

## RF HealthPlan 2015 Questions & Answers

	General Topic	Question	Answer
1	Associations	If an existing association group is moving to our large group pool, do we file as a new group (Public Rate Filing only), or do we treat it like a renewal (Public Rate Filing and OIC 3 Pager)?	If an existing association group is moving to a large group pool, you will need to treat the group as a renewal since the group is renewing coverage with the same carrier. We encourage you to explain in the filing about the situation of this renewal group.
2	Associations	Are there any unique or additional SERFF filing requirements for political subdivision organizations, such as the AWC (Association of WA Cities)?	No, there are no additional or unique SERFF filing requirements for any specific organization. To expedite the review process, our office strongly encourages all carriers to provide detailed information in the Filing Description field or submission of a Cover Letter regarding the filings purpose.
3	Associations	What specifically is the “Statement of History”? I think this has to do with documenting plan benefits and changes regarding grandfathered/non-grandfathered status. If all our Association plans are non-grandfathered (we mandated) do we simply state that?	The general filing instructions require a “Statement of the <u>association history</u> ”. The statement should document the historical development and purpose of the association. The requirement to provide this information is not about a plans grandfathered/non-grandfathered status.
4	Associations	When first presented these rules only applied to Associations that contain small employees, as rules were around small group underwriting in the ACA. If an association has only large groups enrolled are they still exempted? If not, why the change.	The ACA extinguished the “safe harbor” previously available to associations in Washington. As a result, ERISA law and standards apply to all true employer associations. Even when an association contains only large groups, the employer is considered to be the association.
5	Associations	Will the Short Form Filing Summary be revised to remove the association information piece?	Yes. We will be addressing this as part of the changes we will be making to our General Filing Instructions (GFIs) in February.
6	Associations	Questions regarding true-employer AHP rating allowances:  Can an issuer establish new group rates and renewal rates for each participating group within the association using a model that sets rates looking at various group and member rating factors at the participating member group level (excluding health status factors)?	If an association health plan (AHP) is a true-employer large group health plan ( <i>the association is defined as an “employer” under 29 U.S.C.S. 1002(5)</i> ), a health plan offered to the association is ONE large group health plan, and the carrier and the association must comply with HIPAA (29 CFR Chapter XXV, Section 2590.702) that prohibits discrimination against

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		<p>Specifically, may an issuer set a rate for a participating employer group:</p> <ul style="list-style-type: none"> <li>• Using members' <u>ages</u> as a rating factor?</li> <li>• Using members' <u>gender</u> as a rating factor?</li> <li>• Using members' <u>geographic location of residence</u> (or employer location) as a rating factor?</li> <li>• Using members' <u>contribution to the premium rate</u> as a rating factor?</li> <li>• Using the <u>size of the employer</u> as a rating factor?</li> <li>• Using <u>risk adjustors</u> to normalize premium revenue among the members?</li> <li>• Using wellness as a rating factor?</li> <li>• Using <u>Tobacco usage</u> as a rating factor?</li> <li>• Can rates be altered on a group level in response to market competition?</li> <li>• Blend rates into a tiered-composite for billing purposes to reduce administration to an employer-group?</li> </ul>	<p>participants and beneficiaries based on a health status-related factor.</p> <p>You ask whether an issuer can establish new group rates and renewal rates for each participating group within the association using a model that sets rates looking at various group and member rating factors at the participating member group level. First, if you rate each participating group within the association using a model that sets rates looking at various group and member rating factors, you are not treating all members within this employer (AHP) consistently in terms of issuing or renewing the group health plan. In that case, your rates for two similarly situated individuals (that belong to two participating group purchasers) are likely to be different, and this would violate HIPAA (29 CFR Chapter XXV, Section 2590.702).</p> <p>Here are the answers related to your specific questions regarding whether an issuer may set a rate for a participating employer group:</p> <ul style="list-style-type: none"> <li>• <a href="#">Using members' <u>ages</u> as a rating factor?</a> Only when the age factor is applied uniformly to everyone in the association.</li> <li>• <a href="#">Using members' <u>gender</u> as a rating factor?</a> Only when the gender factor is applied uniformly to everyone in the association.</li> <li>• <a href="#">Using members' <u>geographic location of residence</u> (or employer location) as a rating factor?</a> Only when the geographic location factor is applied uniformly to everyone in the association.</li> <li>• <a href="#">Using members' <u>contribution to the premium rate</u> as a rating factor?</a> Only when the factor is applied uniformly to everyone in the association.</li> <li>• <a href="#">Using the <u>size of the employer</u> as a rating factor?</a></li> </ul>

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			<p>No. In terms of the group health plan, there is only ONE employer which is the AHP. There are no other sizes of employers.</p> <ul style="list-style-type: none"> <li>• <a href="#">Using risk adjustors to normalize premium revenue among the members?</a></li> </ul> <p>No, In terms of the group health plan, there is only ONE employer which is the AHP.</p> <ul style="list-style-type: none"> <li>• <a href="#">Using wellness as a rating factor?</a></li> </ul> <p>Only when factor is applied uniformly to everyone in the association</p> <ul style="list-style-type: none"> <li>• <a href="#">Using Tobacco usage as a rating factor?</a></li> </ul> <p>Only when factor is applied uniformly to everyone in the association</p> <ul style="list-style-type: none"> <li>• <a href="#">Can rates be altered on a group level in response to market competition?</a></li> </ul> <p>No. You cannot alter the rates on a participating purchaser (group) level as this will make the rates for two similarly situated individuals (that belong to two participating group purchasers) be different.</p> <ul style="list-style-type: none"> <li>• <a href="#">Blend rates into a tiered-composite for billing purposes to reduce administration to an employer-group?</a></li> </ul> <p>No. You cannot do this on a participating purchaser (group) level as this will make the rates for two similarly situated individuals (that belong to two participating group purchasers) be different.</p>
7	Associations	Did we understand correctly that an example was given that an employee of company A within the association should be able to move to company B within the association and get the same exact rate? Is the assertion that the rates set for the association are at the member level?	You misunderstood the example. The example was given to ensure that issuers comply with HIPAA (29 CFR Chapter XXV, Section 2590.702) non-discrimination requirements. Issuers must treat all members within this employer (AHP) consistently and the rates for two similarly situated individuals (that belong to two separate participating group purchasers) must be the same.

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8	Associations	Employer member groups select up to 2 plans from a suite of products offered by the association and offer those plans to their employees. The group is given access to all plans offered by the association (no closed products). Can a member group of the association select and limit what plans their employees will be offered?	No, an individual participating purchasing group within an association cannot select and limit plans. For true employer associations, the “employer” is at the association level. As a result, participating purchasing groups within the association must offer employees all plans available from the true employer association.
9	Associations	Current filings include the for-public rates when submitting the AHP form filing. Was it mentioned in the meeting that for associations, the public rates needed to be segregated into a unique submission separate from the forms. If so, what format would this separate filing require? Is there a new schedule that carriers should use?	When submitting the association rate filings, the public rates need to be segregated into a unique submission separate from the forms. (See Washington State SERFF Health and Disability Rate Filing General Instructions Sections III. H.4 and III.I.7.) You must list the final public rates for the association groups. There is no specific format for the public rate filing.
10	Associations	What weight in the rate and form filings process will OIC give its “approval” letters that were issued to associations?	Approval letters signed by former deputy Carol Sureau will be dispositive to the extent it can be shown that she was apprised of all material facts and that material facts have not changed since the time of her evaluation.
11	Associations	Has OIC retracted its decision announced at the June 6, 2013 all filers workshop to stop issuing any more “approval” letters to associations?	The OIC will not be issuing approval letters in advance of the review of submitted filings.
12	Associations	Will OIC be using any standards to determine “true association employer status” other than the “DOL criteria” and “Factors” set forth on pages 15 and 16 of the “Final Version” 01/14/2014 overheads used by OIC in the all filers workshop on that date? If so, what are the other standards and where do they come from?	The OIC will be using all relevant federal standards, and will add to the standards as federal law and guidance continue to develop.
13	Associations	Is OIC saying that small employers purchasing coverage through and association or member-governed group are required to offer every benefit plan that is available to the association or member-governed group, regardless of the small employer’s determination of affordability? If the employer decision is not based upon any employee’s individual health status, what is the legal basis for OIC’s interpretation? Why didn’t OIC include this interpretation in the rulemaking process?	Yes, if a small employer is a participating purchasing group within a true employer AHP or member-governed group, then every participating purchase group purchasing coverage through a true employer association must be offered every benefit plan. A participating purchasing group can then make a choice of available benefit plans based upon affordability, or other factors. The legal basis for this interpretation is ERISA law governing associations, under which they have the

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			characteristics of a single large employer. Since federal law governs ERISA, we would not necessarily restate a federal law in our rules. Additionally, as stated in the concise explanatory statement, the market transition rules address the treatment of true employer and non-true employer association plans for purposes of the Commissioner’s review of form and rate filings.
14	Associations	In the GF association rate filing, we are required to provide a schedule to show group-by-group rate increase. We will include the current and proposed rate schedules, but disagree that we need to illustrate rate increases on a group-by-group basis. GF association participating employer groups renew on a rolling basis. Since we are allowed to continue the GF underwriting practices in this block, we will not be able to guarantee a filed group-by-group rate increase at the time of the association master rate filing. Please clarify the group-by-group instruction.	For a grandfathered association pool rate filing effective on or after January 1, 2014, an issuer can file the renewal rate actions as described in the permanent rule for the effective month (January) renewing grandfathered groups and provide the exact rate change for those groups. For all other groups whose renewal occurs throughout the rest of the year, issuers must list their 2013 existing rates and file the detailed methodology for which rates are established. You could file the model that establishes the factors for a group (demographics, location, industry, etc.) that would create the renewal rates. (This is not the actual rates for the participating purchasing group since census and group information may change between the filing with OIC and the participating group’s renewal date.) Your methodology must be detailed enough to allow OIC to replicate a participating purchasing group’s renewal rates if the group’s census is known.
15	Associations	Please clarify if within a True AHP we are allowed to continue to use participating employer group characteristics, including but not limited to average age, area, paid loss ratio, % of COBRA, in the rate-making to arrive at the separate distinct average premium rate for each of the participating employers.	In general, the answer is no. If an association health plan (AHP) is a True Employer AHP (the association is defined as an “employer” under 29 U.S.C.S. 1002(5)), a health plan offered to the association is ONE large group health plan, and the carrier and the association must comply with HIPAA (29 CFR Chapter XXV, Section 2590.702) that prohibits discrimination against participants and beneficiaries based on a health status-related factor.  If you rate each participating purchasing group within the association using participating purchasing group characteristics (such as average age, area, paid loss ratio, % of

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			COBRA) to arrive at the separate distinct average premium rate for each of the participating employers, you are not treating all members within this employer (AHP) consistently in terms of issuing or renewing the group health plan. In that case, your rates for two similarly situated individuals (that belong to two participating purchasing groups) are likely to be different, and this would violate HIPAA (29 CFR Chapter XXV, Section 2590.702).
16	Associations	For a True Association Health Plan, is underwriting using health factors at the employer level permissible? Please clarify permissible uses for health questionnaires?	For a True Employer AHP, there is only ONE employer which is the AHP. Underwriting using health factors at the participating purchaser group level is not permissible as it would violate HIPAA (29 CFR Chapter XXV, Section 2590.702) that prohibits discrimination against participants and beneficiaries based on a health status-related factor. If you require all members in the AHP to fill out a health questionnaire, the information cannot be used to set rates for any participating purchasing group or any members. The information can be used to determine whether you want to issue the AHP coverage or not. For HCSCs and HMOs, the health questionnaires for all members may be used in its entirety to increase or decrease the entire association's rates across the board.
17	Associations	Can a participating employer group within a True AHP be considered as "Similarly Situated Individuals" under the ERISA rule prohibiting discrimination in premiums?	Participation itself within a participating purchasing group does not make the individuals similarly situated. As an example, a participating purchasing group can have two employees that are a 64-year-old male and a 21-year-old female. It is clear that these two individuals are not similar.
18	Associations	We currently offer multiple benefit plans to True AHPs, and the participating employers pick the benefit plan (or plans) for their employees. Can the participating employers still choose the benefit plans for all of their employees, or does each employee have the choice from all benefit plans offered in the association to "Similarly Situated Individuals"?	For a true employer AHP, the employer is at the association level, not at the participating purchasing group level. Employees may pick their benefit plan from all of the plans that the employer – which is the true employer AHP – offers. Participating purchasing groups may not limit of choose the health plans for any individuals.

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19	Associations	The new rule will be effective after 1/1/2014; meanwhile, we have True AHPs that have already renewed in January of 2014. To implement the new rules, we will need an implementation timeline. We propose to prospectively implement the new rule 90 days from the permanent rule date. For all participating employer groups within a True AHP who have already renewed prior to implementation (90 days from the permanent rule), they will be required to be in compliance with the new rule on the earlier of their next renewal date or the master contract renewal date. If the compliance date is instead 30 days from the permanent rule date, please clarify how you want us to treat participating employer groups within a True AHP that have already been quoted, renewed, or sold in 2014.	Although the permanent Market Transition Rule was effective on 1/11/2014, the Emergency Market Transition Rule was effective on 10/26/2013. Furthermore, with respect to the implementation of ACA and AHP transition, the OIC has been communicating with the issuers since 2012 through various channels including all filers meetings (see AHP Transition webinars on 9/26/2012 and 6/6/2013). We expect issuers to fully comply with ACA and Market Transition Rule.
20	Associations	Please provide in detail the steps that the OIC will take to ensure that these rules are applied evenly across all issuers and associations.	The OIC endeavors to apply the same standards of review across all lines of insurance. As a reminder, the OIC does not regulate associations.
21	Grandfathered plans	If the rate filing for AHP grandfathered plans is a separate pool that needs to be filed separately, do the same GF plans need to be filed separately on the form side?	Yes. Grandfathered plans should be filed as a separate form submission from the non-grandfathered plans.
22	Rate filings	Please verify the following understanding regarding filing of a grandfathered pool is accurate based on the all filer meeting held Tuesday, January 14 <sup>th</sup> : The carrier can file the renewal rate actions as described in the permanent rule for January renewing grandfathered groups, but for all other groups whose renewal occur throughout the rest of the year it is okay to file the methodology for which rates are established. For example, we would file the model that establishes the factors that rate a group (demographics, location, industry, etc.) that would create renewal rates for groups, not the actual rates for those groups since census and group information may change between the filing with OIC and the group's renewal date.	For a grandfathered association pool rate filing effective on or after January 1, 2014, an issuer can file the renewal rate actions as described in the permanent rule for the effective month (January) renewing grandfathered groups and provide the exact rate change for those groups. For all other groups whose renewal occurs throughout the rest of the year, issuers must list their 2013 existing rates and file the detailed methodology for which rates are established. You could file the model that establishes the factors for a group (demographics, location, industry, etc.) that would create the renewal rates. (This is not the actual rates for the group since census and group information may change between the filing with OIC and the participating group's renewal date.) Your methodology must be detailed enough to allow OIC to replicate a participating group's renewal rates if the group's census is known.

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23	Rate Filings	Will the OIC be providing the rate provision assertions from the meeting in writing with detail for issuer reference and understanding?	We have provided ample information through the Market Transition Rule, General Filing Instructions, and Market Transition webinar. At this point, we don't plan to provide more information.
24	Rate Filings	The rule specified the required documents for the GF rate filing, but it is not clear what is needed for the True AHP rate filing. Please specify the requirements. For example, what is required in the public rate filing if the proprietary filing is not submitted?	See Washington State SERFF Health and Disability Rate Filing Instructions Section III.I.
25	Rate Filings	Does the True AHP rate filing have to be filed separate from the form filing?	Under Washington State SERFF Health and Disability Rate Filing Instructions, association and trust rate filings must have a public rate filing (separate from the form filing). In other words, if an issuer files a proprietary rate filing, it must also file a public rate filing. The association and trust filings must include a public rate filing (with an optional proprietary rate filing) and a form filing. (See Health and Disability Rate Filing Instructions Sections II.F.4, II.G.6, III.H.4, III.I.7, IV.H.4, and IV.I.7).
26	Rate Filings	What is the filing timeline requirement for a True AHP rate filing? Since this is submitted as a LG filing, we assume that we still have 30 days following the effective date to submit the filing. What actions are required by issuers if the rate filing is disapproved?	For Health Care Service Contractors (HCSCs) and Health Maintenance Organizations (HMOs), WAC 284-43-920(2) applies to a True Employer AHP large group. Issuers still have 30 working days following the effective date to submit the rate filings. We expect issuers to fully comply with ACA and Market Transition Rule.
27	Rate Filings	At the master contract renewal date, can all existing participating employers within the True AHP receive a flat rate increase even if the group characteristics have changed?	No - if the rates for two similarly situated individuals (that belong to two participating purchasing groups) are different, this would which violate HIPAA (29 CFR Chapter XXV, Section 2590.702).  Yes – if the rates for two similarly situated individuals (that belong to two participating purchasing groups) are the same.
28	Rate Filings	Does the new rule require underwriting practices, rating methodology, benefit choices be applied consistently within “Similarly Situated	This is not a new rule. HIPAA (29 CFR Chapter XXV, Section 2590.702) that prohibits discrimination against participants



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		Individuals”?	and beneficiaries based on a health status-related factor has been in effect for a long time.
29	Short Form filings	<p>The revised form filing instructions include the edit shown below under the short form filing section – what is the rationale? The short form template still includes a field for public rate disclosure.</p> <p><del>5. Must include the For Public rate schedule in the form filing if t</del></p>	This was removed from the forms General Filings Instructions (GFI) to be consistent with the new rate GFI. The Short Form filing summary document will reflect this change.