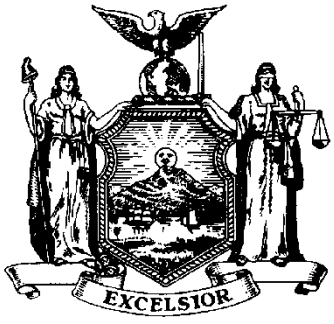

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

NIAGARA LIFE AND HEALTH INSURANCE COMPANY

CONDITION: DECEMBER 31, 2012

DATE OF REPORT: JUNE 19, 2014

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EXAMINER: EDEN M. SUNDERMAN

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

May 22, 2014

Honorable Benjamin M. Lawsky
Superintendent of Financial Services
New York, New York 10004

Sir:

In accordance with instructions contained in Appointment No. 30983, dated February 28, 2013 and annexed hereto, an examination has been made into the condition and affairs of Niagara Life and Health Insurance Company, hereinafter referred to as "the Company," at its home office located at 300 Corporate Parkway, Suite 200, Amherst, New York 14226.

Wherever "Department" appears in this report, it refers to the New York State Department of Financial Services.

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

The material violations and recommendation contained in this report are summarized below.

- The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy forms that were not approved by the Department for use in New York. (See Section7B of this report)

- The Company violated Section 3204(a)(1) of the New York Insurance Law by failing to deliver a policy containing the entire contract between the group and the insurer. (See Section7B of this report)

- The Company violated Section 3221(a)(6) of the New York Insurance Law by failing to deliver to the groups, for delivery to each covered student, a certificate setting forth, in summary form, a statement of the essential features of the insurance coverage. (See Section7B of this report)

- The Company violated Section 3234(b)(7) of the New York Insurance Law by failing to provide the time limit, place and manner in which an appeal of a denial of benefits must be brought under the policy or certificate and a notification that failure to comply with such requirements may lead to forfeiture of a consumer's right to challenge a denial or rejection. (See Section7C of this report)

- The examiner recommends that the Company develop and implement effective procedures to ensure that it can produce policy level detail that can be reconciled to the various policy exhibits reported in the Company’s filed annual statements. (See Section 9 of this report)

2. SCOPE OF EXAMINATION

The examination of the Company was a full scope examination as defined in the *NAIC Financial Condition Examiners Handbook, 2013 Edition* (the "Handbook"). The examination covers the three-year period from January 1, 2010 through December 31, 2012. The examination was conducted observing the guidelines and procedures in the Handbook and, where deemed appropriate by the examiner, transactions occurring subsequent to December 31, 2012 but prior to the date of this report (i.e., the completion date of the examination) were also reviewed.

In the course of the examination, a review was also made of the manner in which the Company conducts its business and fulfills its contractual obligations to policyholders and claimants. The results of this review are contained in item 7 of this report.

The examination was conducted on a risk focused basis in accordance with the provisions of the Handbook published by the National Association of Insurance Commissioners ("NAIC"). The Handbook guidance provides for the establishment of an examination plan based on the examiner's assessment of risk in the insurer's operations and utilizing that evaluation in formulating the nature and extent of the examination. The examiner planned and performed the examination to evaluate the current financial condition as well as identify prospective risks that may threaten the future solvency of the insurer. The examiner identified key processes, assessed the risks within those processes and evaluated the internal control systems and procedures used to mitigate those risks. The examination also included assessing the principles used and significant estimates made by management, evaluating the overall financial statement presentation, and determining management's compliance with New York statutes, Department guidelines, Statutory Accounting Principles as adopted by the Department, and NYS annual statement instructions.

Information about the Company's organizational structure, business approach and control environment were utilized to develop the examination approach. The Company's risks and management activities were evaluated incorporating the NAIC's nine branded risk categories. These categories are as follows:

- Pricing/Underwriting
- Reserving
- Operational
- Strategic

- Credit
- Market
- Liquidity
- Legal
- Reputational

The Company was audited annually, for the years 2010 through 2012, by the accounting firm of Deloitte & Touche LLP. The Company received an unqualified opinion in all years. Certain audit workpapers of the accounting firm were reviewed and relied upon in conjunction with this examination.

The Company does not have an internal audit department (See item 8 of this report). The Company's ultimate parent, Blue Cross Blue Shield of South Carolina ("BCBSSC") is subject to the NAIC's Model Audit Rule ("MAR") which requires all insurance companies exceeding an annual premium threshold of $500 million to issue management's report on the effectiveness of internal control over financial reporting. For processes that were performed by BCBSSC, the Company provided and the examiner utilized the MAR workpapers. The key MAR processes performed by BCBSSC for the Company included investment/treasury, cost and budgeting, and taxation.

The examiner reviewed the prior report on examination which did not contain any violations, recommendations or comments.

This report on examination is confined to financial statements and comments on those matters which involve departure from laws, regulations or rules, or which require explanation or description.

3. DESCRIPTION OF COMPANY

A. History

The Company was incorporated as a stock life insurance company under the laws of the State of New York on October 24, 2000 and was licensed and commenced business on July 21, 2005 as Forethought Life Insurance Company of New York ("FLICNY"). Initial resources of $6,250,000, consisting of common capital stock of $2,000,000 and paid in and contributed surplus of $4,250,000 were provided through the sale of 400 shares of common stock, with a par value of $5,000 each, for approximately $15,625 a share. The ultimate parent of the Company was Forethought Financial Group, Inc. ("FFG").

On June 29, 2007, the Department approved an application for acquisition of control of FFG, including the Company, by Century Capital Partners III, L.P., a private equity fund, and a number of affiliated entities, as well as several individuals.

On September 9, 2009, the Department approved an application for acquisition of control of FLICNY by Companion Life Insurance Company ("Companion"), a South Carolina stock life insurance company, and BCBSSC. Companion is a wholly owned subsidiary of BCBSSC. Companion acquired all of the issued and outstanding common shares of the Company from the Company's direct parent, Forethought Life Insurance Company ("FLIC"), an Indiana corporation for the payment of the sum of the aggregate amount of the Company's capital and surplus, which was $300,000. When the Company was acquired by Companion, it had no policies in force.

On October 20, 2009, the Company's name was changed to its current name.

In November 2010, Companion made an investment in the Company through a cash contribution in the amount of $300,000. Capital and paid in and contributed surplus were $2,000,000 and $4,578,190, respectively, as of December 31, 2012.

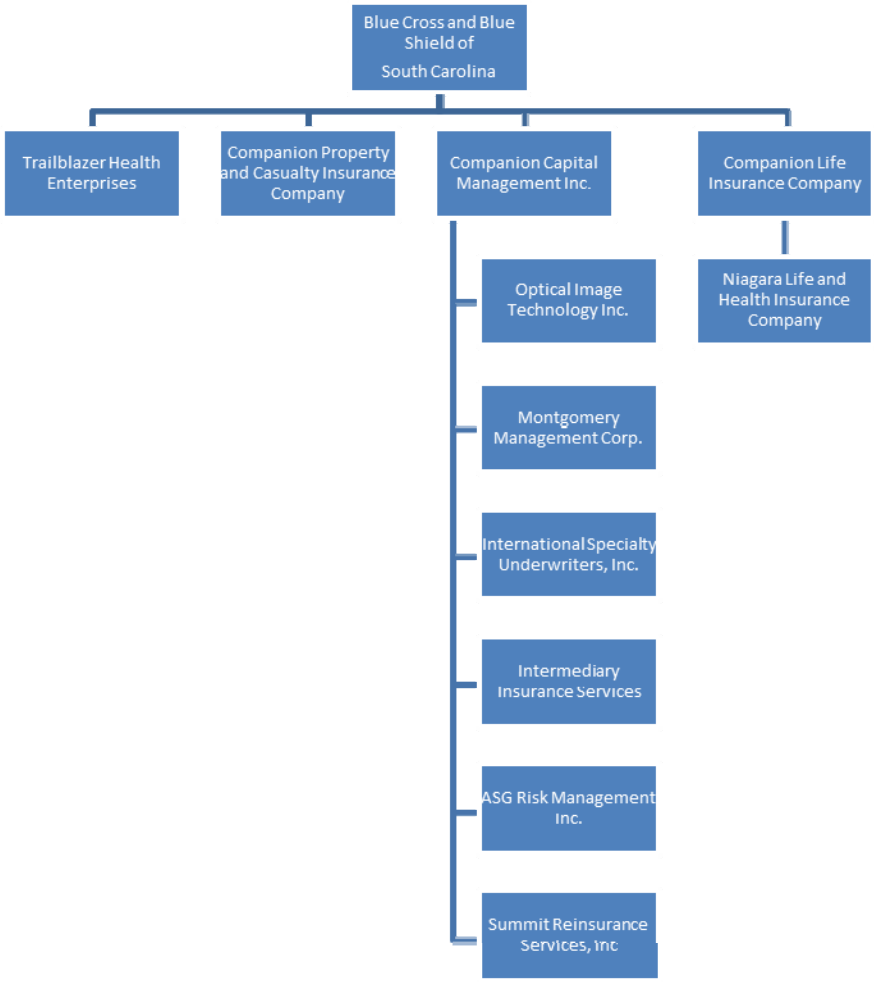
B. Holding Company

The Company is a wholly owned subsidiary of Companion, a South Carolina stock life insurance company, which is in turn a wholly owned subsidiary of BCBSSC, a South Carolina mutual insurance company that provides health insurance, health benefits administration and government program services to the State of South Carolina Employee Health Plan and the Department of Defense. In addition, BCBSSC provides life insurance, property and casualty

insurance, information technology and investment management services through its subsidiaries. BCBSSC is the Company's ultimate parent.

C. Organizational Chart

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2012 follows:



D. Service Agreements

The Company had four service agreements in effect with affiliates during the examination period.

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
Service Agreement Department File No. 43852	12/01/10	Companion	The Company	Administrative, underwriting, compliance, accounting and actuarial, marketing, communications, and claims processing.	2010-$ 0 2011-$ 0 2012-$ (6,557)
Service Agreement Department File No. 46898	04/01/13	BCBSSC	The Company	General administrative services: telephone and data lines, access to electronic databases, IT and technical support, human resources, tax filing and reporting, employee oversight, facilities, audit services.	2010–$ (61,480) 2011–$ (57,060) 2012–$ (43,477)

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
Investment Management Agreement Department File No. 47238	05/01/13	BCBSSC	The Company	Investment accounting services and treasury and cash management functions.	2010-$ 0 2011-$ 134 2012-$ (5,008)
Managing General Underwriting Agreement Department File No. 46735	03/01/13	International Specialty Underwriters Inc. (“ISU”)	The Company	Solicitation of insurance, advertisements, compliance, benefits, rates and reinsurance, underwriting guidelines, issue policies premium collection and distribution.	2010–$ 0 2011–$(26,030) 2012–$(118,815)

* Amount of Income or (Expense) Incurred by the Company

The Company is not party to a tax allocation agreement with any of its affiliates.

Section 1505 of the New York Insurance Law states, in part:

> “ . . . (d) The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period:
> (1) sales, purchases, exchanges, loans or extensions of credit, or investments, involving more than one-half of one percent but less than five percent of the insurer's admitted assets at last year-end . . .
> (3) rendering of services on a regular or systematic basis . . ."

In November 2010, Companion made an investment in the Company in the amount of $300,000 through a cash contribution. The Company did not notify the Superintendent of this

transaction which involved approximately 4.9% of the Company's admitted assets at December 31, 2009.

The examiner recommends that the Company provide notice to the Superintendent of any surplus contribution from the Company's parent.

During the examination period, the Company received investment management and general administrative services from BCBSSC and managing general underwriting services from ISU on a regular and systematic basis. As of December 31, 2013, the Company did not enter into written agreements with these affiliates for these transactions and did not notify the Superintendent in writing of its intention to enter into any such transactions with these affiliates. In addition to the services received from ISU and BCBSSC, the Company received managing general underwriting services related to its Employer Medical Excess Loss ("EMEL") from three other affiliates, ASG Risk Management, Inc., Summit Reinsurance Services, Inc. and Intermediary Insurance Services, Inc. during 2013. The Company received services from these affiliates prior to entering into and filing the agreements with the Superintendent.

The Company violated Section 1505(d)(3) of the New York Insurance Law by receiving services from affiliates on a regular and systematic basis without notifying the Superintendent in writing of its intention to enter into any such transaction.

The examiner recommends that the Company enter into written contracts for all transactions between affiliates and notify the Superintendent in writing of its intention to enter into any such transactions.

The Company filed an investment management agreement and an administrative services agreement for services received from BCBSSC with the Department on March 15, 2013 and March 8, 2013, respectively. The agreements were non-disapproved on June 3, 2013. The Company filed a managing general agent agreement for services received from ISU with the Department on January 30, 2013. The managing general agent agreement was non-disapproved on October 25, 2013. The Company also filed agreements with the Department for services received from ASG Risk Management, Inc., Summit Reinsurance Services, Inc. and Intermediary Insurance Services, Inc. on December 31, 2013.

E. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than seven and not more than 12 directors. Directors are elected to hold office until their successors are chosen at the annual meeting of the stockholders held in April or May of each year. As of December 31, 2012, the board of directors consisted of 10 members. Meetings of the board are held annually.

The 10 board members and their principal business affiliation, as of December 31, 2012, were as follows:

Name and Residence	Principal Business Affiliation	Year First Elected
Stephen T. Carter Columbia, SC	Vice President of Actuarial Services Niagara Life and Health Insurance Company	2009
Judith M. Davis Columbia, SC	Executive Vice President and Chief Legal Officer Blue Cross Blue Shield of South Carolina	2009
Trescott N. Hinton, Jr. Chapin, SC	Chairman and President Niagara Life and Health Insurance Company	2009
Catherine G. Huddle* Chapin, SC	Vice President, Sales and Marketing Conceptual Mind Works, Inc.	2009
Karl C. Kemmerlin Elgin, SC	Vice President and Chief Financial Officer Niagara Life and Health Insurance Company	2009
Robert J. Looney* Summit, NJ	Investment Banking Axis Capital	2009
Duncan S. McIntosh Columbia, SC	Secretary Niagara Life and Health Insurance Company	2009
Michael J. Mizeur Columbia, SC	Treasurer Niagara Life and Health Insurance Company	2011
Mark R Rozeen* Port Washington, NY	Public Relations Golin Harris	2009
Rickey C. Williams* Hermitage, TN	Actuary Lamar Williams & Associates	2010

The examiner's review of the minutes of the meetings of the board of directors and its committees indicated that meetings were well attended and that each director attended a majority of meetings.

Section 325(a) of the New York Insurance Law states, in part:

> "(a) Every domestic insurer and every licensed United States branch of an alien insurer entered through this state shall, except as hereinafter provided, keep and maintain at its principal office in this state its charter and by-laws, (in the case of a United States branch a copy thereof) and its books of account, and if a domestic stock corporation, a record containing the names and addresses of its shareholders, the number and class of shares held by each and the dates when they respectively became the owners of record thereof, and if a domestic corporation the minutes of any meetings of its shareholders, policyholders, board of directors and committees thereof . . ."

The Services Agreement between the Company and Companion states, in part:

> ". . . 11. Accounting Services
> A. All records shall be maintained in accordance with New York Insurance Department Regulation No. 152. In addition to the foregoing, a computer terminal, which is linked to the electronic system that generates the electronic records that constitute Niagara's books of account, shall be kept and maintained at Niagara's principal office in New York. During all normal business hours, there shall be ready availability and easy access through such terminal (either directly by the New York State Department of Financial Services personnel or indirectly with the aid of Niagara's employees) to the electronic media used to maintain the records comprising Niagara's books of account. The electronic records shall be in a readable form . . .
> C. Companion shall maintain acceptable backup (hard copy or another durable medium, as defined in Regulation No. 152, as long as the means to access the durable medium is also maintained at Niagara's principal office) of the records constituting Niagara's books of account. Such backup shall be forwarded to Niagara on a monthly basis and shall be maintained by Niagara at its principal office in New York . . ."

During the examination period, the Company did not maintain corporate records such as their charter, by-laws, and minutes of the meetings of its shareholders, board of directors and audit committee, at their home office located in Amherst, New York. In addition, the Company did not maintain their books of account, including their general ledger, transaction register detail, subsidiary ledger transaction detail (investment, claims, etc.), cash books, quarterly and annual statements, and detailed workpapers supporting the quarterly and annual statements, at their

home office. In accordance with the terms of their services agreement with Companion, copies of the Company's corporate records (charter, by-laws, minutes, etc.) and records constituting the Company's books of account should have been forwarded by Companion to the Company on a monthly basis.

The examiner was given access to Company's books of account through Companion's secure server. This system access was configured solely for the purpose of the examination which began on March 11, 2013 and was not maintained in New York during the examination period.

The Company violated Section 325(a) of the New York Insurance Law by failing to maintain its charter, by-laws and books of account at its principal office in this state.

The examiner recommends that the Company comply with the terms of their Services Agreement with Companion by instituting a process whereby copies of the Company's corporate records (charter, by-laws, minutes, etc.) and records constituting the Company's books of account are forwarded to the Company on a monthly basis and maintained in an accessible medium at the Company's principal office in Amherst, New York.

The examiner recommends that the Company comply with the terms of their Services Agreement with Companion by establishing a permanent computer terminal(s) at the Company's home office in Amherst, New York which would be linked to the electronic system that generates the electronic records that constitute the Company's books of account.

Section 1202(b)(2) of the New York Insurance Law states, in part:

> "The board of directors of a domestic life insurance company shall establish one or more committees comprised solely of directors who are not officers or employees of the company or of any entity controlling, controlled by, or under common control with the company and who are not beneficial owners of a controlling interest in the voting stock of the company or any such entity. Such committee or committees shall have responsibility for . . . evaluating the performance of officers deemed by such committee or committees to be principal officers of the company and recommending to the board of directors the selection and compensation of such principal officers . . ."

Section 4230(a) of the New York Insurance Law states:

> "No domestic life insurance company shall pay any salary, compensation or emolument in any amount to any officer, deemed by a committee or committees of the board to be a principal officer pursuant to subsection (b) of section one

> thousand two hundred two of this chapter, or to any salaried employee of the company if the level of compensation to be paid to such employee is equal to, or greater than, the compensation received by any of its principal officers, or to any trustee or director thereof, unless such payment be first authorized by a vote of the board of directors of such company."

The examiner reviewed the board and the independent audit committee minutes for meetings that were held during the examination period and on April 29, 2013. There was no evidence in the minutes to verify that the independent audit committee recommended the selection or evaluated the performance of employees deemed to be principal officers of the Company or recommended to the board the amount of compensation to be paid by the Company to such principal officers. There was also no evidence that the board authorized the payment of compensation to the principal officers.

The Company violated Section 1202(b)(2) of the New York Insurance Law by failing to have its independent committee recommend the selection and evaluate the performance of employees deemed to be principal officers of the Company and by failing to recommend to the board of directors the compensation of such principal officers.

The Company violated Section 4230(a) of the New York Insurance Law by paying compensation to principal officers that was not authorized by a vote of the board of directors of the Company.

Section 1411(a) of the New York Insurance Law states:

> "No domestic insurer shall make any loan or investment … unless authorized or approved by its board of directors or a committee thereof responsible for supervising or making such investment or loan. The committee's minutes shall be recorded and a report submitted to the board of directors at its next meeting."

During the examination period, Company's investments were approved by the corporate investment committee of BCBSSC. Based upon the examiner's review of the minutes of the meetings of the Company's board of directors and committees thereof for the examination period, the Company's board of directors did not review or authorize any investment transactions during the period under examination and through April, 2013.

The Company violated Section 1411(a)(1) of the New York Insurance Law by making investments that were neither authorized nor approved by its board of directors or a committee of the board.

The Company's board of directors did not review and approve the BCBSSC and Subsidiary Companies Investment Objectives, Policies, And Parameters.

The examiner recommends that the Company's board of directors review and approve the Corporate Investment Policy.

The following is a listing of the principal officers of the Company as of December 31, 2012:

Name	Title
Trescott N. Hinton, Jr.	President
Karl C. Kemmerlin	Chief Financial Officer
Stephen T. Carter	Chief Actuary
Michael J. Mizeur	Treasurer
Duncan S. McIntosh	Secretary
F. David Wythe*	Director of Compliance

* Designated consumer services officer per Section 216.4(c) of Department Regulation No. 64

4. TERRITORY AND PLAN OF OPERATIONS

The Company is authorized to write life insurance, annuities and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law.

The Company is licensed to transact business in two states, namely New York and Connecticut. In 2012, all accident and health premiums were received from New York (83.6%), and Connecticut (16.4%). Policies are written on a non-participating basis.

A. Statutory and Special Deposits

As of December 31, 2012, the Company had $250,000 (par value) of United States Treasury Notes on deposit with the State of New York, its domiciliary state, for the benefit of all policyholders, claimants and creditors of the Company.

Section 4206 of the New York Insurance Law states:

> "Before being licensed to do business, every domestic life insurance company, every domestic accident and health insurance company and every domestic legal services insurance company shall deposit with the superintendent at least one hundred thousand dollars in securities eligible for deposits, except that every such company initially licensed on or after July first, nineteen hundred eighty-two shall make a deposit with the superintendent at least equal to two hundred percent of the amount required hereinabove."

A company licensed after July 1, 1982 is required to deposit $200,000 with the Superintendent in order to write life insurance business and $200,000 to write accident and health insurance, a combined total of $400,000. The Company was licensed July 21, 2005 to write both life and health insurance. Therefore, the Company is required to deposit $400,000 with the Superintendent. On December 31, 2012, the Company had only $250,000 on deposit with the Superintendent.

The Company violated Section 4206 of the New York Insurance Law by failing to deposit securities with a par value totaling $400,000 with the State of New York for the benefit of all policyholders, claimants, or creditors of the Company.

Upon notification of the inadequate deposit, the Company immediately initiated the purchase of an additional U.S. Treasury Note with a par value of $150,000 to increase the total securities on deposit with New York to $400,000. The transaction settled on May 15, 2013.

B. Direct Operations

When the Company commenced business as Forethought Life Insurance Company of New York in 2005, the Company sold life insurance linked with pre-arranged funerals through financial planners. From 2006 to 2010, the Company had no product sales. The Company started writing direct premiums again on June 1, 2011 after it was purchased by Companion. During 2011, the Company sold EMEL and blanket student medical ("SM") insurance policies.

The Company's marketing sector is divided between the Specialty Markets Division and the Core Products Division. The Specialty Markets Division sold two products during the examination period, EMEL and SM. The EMEL business is marketed by third party administrators and offered to self-insuring employers through an existing network of managing general agents. The SM coverage is issued to colleges and universities and sold by general agents and independent producers. The SM business is marketed, administered, and reinsured with a managing general agent, Commercial Travelers Mutual Insurance Company ("CT").

The Core Products Division started writing group dental direct premiums in January 2012. The employer group dental product is marketed on a general agency basis through dental health maintenance organizations.

C. Reinsurance

As of December 31, 2012, the Company had reinsurance treaties in effect with three companies, all of which were authorized or accredited. The Company's accident and health business is reinsured on a coinsurance basis. Reinsurance is provided on an automatic or facultative basis.

5. SIGNIFICANT OPERATING RESULTS

Indicated below is significant information concerning the operations of the Company during the period under examination as extracted from its filed annual statements. Failure of items to add to the totals shown in any table in this report is due to rounding.

The following table indicates the Company's financial growth (decline) during the period under review:

	December 31, 2009	December 31, 2012	Increase (Decrease)
Admitted assets	$6,140,442	$7,110,062	$969,620
Liabilities	$ 15,496	$ 748,549	$733,053
Common capital stock	$2,000,000	$2,000,000	$ 0
Gross paid in and contributed surplus	4,278,190	4,578,190	300,000
Unassigned funds (surplus)	(153,243)	(216,676)	(63,433)
Total capital and surplus	$6,124,946	$6,361,514	$236,568
Total liabilities, capital and surplus	$6,140,442	$7,110,062	$969,620

The Company's invested assets as of December 31, 2012 were comprised of cash and short-term investments (54.0%), bonds (34.2%), and stocks (11.8%).

The Company's entire bond portfolio, as of December 31, 2012, was comprised of investment grade obligations.

The following is the net gain (loss) from operations by line of business after federal income taxes but before realized capital gains (losses) reported for each of the years under examination in the Company's filed annual statements:

	2010	2011	2012
Group:			
Life	$(61,551)	$ 0	$ 0
Accident and health:			
Group	$ 0	$38,973	$(27,069)
Total	$(61,551)	$38,973	$(27,069)

When the Company originally commenced business in 2005 it sold group life insurance linked with pre-arranged funerals through financial planners. When the Company was acquired by Companion in 2009, it had no policies in force so it continued to report and classify its income and expenses under the group life insurance line of business. The Company started allocating its income and expenses to group A&H insurance in 2011.

6. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2012, as contained in the Company's 2012 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Company's financial condition as presented in its financial statements contained in the December 31, 2012 filed annual statement.

A. Independent Accountants

The firm of Deloitte & Touche LLP was retained by the Company to audit the Company's combined statutory basis statements of financial position as of December 31st of each year in the examination period, and the related statutory-basis statements of operations, capital and surplus, and cash flows for the year then ended.

Deloitte & Touche LLP concluded that the statutory financial statements presented fairly, in all material respects, the financial position of the Company at the respective audit dates. Balances reported in these audited financial statements were reconciled to the corresponding years' annual statements with no discrepancies noted.

B. Net Admitted Assets

Bonds	$2,416,438
Stocks:	
Common stocks	834,088
Cash, cash equivalents and short term investments	3,820,832
Investment income due and accrued	33,657
Accounts receivable - Meritain	5,047
Total admitted assets	$7,110,062

C. Liabilities, Capital and Surplus

Aggregate reserve for accident and health contracts	$ 70,599
Contract claims:	
Accident and health	156,562
General expenses due or accrued	101,945
Taxes, licenses and fees due or accrued, excluding federal income taxes	76,491
Net deferred tax liability	14,603
Miscellaneous liabilities:	
Asset valuation reserve	123,342
Payable to parent, subsidiaries and affiliates	12,599
Funds held under coinsurance	167,895
Stop loss payable	24,512
Total liabilities	$ 748,549
Common capital stock	$2,000,000
Gross paid in and contributed surplus	4,578,190
Unassigned funds (surplus)	(216,676)
Surplus	$4,361,514
Total capital and surplus	$6,361,514
Total liabilities, capital and surplus	$7,110,062

D. Condensed Summary of Operations

	2010	2011	2012
Premiums and considerations	$ 0	$155,053	$398,423
Investment income	10,003	17,860	93,286
Commissions and reserve adjustments on reinsurance ceded	0	47,138	92,800
Total income	$ 10,003	$220,051	$584,509
Benefit payments	$ 0	$ 66,363	$265,170
Increase in reserves	0	0	70,599
Commissions	0	35,625	76,945
General expenses and taxes	71,554	79,090	206,603
Total deductions	$ 71,554	$181,078	$619,317
Net gain (loss)	$(61,551)	$ 38,973	$(34,808)
Federal and foreign income taxes incurred	0	0	(7,739)
Net gain (loss) from operations before net realized capital gains	$(61,551)	$ 38,973	$(27,069)
Net realized capital gains (losses)	0	(8,149)	14,372
Net income	$(61,551)	$ 30,824	$(12,697)

E. Capital and Surplus Account

	2010	2011	2012
Capital and surplus, December 31, prior year	$6,124,946	$6,354,298	$6,393,417
Net income	$ (61,551)	$ 30,824	$ (12,697)
Change in net unrealized capital gains (losses)	0	19,747	50,620
Change in net deferred income tax	23,043	(10,370)	7,688
Change in non-admitted assets and related items	(32,139)	40,829	3,916
Change in asset valuation reserve	0	(41,911)	(81,431)
Surplus adjustments: Paid in	300,000	0	0
Net change in capital and surplus for the year	$ 229,352	$ 39,119	$ (31,904)
Capital and surplus, December 31, current year	$6,354,298	$6,393,417	$6,361,514

7. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Company.

A. Advertising and Sales Activities

The examiner reviewed a sample of the Company's advertising files and the sales activities of the agency force including trade practices, solicitation.

Section 215.13 of Department Regulation No. 34 states, in part:

> (a) The name of the actual insurer and the form number or numbers advertised shall be identified and made clear in all of its advertisements . . ."

The examiner reviewed all six of the Company's group dental and group short term disability advertisements. The advertisements failed to contain the policy form number(s) for the product(s) or plan(s) being advertised.

The Company violated Section 215.13(a) of Department Regulation No. 34 by failing to identify the corresponding policy form number(s) on the group dental and group short term disability advertisements that were disseminated in New York during the examination period.

B. Underwriting and Policy Forms

The examiner reviewed a sample of new underwriting files, both issued and declined, and the applicable policy forms.

Section 3201(b)(1) of the New York Insurance Law states, in part:

> "No policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the superintendent as conforming to the requirements of this chapter and not inconsistent with law. . . ."

Section 3204(a)(1) of the New York Insurance Law states, in part:

> "Every policy of life, accident or health insurance . . . delivered or issued for delivery in this state, shall contain the entire contract between the parties, and nothing shall be incorporated therein by reference to any writing, unless a copy thereof is endorsed upon or attached to the policy or contract when issued."

Section 3221(a)(6) of the New York Insurance Law states, in part:

> "(a) No policy of group or blanket accident and health insurance shall, except as provided in subsection (d) hereof, be delivered or issued for delivery in this state unless it contains in substance the following provisions . . .
> (6) That the insurer shall issue either to the employer or person in whose name such policy is issued, for delivery to each member of the insured group, a certificate setting forth in summary form a statement of the essential features of the insurance coverage and in substance the following provisions of this subsection."

The Company used enrollment form 70000 to enroll employee insureds in group dental plans issued in 2012 and 2013. Enrollment form 70000 was not approved for use in New York.

One of the Company's managing general agents, CT, used group enrollment form NL-NY-EF for the sale of the Company's SM insurance to two groups without delivering an actual policy contract or certificate. Enrollment form NL-NY-EF was not approved for use in New York.

The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy forms that were not approved by the Department for use in New York.

In addition, the sole evidence of coverage provided to the groups of the SM policies used by CT consisted of a brochure and the cancelled check for premium payment.

The Company violated Section 3204(a)(1) of the New York Insurance Law by failing to deliver a policy containing the entire contract between the group and the insurer.

The Company violated Section 3221(a)(6) of the New York Insurance Law by failing to deliver to the groups, for delivery to each covered student, a certificate setting forth, in summary form, a statement of the essential features of the insurance coverage.

C. Treatment of Policyholders

The examiner reviewed a sample of various types of claims. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

Section 3234 of the New York Insurance Law states, in part:

> "(a) Every insurer . . . is required to provide the insured or subscriber with an explanation of benefits form in response to the filing of any claim under a policy or certificate providing coverage for hospital or medical expenses . . .
> (b) The explanation of benefits form must include at least the following . . .
> (7) a telephone number or address where an insured or subscriber may obtain clarification of the explanation of benefits, as well as a description of the time limit, place and manner in which an appeal of a denial of benefits must be brought under the policy or certificate and a notification that failure to comply with such requirements may lead to forfeiture of a consumer's right to challenge a denial or rejection, even when a request for clarification has been made. . . ."

The examiner's review of claims included an analysis of the Explanation of Benefits ("EOB") forms sent to subscribers and/or providers. An EOB is an important link between the subscriber, provider, and the insurance company. It should clearly communicate to the subscriber and/or provider that the Company has processed a claim and how that claim was processed. It should clearly describe the charges submitted, the date the claim was received, the amount allowed for the specific services rendered and show any balance owed the provider. It should also serve as the necessary documentation to recover any money from coordination of benefits with other insurance carriers.

Meritain Health, Inc. ("Meritain"), a Third Party Administrator ("TPA"), processes all of the Company's dental claims and is responsible for producing the EOBs for such claims. There were 182 dental claims processed in 2012 and 105 claims processed through July 2013 for New York subscribers.

The examiner's review of EOBs mailed to group dental insureds and group dental providers for claims processed during 2012 and through August 1, 2013 did not contain information identifying the time limit, place and manner in which an appeal of a denial of benefits may be made and a notification that failure to comply with such requirements may lead to forfeiture of a consumer's right to challenge a denial or rejection, even when a request for clarification has been made. All EOBs processed by Meritain prior to August 2013 were deficient.

Failure to provide this disclosure could result in insureds or subscribers not availing themselves of their right to challenge a claim payment denial or rejection.

The Company violated Section 3234(b)(7) of the New York Insurance Law by failing to provide the time limit, place and manner in which an appeal of a denial of benefits must be

brought under the policy or certificate and a notification that failure to comply with such requirements may lead to forfeiture of a consumer's right to challenge a denial or rejection.

The examiner recommends that the Company revise the EOB to include detailed information about the appeals procedures for the dental plan.

Section 4235(h) of the New York Insurance Law states, in part:

> "(1) Each domestic insurer and each foreign or alien insurer doing business in this state shall file with the superintendent its schedules of premium rates, rules and classification of risks for use in connection with the issuance of its policies of group accident, group health or group accident and health insurance, and of its rates of commissions, compensation or other fees or allowances to agents and brokers pertaining to the solicitation or sale of such insurance and of such fees or allowances, exclusive of amounts payable to persons who are in the regular employ of the insurer, other than as agent or broker to any individuals, firms or corporations pertaining to such class of business, whether transacted within or without the state.
>
> (2) An insurer may revise such schedules from time to time, and shall file such revised schedules with the superintendent.
>
> (3) No insurer shall issue any policy of group accident, group health or group accident and health insurance the premium rate under which for the first policy year is less than that determined by the schedules of such insurer as then on file with the superintendent; nor shall it pay to the agent or agents or to a broker or brokers for the solicitation or sale of such policy or for any other purpose related to such policy any commission, compensation or other fees or allowances in excess of that determined on the basis of the schedules of such insurer as then on file with the superintendent; nor shall such insurer pay for services pertaining to the service or administration thereof to any individual, firm or corporation any fees, commissions or allowances in excess of that determined on the basis of the schedules of such insurer as then on file with the superintendent or for such services not rendered in behalf of such insurer; provided, however, that nothing contained herein shall apply to or affect the computation of dividends or experience rating credits. . . ."

The examiner reviewed a sample of group underwriting files, detailed premium, claim and reinsurance bordereaux records related to group EMEL policies that were produced by ISU during the examination period. The acquisition costs for two of the five EMEL policies issued during the examination period exceeded the maximum total expense assumptions on file with the Department for policies issued using policy form CLXPOL.

The examiner also reviewed a sample of group underwriting files, detailed premium, claim and reinsurance bordereaux records related to SM policies that were produced by CT during the examination period. The Company paid CT an administrative or managing general agent fee for the administration of its SM plans for policies issued using policy forms NLH-200(2011), NLH2011-100, NLHSA1-11 and NLHSP1-2011(NY). Administrative expenses were not described in the schedule of fees, commissions and allowances on file with the Department for these policy forms.

In addition, the Company paid three producers a commission between 15% and 20% on the NLHSA1-11 plans. This commission rate exceeded the maximum allowable commission rate of 14% on file with the Department for this policy form.

The Company violated Section 4235(h)(3) of the New York Insurance Law by exceeding the maximum expense assumption limits on file with the Department, paying administrative expenses that were not on file with the Department and paying commissions that exceeded the maximum allowable commission rate on file with the Department.

8. INTERNAL AUDIT

Section 1202(b)(2) of the New York Insurance Law states, in part:

> "The board of directors of a domestic life insurance company shall establish one or more committees comprised solely of directors who are not officers or employees of the company or of any entity controlling, controlled by, or under common control with the company and who are not beneficial owners of a controlling interest in the voting stock of the company or any such entity. Such committee or committees shall have responsibility for . . . reviewing the company's financial condition, the scope and results of the independent audit and any internal audit . . ."

Internal audit is an integral part of corporate governance that also includes the audit committee, the board of directors, senior management and the external auditors. In particular, internal auditors and audit committees are mutually supportive. Consideration of the work of internal auditors is essential for the audit committee to gain a complete understanding of the

Company's operations. Internal audit identifies strategic, operational and financial risks facing the organization and assesses controls put in place by management to mitigate those risks.

The Company does not have an independent audit function. The Corporate Audit Division of the ultimate parent, BCBSSC, provides internal audit services and support. During the examination period, there were no internal audits conducted on the Company's operations. A review of the Company's board of director and audit committee minutes corroborate that no internal audits were performed on the Company during the examination period and no reporting was made with regard to audits conducted on affiliates or non-affiliates that performed business processes on behalf of the Company. The minutes also indicate that neither the Company's audit committee nor board of directors were involved in planning the scope of the BCBSSC internal audits or internal audit plan.

The examiner recommends that the Company, the Corporate Audit Division of BCBSSC, and the Company's board of directors take measures to ensure that Company policies and transactions are taken into account when performing audits of shared services within the BCBSSC group of companies.

The examiner recommends that the Company implement a process to require regular reporting to the Company's audit committee of the scope and results of internal audits conducted by the Corporate Audit Division of BCBSSC that have an impact on the Company.

Department Regulation No. 120, states in part:

> "33.0 Preamble
> Some insurance companies have entered into contracts with individuals or organizations, commonly referred to as managing general agents or managers, to manage all or part of their insurance business. This may represent a shifting of an insurance company's responsibilities to a person, firm, association or corporation outside of its organization. This Part is promulgated because the Department of Financial Services is concerned that such delegation of authority has been subject to abuses detrimental to both insurance companies and insureds . . .
>
> 33.2 Definitions
> As used in this Part, the following terms shall have the following meanings . . .
>
> (c) Managing general agent (MGA) means any person, firm, association or corporation that:
>
> (1) manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office);

> (2) acts as an insurance agent as defined in section 2101(a) of the Insurance Law for such insurer, whether known as a managing general agent, manager, or other similar term, or acts as an insurance broker as defined in section 2101(c) of the Insurance Law; and
>
> (3) with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and accept or reject risks on behalf of the insurer (underwrites) an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following activities related to the business produced:
>
> (i) Adjusts or pays claims in excess of $25,000, or
>
> (ii) Negotiates reinsurance on behalf of the insurer . . .
>
> 33.6 Duties of insurers . . .
>
> (c) The insurer shall at least semi-annually conduct an on-site review of the underwriting and claims processing operations of the MGA . . .”

The Company relies on managing general agents (“MGAs”) to manage its Specialty Markets insurance operations in New York. CT is a MGA for the Company’s SM block of insurance and ISU is an MGA for the Company’s EMEL business.

During the examination period and through the end date of examination field work, the Company did not conduct any on-site review of the underwriting and claims processing operations outsourced to CT and the Company did not conduct on-site reviews of the underwriting and claims processing operations outsourced to ISU semi-annually. The Company only conducted two internal audits on ISU during the examination period, one was performed in 2010 and the other in 2012.

The Company violated Section 33.6(c) of Department Regulation No. 120 by failing to conduct on-site reviews of the underwriting and claims processing operations outsourced to MGAs at least semi-annually.

9. ELECTRONIC RECORDS

The examiner requested policy level data files for accident and health policies that were issued, in force or terminated, as well as claims paid, denied or pending during the examination period. In addition to requesting data files, reconciliations to support the totals in the data files to the amounts reflected in the various policy exhibits and schedules of the Company's filed annual statements for the examination period, were requested for verification of the integrity of the data.

The issued and in force policy data files provided could not be reconciled to the certificates and premiums in force reported in the Exhibit of Number of Policies for Accident and Health Insurance or to the premiums written, premiums earned, number of policies and certificates, or the number of covered lives as reported in the Accident and Health Policy Experience Exhibit of the Supplement to the Annual Statement.

The examiner recommends that the Company develop and implement effective procedures to ensure that it can produce policy level detail that can be reconciled to the various policy exhibits reported in the Company's filed annual statements.

10. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

Item	Description	Page No(s).
A	The examiner recommends that the Company provide notice to the Superintendent of any surplus contribution from the Company's parent.	9
B	The Company violated Section 1505(d)(3) of the New York Insurance Law by receiving services from affiliates on a regular and systematic basis without notifying the Superintendent in writing of its intention to enter into any such transaction.	9
C	The examiner recommends that the Company enter into written contracts for all transactions between affiliates and notify the Superintendent in writing of its intention to enter into any such transactions.	9
D	The Company violated Section 325(a) of the New York Insurance Law by failing to maintain its charter, by-laws and books of account at its principal office in this state.	12
E	The examiner recommends that the Company comply with the terms of their Services Agreement with Companion by instituting a process whereby copies of the Company's corporate records (charter, by-laws, minutes, etc.) and records constituting the Company's books of account are forwarded to the Company on a monthly basis and maintained in an accessible medium at the Company's principal office in Amherst, New York.	12
F	The examiner recommends that the Company comply with the terms of their Services Agreement with Companion by establishing a permanent computer terminal(s) at the Company's home office in Amherst, New York which would be linked to the electronic system that generates the electronic records that constitute the Company's books of account.	12
G	The Company violated Section 1202(b)(2) of the New York Insurance Law by failing to have its independent committee recommend the selection and evaluate the performance of employees deemed to be principal officers of the Company and by failing to recommend to the board of directors the compensation of such principal officers.	13

Item	Description	Page No(s).
H	The Company violated Section 4230(a) of the New York Insurance Law by paying compensation to principal officers that was not authorized by a vote of the board of directors of the Company.	13
I	The Company violated Section 1411(a)(1) of the New York Insurance Law by making investments that were neither authorized nor approved by its board of directors or a committee of the board.	14
J	The examiner recommends that the Company's board of directors review and approve the Corporate Investment Policy.	14
K	The Company violated Section 4206 of the New York Insurance Law by failing to deposit securities with a par value totaling $400,000 with the State of New York for the benefit of all policyholders, claimants, or creditors of the Company.	15
L	The Company violated Section 215.13(a) of Department Regulation No. 34 by failing to identify the corresponding policy form number(s) on the group dental and group short term disability advertisements that were disseminated in New York during the examination period.	23
M	The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy forms that were not approved by the Department for use in New York.	24
N	The Company violated Section 3204(a)(1) of the New York Insurance Law by failing to deliver a policy containing the entire contract between the group and the insurer.	24
O	The Company violated Section 3221(a)(6) of the New York Insurance Law by failing to deliver to the groups, for delivery to each covered student, a certificate setting forth, in summary form, a statement of the essential features of the insurance coverage.	24
P	The Company violated Section 3234(b)(7) of the New York Insurance Law by failing to provide the time limit, place and manner in which an appeal of a denial of benefits must be brought under the policy or certificate and a notification that failure to comply with such requirements may lead to forfeiture of a consumer's right to challenge a denial or rejection.	25
Q	The examiner recommends that the Company revise the EOB to include detailed information about the appeals procedures for the dental plan	26

Item	Description	Page No(s).
R	The Company violated Section 4235(h)(3) of the New York Insurance Law by exceeding the maximum expense assumption limits on file with the Department, paying administrative expenses that were not on file with the Department and paying commissions that exceeded the maximum allowable commission rate on file with the Department.	27
S	The examiner recommends that the Company, the Corporate Audit Division of BCBSSC, and the Company's board of directors take measures to ensure that Company policies and transactions are taken into account when performing audits of shared services within the BCBSSC group of companies.	28
T	The examiner recommends that the Company implement a process to require regular reporting to the Company's audit committee of the scope and results of internal audits conducted by the Corporate Audit Division of BCBSSC that have an impact on the Company.	28
U	The Company violated Section 33.6(c) of Department Regulation No. 120 by failing to conduct on-site reviews of the underwriting and claims processing operations outsourced to MGAs at least semi-annually.	29
V	The examiner recommends that the Company develop and implement effective procedures to ensure that it can produce policy level detail that can be reconciled to the various policy exhibits reported in the Company’s filed annual statements.	30

Respectfully submitted,

/s/
Eden Sunderman
Associate Insurance Examiner

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

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

/s/
Eden Sunderman

Subscribed and sworn to before me

this_____ day of _____

APPOINTMENT NO. 30983

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

*I, **BENJAMIN M. LAWSKY**, 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:*

EDEN SUNDERMAN

as a proper person to examine the affairs of the

NIAGARA LIFE AND HEALTH INSURANCE COMPANY

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 my name and affixed the official Seal of the Department at the City of New York

this 28th day of February, 2013

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By: _____

MICHAEL MAFFEI
ASSISTANT DEPUTY SUPERINTENDENT
AND CHIEF OF THE LIFE BUREAU