Washington State
Office of the
Insurance Commissioner

Association Health Plan Transition (ACA #12)

Office of the Insurance Commissioner

June 6, 2013

Purpose of Today's Meeting

- To provide clear direction to carriers and their clients regarding upcoming changes for 2014
- Provide a brief review of two types of AHPs – "True Employer" Health and Welfare Benefit Plans and "Non-Employer AHPs"
- Discuss grandfathered status for certain participating employers with "Non-Employer AHPs"
- Provide transition guidance for both types of AHPs for 2014
- Review emergency rule to clarify transition requirements

Important Definitions

- "True Employer AHP" – 29 USCS Sec. 1002 (5) provides: "The term "employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; <u>and includes a group or association of employers acting for an employer in such capacity.</u>" [emphasis added]

Important Definitions

- "Non-Employer AHP" – An Association of employers and individuals that does not meet the definition of an "employer" under ERISA but otherwise provides access to various insurance products – including health insurance to its members

Important Definitions

- “Grandfathered plan” – A benefit plan that had one or more employees or an individual enrolled in the AHP before March 23, 2010 and did not lose its grandfathered status under the federal rules – (individual, small group or large group). For purposes of today’s presentation the grandfathered and non-grandfathered status is held by each employer or individual plan and not the AHP’s master contract level.
- “Non-grandfathered employer or individual plan” – a plan which was formed on or after March 23, 2010 – or a plan which lost its grandfathered status (See Appendix “A”)

True Employer Health and Welfare Plan vs. Non-Employer Health and Welfare Plan Associations – and Why it Matters

- Associations which qualify as <u>True Employer Health and Welfare Benefit Plans</u> under ERISA continue to be treated as large group (if more than 50 covered lives) by both state and federal regulators if the contract is held at the Association level –
  - Rates will be established by pooling the experience of the large group
  - Carrier will submit the rate and form filing as "large" group
  - Carrier may not use individual health status to establish rates or eligibility
  - Carrier is not required to provide the Essential Health Benefits
  - All employers participating in the AHP must have a common plan year that will coincide with the master contract's renewal date

True Employer Health and Welfare Plan vs. Non-Employer Health and Welfare Plan Associations – and Why it Matters

- Other "Non-employer" AHPs (which do not qualify as an Employer Health and Welfare Benefit Plan under ERISA), and that have non-grandfathered groups/individuals must comply with **Federal Community rating laws** at the first plan renewal in 2014 **–** and will be made up of individual, small and large employer groups
  - Health plans for non-grandfathered small employer and individual members must fully comply with ACA requirements including the provision of the Essential Health Benefits and metal levels as well as federal community rating.
  - Must make all plans available and cannot condition eligibility for benefit plans on membership in Association

General Regulatory Requirements "True Employer" AHP

- "True Employer" AHPs may be filed and rated as large group (as long as the membership is more than 50 employees)
- "True Employer" AHPs may not use health status factors to establish rates
- "True Employer" AHPs that are large group are not required to provide Essential Health Benefits by Federal law (placeholder technical bill didn't pass)

General Regulatory Differences "True Employer" AHP

- All participating employers and individuals under "True Employer" must have the <u>same</u> plan renewal date – with any benefit changes or rate changes applied across the entire group at the same time. No rolling plan year at the employer level based on the employer's anniversary date
- True Employer AHP must comply with appropriate Affordable Care Act (ACA) requirements

General Regulatory Differences – "Non-Employer" AHP

- "Non-employer AHPs" – Carrier must differentiate between grandfathered and non-grandfathered individuals and employers in rating and benefit design
- "Non-employer AHPs" with Non-Grandfathered small employers and individuals AHP will be subject to the Federal Community Rating requirements
- "Non-employer AHPs" – Carrier may discontinue all grandfathered plans and replace with non-grandfathered individual metal level, small group metal level or large group plans
- "Non-employer AHPs" Carriers which choose to maintain grandfathered individual and small employers may do so by filing the grandfathered portion of the AHP group with combined claims experience

General Regulatory Differences – "Non-Employer" AHP

- Carrier must transition both grandfathered and non-grandfathered employer groups to new rating and benefits at the first plan renewal date on or after January 1, 2014
- All grandfathered and non-grandfathered groups must be fully transitioned to 2014 benefit plans and rates no later than the first master contract renewal date, on or after January 1, 2014
- If AHP is accepting new groups or individuals – Carrier must enroll any new group or individual in a 2014 compliant product if joining on or after January 1, 2014.
- Carriers and AHPs <u>may not</u> manipulate the master contract or employer plan year to avoid or delay compliance with the ACA

Carrier Issues to the Association or Member Governed Group a Master Contract with an Established Annual Renewal Date – Variety of Health "Plan" Options Available to Participants

Non-Employer AHP or Member Governed Group Comprised of a Variety of Industries, Employers and Individuals

AHP or Member Governed Group that Constitutes an "Employer" Under 29 USCS 1002 (5) or is a Government Employee Plan

Grandfathered Plan

- Employer group joined prior to 3/23/10
- Employer or AHP or Carrier did not make changes to trigger loss of grandfathered status since 3/23/10 (see second slide)
- Employer or AHP or Carrier must have maintained plan design in place on 3/23/10 and not have triggered loss of grandfathered status
- All employer grandfathered business rated as large group filed as a "single case filing" under rules adopted by OIC
- Allow individuals to maintain coverage in large group single case pool.

Non-Grandfathered Plan

- Employer joined on or after 3/23/10 or lost grandfathered status
- Small employers or individuals must transition to ACA compliant small group or individual non-grandfathered benefit plans subject to federal community rating
- Transition must occur on the anniversary date of employer or individual or Master Contract renewal date which ever is earlier (on or after 1/1/14)
- Anniversary date or plan renewal date may not be changed to avoid or delay transition date
- Large employers (51+) maintain ACA compliant coverage and rating but may not be rated using health status
- All individuals and employers must be allowed to join – AHP may not restrict eligibility
- All small group plans offered by issuer must be made available

- Large Group Rating Rules and Benefit Requirements apply (if more than 50 employees)– otherwise subject to small group rating rules
- May only enroll eligible employers and employees within industry class
- Issuer must submit supporting plan documents and industry classifications as part of filing process
- Health status may not be used to establish rates or determine eligibility
- Formed after 3/23/10 must meet all large ACA non-grandfathered large group requirements

AHPs in Transition

- OIC is no longer able to review and provide feedback on draft AHP documents and employee categories
- AHPs are encouraged to seek advice from appropriate legal counsel with ERISA expertise and the Department of Labor
- Carriers must review documents to verify AHP status before filing submission – and must be prepared to justify any large group filing as part of the filing review process – filings for AHPs that do not appear to qualify as a "true employer" may be disapproved

AHPs in Transition

- Most current **<u>Non-</u>**Employer Health and Welfare Benefit Plan Associations that wish to continue to offer health and other types of insurance coverage may do so
- Although true Employer Health and Welfare Benefit Plans will still be able to file and market as large group if over 50 lives – the rates must be based on the overall experience of the group and health status may not be used to set rates

AHPs in Transition

- Non-Employer Health and Welfare Benefit Plan AHPs will need to offer <u>all</u> small group products to members in the AHP – if the employer has 1-50 employees
- Individual product must be made available to individuals and families not purchasing as an employer group (AHPs are not required to offer all of the carrier's individual portfolio).
- Large group products must be made available to employers with 51+ employees
- Additional insurance products (e.g. life, dental, disability income etc.) may also be offered

AHPs in Transition

- Carriers need to continue to work with AHP clients to establish a transition plan for each AHP
- AHP administrators may need to be licensed as producers by the OIC – if they are “engaged in selling, soliciting or negotiating insurance…” (RCW 48.17.060)

AHP Transition Rule Making

- The OIC will file an Emergency Rule and start permanent rule making to clarify the transition requirements. Topics addressed are:
  - Carrier Compliance Responsibilities
  - Date(s) for Transition to ACA Compliant non-grandfathered plan
  - Rate and form filing requirements
  - Carrier data tracking and record maintenance

Questions?

Appendix "A"
What Triggers Loss of Grandfathered Status?
29 CFR2590.715-1251(g)

- **Cannot Significantly Cut or Reduce Benefits**. For example, if a plan decide to no longer cover care for people with diabetes, cystic fibrosis or HIV/AIDS
- **Cannot Raise Co-Insurance Charges.** Typically, co-insurance requires a patient to pay a fixed percentage of a charge (for example, 20% of a hospital bill). Grandfathered plans cannot increase this percentage
- **Cannot Significantly Raise Co-Payment Charges.** Frequently, plans require patients to pay a fixed-dollar amount for doctor's office visits and other services. Compared with the co-payments in effect on March 23, 2010, grandfathered plans will be able to increase those co-pays by no more than the greater of $5 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15 percentage points. For example, if a plan raised its co-payment from $30 to $50 between 2010 and 2014 years, it will lose its grandfathered status
- **Cannot Significantly Raise Deductibles.** Many plans require patients to pay the first bills they receive each year (for example, the first $500, $1,000, or $1,500 a year). Compared with the deductible required as of March 23, 2010, grandfathered plans can only increase these deductibles by a percentage equal to medical inflation plus 15 percentage points. In recent years, medical costs have risen an average of 4-to-5% so this formula would allow deductibles to go up, for example, by 19-20% between 2010 and 2011, or by 23-25% between 2010 and 2012. For a family with a $1,000 annual deductible, this would mean if they had a hike of $190 or $200 from 2010 to 2011, their plan could then increase the deductible again by another $50 the following year.
- **Cannot Add or Tighten an Annual Limit on What the Insurer Pays.** Some insurers cap the amount that they will pay for covered services each year. If they want to retain their status as grandfathered plans, plans cannot tighten any annual dollar limit in place as of March 23, 2010. Moreover, plans that do not have an annual dollar limit cannot add a new one unless they are replacing a lifetime dollar limit with an annual dollar limit that is at least as high as the lifetime limit (which is more protective of high-cost enrollees).
- **May Change Insurance Companies.** An employer with a group health plan can switch plan administrators as well as buy insurance from a different insurance company without losing grandfathered status--provided the plan does not make any of the above six changes to its cost or benefits structure
- Employer may not decrease employer contribution rate >5%