disorders.<sup>132</sup> This poses a very real challenge in Alaska, where “[n]ine of the 10 leading causes of death in Alaska can be associated with substance abuse as a potential contributing cause of death.”<sup>133</sup> Additionally, over a quarter of Alaskan adults who experienced severe psychological distress reported not seeking the mental

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126. See generally *Don't Worry: Marketplace Insurance Covers Pre-existing Conditions*, HEALTHCARE.GOV (Aug. 10, 2017), <https://www.healthcare.gov/blog/whats-a-pre-existing-condition>.

127. *Can I Get Coverage If I Have a Pre-existing Condition?*, DEP'T OF HEALTH & HUM. SERVS., <https://www.hhs.gov/answers/health-insurance-reform/can-i-get-coverage-if-i-have-a-pre-existing-condition/index.html> (last visited Feb. 22, 2022).

128. § 21.54.110.

129. See, e.g., P'SHIP TO PROTECT COVERAGE, UNDER-COVERED: HOW “INSURANCE-LIKE” PRODUCTS ARE LEAVING PATIENTS EXPOSED 16 (Mar. 25, 2021), [https://www.nami.org/NAMI/media/NAMI-Media/Public%20Policy/Undercovered\\_Report\\_03252021.pdf](https://www.nami.org/NAMI/media/NAMI-Media/Public%20Policy/Undercovered_Report_03252021.pdf) (providing an example of an HCSM member being stuck with thousands in medical bills when the HCSM refused to pay).

130. See ALASKA STAT. § 21.54.151 (2022).

131. *Id.*; 42 U.S.C. § 300gg-26 (2022).

132. Volk et al., *supra* note 10.

133. STATE OF ALASKA EPIDEMIOLOGIC PROFILE ON SUBSTANCE USE, ABUSE, AND DEPENDENCY 48 (July 2019), [https://dhss.alaska.gov/dph/Epi/injury/Documents/sa/SubstanceAbuseEpiProfile\\_2019.pdf](https://dhss.alaska.gov/dph/Epi/injury/Documents/sa/SubstanceAbuseEpiProfile_2019.pdf).

health care they needed due to cost barriers, which could be ameliorated through insurance coverage.<sup>134</sup>

Finally, if HCSMs were regulated under Title 21, prosecutors could bring criminal charges against a person who fraudulently sells an HCSM to people who genuinely believe what they are signing up for is mainstream health insurance.<sup>135</sup> If an insurance agent sells an HCSM plan to an Alaskan who believes it is mainstream health insurance, the agent could be criminally liable for their actions if that person's claim is not paid out by the HCSM.<sup>136</sup> Under Title 21, it is illegal to "collect[] a sum as premium or charge for insurance if the insurance has not been provided or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy authorized under this title."<sup>137</sup> This threat of criminal liability for fraudulently marketing HCSMs as quasi-health insurance will hopefully further incentivize the Alaskan insurance industry to do the right thing and discourage predatory, unregulated HCSMs from doing business in Alaska.

This greater regulation from the State of Alaska would better protect consumers from being left in the dust with their medical bills when the HCSM refuses to cover medical expenses. While the greater regulation may increase costs for HCSMs, that increase would perhaps convince some HCSM members to join the pool of people in mainstream health insurance. This may lower health care costs across the board for consumers.<sup>138</sup>

## VI. CONCLUSION: MORE REGULATION CAN BE GOOD REGULATION

HCSMs are complicated vehicles for health insurance cost reduction. Before the ACA and its standardization of American health coverage, HCSMs served a small market of consumers who would indeed bear each other's burdens by pooling resources to pay out to members when they fell on hard times.<sup>139</sup> However, the

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134. Hanke Heun-Johnson et al., THE COST OF MENTAL ILLNESS: ALASKA FACTS AND FIGURES 15 (Aug. 2019) <https://healthpolicy.usc.edu/wp-content/uploads/2019/11/AK-Chartbook-v1-2019.pdf>.

135. ALASKA STAT. § 21.36.360 (2022).

136. *Id.*; Carlesso, *supra* note 40 (illustrating how consumers legitimately believe they are signing up for health insurance when they join an HCSM).

137. § 21.36.360.

138. Volk et al., *supra* note 10.

139. Santhanam, *supra* note 2.

current health care market is so convoluted to the point that some HCSMs have preyed on consumers with their similar appearance to health insurance. These consumers believed the monthly amount they were paying to the HCSM was an insurance premium.<sup>140</sup> This consumer confusion, combined with the lack of consumer protections for HCSMs on the federal and state level, has left many consumers out to dry with mounting medical bills and nowhere to seek recourse. While a few consumers have successfully sued their HCSM, many more are left with mounting bills and nowhere to turn for assistance.<sup>141</sup>

For HCSMs to continue operating in a world without a federal individual mandate, consumer protections must be instituted that respect the religious nature of HCSMs while also giving the consumer somewhere to go if they face difficulty with their HCSM. Some proposed state regulations would require HCSMs to cover the ten basic categories of health benefits under the ACA and allow state prosecutors to file charges against those HCSMs who defraud consumers.<sup>142</sup> While the most egregious behavior of HCSMs will be reined in by state regulation, both state and federal governments have a long way to go to regulate these out-of-control companies before consumers are protected from the risky, unregulated nature of HCSMs. If no regulation is put in place, godly, moral people will continue to be taken advantage of with little recourse to save them from their time of trial.<sup>143</sup>

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140. Volk et al., *supra* note 10.

141. See, e.g., *LeCann*, 2021 U.S. Dist. LEXIS 115827 at \*3; *Moeller v. Alier Cos.*, No. CV 20-22-H-SHE, 2021 U.S. Dist. LEXIS 122532, at \*13 (D. Mont. June 30, 2021).

142. See generally *10 Essential Health Benefits Insurance Plans Must Cover Under the Affordable Care Act*, FAMILIES USA (Feb. 9, 2018), <https://familiesusa.org/resources/10-essential-health-benefits-insurance-plans-must-cover-under-the-affordable-care-act>.

143. Helaine Olen, *Health-care Sharing Ministries Promise Relief from High Insurance Costs. But There's a Catch.*, WASH. POST (Nov. 25, 2019), [https://www.washingtonpost.com/opinions/2019/11/25/health-care-sharing-ministries-promise-relief-high-insurance-costs-theres-catch.](https://www.washingtonpost.com/opinions/2019/11/25/health-care-sharing-ministries-promise-relief-high-insurance-costs-theres-catch/)