

REPORT ON EXAMINATION

OF THE

GENTIVA INSURANCE CORPORATION

AS OF

DECEMBER 31, 2016

DATE OF REPORT

NOVEMBER 10, 2017

EXAMINER

WEI CAO

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## Department of Financial Services

**ANDREW M. CUOMO**  
Governor

**LINDA A. LACEWELL**  
Superintendent

July 9, 2019

Honorable Linda A. Lacewell  
Superintendent  
New York State Department of Financial Services  
Albany, New York 12257

Madam:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 31654 dated August 7, 2017, attached hereto, I have made an examination into the condition and affairs of Gentiva Insurance Corporation as of December 31, 2016 and submit the following report thereon.

Wherever the designation “the Company” appears herein without qualification, it should be understood to indicate Gentiva Insurance Corporation.

Wherever the term “Department” appears herein without qualification, it should be understood to mean the New York State Department of Financial Services.

## 1. SCOPE OF EXAMINATION

The examination covers the period from January 1, 2011 through December 31, 2016 and was limited in its scope to a review or audit of only those balance sheet items considered by this Department to require analysis. Transactions occurring subsequent to this period were reviewed where deemed appropriate. The examination included a review of Company records deemed necessary to accomplish such analysis or verification. Additionally, a review was performed to determine whether the captive insurer was operating within its by-laws, conforming with its plan of operation as submitted to the New York State Department of Financial Services, and was in compliance with Article 70 of the New York Insurance Law (“the Law”).

Comments and recommendations are limited to those items requiring financial adjustment, procedural recommendations, or instances where the Company was not conforming to the application submitted to the Department or Article 70 of the Law.

The report utilized work performed by the Company’s independent certified public accountant and its opining actuary to the extent considered appropriate.

## 2. DESCRIPTION OF COMPANY

The Company was incorporated under the laws of New York State as a captive insurance company on December 12, 2005 and commenced business on December 30, 2005. The Company was a wholly-owned subsidiary of Gentiva Health Services Holding Corp. until February 2, 2015 when Kindred Healthcare, Inc. completed an acquisition of Gentiva Health Services Holding Corp. The Company provided workers’ compensation and professional liability to Gentiva Health Services Holding Corp. and its subsidiaries.

Effective February 2, 2015, the Company ceased writing new insurance policies and is currently in run-off status.

A. Articles of Incorporation

The Company is organized to transact the kinds of insurance specified in Section 1113(a) of the New York Insurance Law, subject at all times to the limitations on the business of pure captive insurance companies set-forth in Article 70 of the Law.

B. By-Laws

The examination found that the Company was in compliance with its by-laws in all material respects.

C. Capital Structure

As a pure captive insurance company incorporated as a stock insurer, the Company is required to maintain a total surplus as regards policyholders of not less than \$250,000, of which \$100,000 shall represent paid-in capital pursuant to the provisions of Section 7004(a)(1) of the Law.

As of December 31, 2016, the Company's paid-in capital was \$16,097,575, consisting of 100,000 shares of common stock with a par value of \$1 per share and an additional paid-in capital amount of \$15,997,575. The Company had a retained deficit of \$4,533,400. In addition, the portion of the "loan to parent" attributable to paid-in capital was recorded as contra equity rather than an asset. Therefore, the Company recorded \$6,800,000 of the "loan to parent" as a reduction of stockholder's equity resulting in a total capital and surplus (surplus as regards policyholders) of \$4,764,175.

D. Corporate Records

The corporate records reviewed appeared to be substantially accurate and complete in all material respects.

E. Operations

During the period covered by this examination, the Company did not assume nor cede any business.

The Company provided Gentiva Health Services, Inc. with workers' compensation and professional liability coverage. The coverage had a \$1,000,000 liability limit for each policy, with no annual aggregate.

Effective February 2, 2015, the Company ceased writing new business and canceled the renewal of all existing policies. The Company continues to operate in a "run-off" capacity, servicing claims on policies in place prior to February 2, 2015.

F. Management and Control

(i) Captive Manager

Section 7003(b)(4) of the Law provides that no captive insurer shall do any captive insurance business in this state unless it utilizes a captive manager resident in this State who is licensed as an agent or broker under the provisions of Article 21 of the Law, or any other person approved by the Superintendent.

During the period covered by this examination, the Company was managed by Willis of New York, Inc. (“Willis”) which is authorized to act as a manager for captive insurance companies by the Department.

Pursuant to a management agreement, effective December 31, 2005, Willis has the responsibility for providing the Company with underwriting, policyholder services, claims, and other general management and operational services for a fee. These responsibilities include assisting the Company in complying with New York rules, regulations and requirements of the Law. It also included helping maintain true and complete books of account and records for all business conducted under this agreement.

(ii) Board of Directors

Pursuant to the Company’s by-laws, management of the Company is vested in a board of directors consisting of at least three members, at least two of whom are residents of New York. At December 31, 2016, the board of directors was comprised of the following five members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Juanita Blevens Louisville, KY	Senior Director, Kindred Healthcare, Inc.
Mark Laemmle Louisville, KY	Senior Vice President of Corporate Finance, Kindred Healthcare, Inc.
Kevin Marrasso New York, NY	Assistant General Counsel, Kindred Healthcare, Inc.
Kelly Priegnitz Samuels, KY	Senior Vice President & Chief Compliance Officer, Kindred Healthcare, Inc.
Susan Sender Syosset, NY	Senior Vice President & Chief Clinical Officer, Kindred Healthcare, Inc.

In accordance with its by-laws and Section 7003(b)(2) of the Law, the board of directors met once annually. A review indicated that the meetings were well attended.

(iii) Officers

As of December 31, 2016, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Mark Laemmle	President
Juanita Blevens	Vice President
Kelly Priegnitz	Vice President
Kevin Marrazzo	Secretary

G. Certified Public Accountant

Saslow Lufkin & Buggy, LLP was the Company's independent certified public accountant for the years 2011 through 2014. As of July 1, 2015, Saslow Lufkin & Buggy, LLP was acquired by combined with Crowe Horwath LLP ("Crowe"). In its audited financial statement at December 31, 2016, Crowe states that the Company's financial position is presented fairly, in all material respects, at December 31, 2016.

3. FINANCIAL STATEMENTSA. Balance Sheet

The financial statements of the Company have been prepared in conformity with accounting principles generally accepted in the United States of America.

Assets

Cash	\$9,307,684
Loan to parent	28,528,141
Prepaid expenses	752,176
Deferred tax asset	<u>1,368,491</u>

Total assets	<u>\$39,956,492</u>
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Liabilities

Unpaid losses and loss adjustment expenses	\$35,162,052
Premium tax payable	5,000
Accrued expenses	<u>25,265</u>

Total liabilities	<u>\$35,192,317</u>
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Capital and Surplus

Common stock	\$100,000
Additional paid-in capital	15,997,575
Loan to parent attributable to paid in capital	(6,800,000)
Retained earnings	<u>(4,533,400)</u>

Total capital and surplus	\$ <u>4,764,175</u>
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Total liabilities, capital and surplus	<u>\$39,956,492</u>
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B. Statement of Income

The Company's net income for the examination period was (\$12,106,709) as detailed below:

Underwriting Income

Net premiums earned		\$57,968,044
Deductions:		
Unpaid losses and Loss adjustment expenses	\$76,580,577	
Policy acquisition expenses	251,536	
General and administrative expense	<u>783,197</u>	
Total underwriting deductions		<u>77,615,310</u>
Net underwriting (loss)		(19,647,266)
Net investment income		<u>1,338,033</u>
Total income before tax		(18,309,233)
Federal income tax benefit		<u>(6,202,524)</u>
Net income		<u>\$(12,106,709)</u>

C. Capital and Surplus Account

The Company's capital and surplus decreased \$10,206,709 during the period covered by this examination, detailed as follows:

Capital and surplus as of January 1, 2011			\$14,970,884
	Increase in <u>surplus</u>	Decrease in <u>surplus</u>	
Net income	\$ 0	\$12,106,709	
Loan to parent	2,700,000		
Contributed capital	6,000,000		
Loan to Parent attributable to paid in capital	_____	<u>6,800,000</u>	
Total increase and decrease	<u>\$8,700,000</u>	<u>\$18,906,709</u>	
Net increase in surplus			<u>(10,206,709)</u>
Capital and surplus as of December 31, 2016			<u>\$ 4,764,175</u>

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

As of December 31, 2016, the Company reported total loss and loss adjustment expense reserves of \$35,162,052. The Company's opining actuarial firm, Milliman Inc., noted in its Statement of Actuarial Opinion that, in its opinion, the reported reserves were consistent with reserves computed in accordance with Standards of Practice issued by the Actuarial Standards Board. It was also noted that reasonable provisions had been made for all unpaid loss and loss adjustment expense obligations of the Company under the terms of its contracts and agreements.

5. ARTICLE 70 COMPLIANCE

Article 70 of the New York State Insurance Law is the governing section of the law for the formation and continued operation of captive insurers in New York State. A review was performed to test the

Company's compliance with all applicable parts of Article 70. No significant areas of non-compliance were found.

#### 6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

There are no comments or recommendations in this report.

Respectfully submitted,

\_\_\_\_\_/S/  
Wei Cao  
Senior Insurance Examiner

STATE OF NEW YORK     )  
  )ss:  
COUNTY OF NEW YORK    )

WEI CAO, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

\_\_\_\_\_/S/  
Wei Cao

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

*APPOINTMENT NO. 31654*

**NEW YORK STATE**

**DEPARTMENT OF FINANCIAL SERVICES**

*I, Maria T. Vullo, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:*

***Wei Cao***

*as a proper person to examine the affairs of the*

***Gentiva Insurance Corporation***

*and to make a report to me in writing of the condition of said*

**COMPANY**

*with such other information as she shall deem requisite.*

*In Witness Whereof, I have hereunto subscribed by name  
and affixed the official Seal of the Department  
at the City of New York*

*this 7th day of August, 2017*

**MARIA T. VULLO**  
*Superintendent of Financial Services*



By:

*Joan P. Riddell*

*Joan Riddell  
Deputy Bureau Chief*