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2015 MAR 27 A 10

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March 27, 2015

VIA EMAIL AND FIRST-CLASS MAIL

Hearings Unit
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255
Email: hearings@oic.wa.gov

Re: Demand for Hearing

To Whom It May Concern:

We represent the Northwest Marine Trade Association and the Northwest Marine Trade Association Health Trust ("NMTA Trust"). We write to formally demand a hearing before an administrative law judge ("ALJ"), pursuant to RCW 48.04.010 and WAC 284-02-070, to challenge the disapproval by the Office of Insurance Commissioner ("OIC") of Regence BlueShield's ("Regence's") 2014 rate and form filings ("the Filings") for the NMTA Trust. A copy of the OIC's decision subject to this Demand for Hearing accompanies this demand as Attachment 1.

NMTA Trust facilitates the purchase of health benefits for over 114 companies in the recreational boating or marine industry. This industry-specific healthcare program serves some 1830 industry employees and 2500 total members, all of whom may be negatively impacted by the OIC's disapproval.

NMTA Trust offers benefit plans through Regence that the participating employers ("Participating Employers") offer for purchase by their employees and the employees' eligible dependents (collectively, the "Members"). The OIC's rejection of the Filings directly, adversely, and unfairly affects NMTA Trust, its Participating Employers, and their Members (who may be forced to move to or purchase plans with substantially reduced benefits and/or higher premiums and who may be subject to retroactively-adjusted premiums), warranting a hearing pursuant to RCW 48.04.010(1)(b).

The OIC takes issue with the fact that the Regence plans for NMTA Trust include multiple Rate Categories for each plan design, established at the Participating Employer level with potentially different monthly premiums for different Participating Employers. In rejecting

the Filings, the OIC erroneously treats NMTA Trust as a single employer, asserting that it must file a single rate at the association level. In its disapproval, the OIC stated:

[Y]our rates, filed for various employers, are unreasonable in relation to the amount charged for the contract for one single employer Therefore, your rate and form filings are disapproved and closed under the authority of RCW 48.44.020(3).¹

NMTA Trust challenges the OIC's decision on the following grounds:

- OIC lacks legal authority to disapprove the Filings.
 - First, RCW 48.44.020(3) does not provide a legal basis for the OIC's disapproval. That statute permits disapproval of a health benefits contract only "if the benefits provided therein are unreasonable in relation to the amount charged for the contract." The OIC's own regulations, however, provide that benefits "will be found not to be unreasonable" for purposes of RCW 48.44.020(3) if the projected earned premium for the rate renewal period meets certain requirements. WAC 284-43-915(2) (emphasis added). The Filings in fact satisfy the requirements of WAC 284-43-915(2) and OIC's disapproval does not contend otherwise. Indeed, the attached disapproval notice does not address benefits provided under the plans. Therefore, by OIC's own regulations, RCW 48.44.020(3) provides no authority for OIC's disapproval of the Filings.
 - Second, no other Washington law or regulation gives the OIC authority to reject the Filings based upon the rates.
- Even if OIC had authority to disapprove the Filings (including the rates), there is no basis under state or federal law for the OIC's position that a Bona Fide Association ("BFA") like NMTA Trust must be treated as a single employer for purposes of rating.
 - No state statute or regulation prohibits separately rating Participating Employers based on non-discriminatory criteria, or requires that all Participating Employers be rated in one pool when coverage is offered through a BFA. To the contrary, Washington law explicitly and unambiguously exempts employers purchasing health plans through associations from community rating: "Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care are not small employers and the plans are not subject to RCW 48.44.023(3) [community rating]." RCW 48.44.024(2).

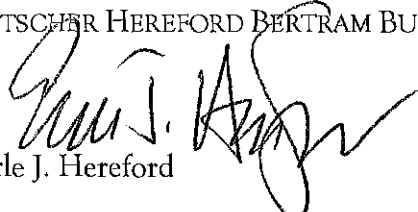
¹ See Attachment 1.

- Nor is there any basis under federal law for the OIC's position that a BFA must be treated as a single employer for purposes of rating. All rating factors utilized by Regence were consistent with federal regulations and guidance, including under the Health Insurance Accountability and Portability Act, also known as HIPAA. Indeed, the OIC's disapproval does not cite any federal law or rule that is implicated by the Filings or that provides a basis for its disapproval of the Filings.
- Rating at the Participating Employer level is a long-standing and sanctioned practice for BFAs in Washington to which the OIC has never previously objected. There has been no recent change in federal or state law that would compel a different response from OIC.
- The OIC's unlawful disapproval of the Filings will unfairly prejudice NMTA Trust, its Participating Employers, and their Members. If the OIC's proposed remedy is implemented, the Members may be forced to move to or purchase plans with substantially reduced benefits and/or higher premiums, potentially with adverse federal tax consequences.
- The OIC attempts to impose a remedy that does not flow from its rejection of the Filings. Specifically, the OIC asserts: "As a result of this disapproval, it is necessary for all current enrollees to be transitioned to a complaint plan as soon as possible."² The OIC's disapproval of Regence's 2014 Filings after the end of the 2014 coverage period cannot logically require any action with respect to prior enrollees (who are not enrolled in 2015 plans).

The OIC's rejection of the Filings lacks foundation in state or federal law; is contrary to the long-established AHP rating practices condoned by the OIC and sanctioned by state law; and would unfairly prejudice NMTA Trust and its Washington citizen Members in direct contravention of the primary purpose of the Affordable Care Act: to provide individuals with access to affordable health care. For the above reasons, NMTA Trust formally demands a hearing before an ALJ.

Very truly yours,

KUTSCHER HEREFORD BERTRAM BURKART PLLC


Earle J. Hereford

Enclosure

² See Attachment 1.

We also asked you to identify the bona fide employment-based classifications upon which the 4 Rate Categories are based (per 26 CFR § 54.9802-1(d).) (Examples for bona fide employment-based classifications include current versus former employees, and employees located in different geographic areas.) You stated that “each subgroup” may be treated separately as each subgroup is an independent ongoing business. You further stated that each subgroup is managed separately from other subgroups and “employment” criteria, “employment” needs, benefit mix, may be unique to each subgroup. Your response reiterated that you have separately rated various “member groups.” Your response also failed to identify how each Risk Level is related to bona fide employment-based classifications.

This tells us that your rates, filed for various employers, are unreasonable in relation to the amount charged for the contract for one single employer, Northwest Marine Trade Association. Therefore, your rate and form filings are disapproved and closed under the authority of RCW 48.44.020(3).

As a result of this disapproval, it is necessary for all current enrollees to be transitioned to a compliant plan as soon as possible. Please contact the Deputy Insurance Commissioner for Rates and Forms to discuss your plan to transition current enrollees to a compliant plan, including the proposed notice and replacement rate schedule.

Item Type	Item Name	Item Status	Public Access
Supporting Document	Disability Associations		Yes
Supporting Document	Disability Rates		Yes
Supporting Document	HCSC Rates		Yes
Supporting Document	PPACA Exemption Request		Yes
Supporting Document	HIPAA AHP Certification Letter		Yes
Supporting Document	Transition of Care Questionnaire		Yes
Rate	Pooled rate filing full negotiated		Yes
Schedule Items			

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