



OFFICE OF  
INSURANCE COMMISSIONER

October 21, 2015

The Honorable Joe Schmick  
Washington State House of Representatives  
PO Box 40600  
Olympia, WA 98504-0600

Dear Representative Schmick:

Thank you for your letter of October 8, 2015, requesting clarification of the recent settlements of court cases related to association health plans in Washington.

As I believe you are aware, my office reviewed the rate filings of association health plans based upon our interpretation of the federal Affordable Care Act (ACA). In particular, my office interpreted the ACA as preempting certain state laws, changing the rating requirements that apply to association health plans (AHPs), and changing the circumstances under which AHPs could be rated as large group plans. My office's interpretation of the rating requirements for AHPs was a significant change in the way they have historically been rated. That interpretation was challenged in administrative hearing proceedings, in state court, and in federal courts in Washington and Oregon.

On July 1, Retired Judge George Finkle, the presiding officer I appointed to provide an impartial review of this issue, found that a different interpretation of federal and state law applied to AHP rating requirements. He determined that our interpretation was incorrect. Although I do not agree with his interpretation, I respect his decision, and have chosen not to challenge his ruling.

I directed my staff and our legal counsel to resolve the other challenges, which were pending in court and in the administrative hearings process. As a result of settlement negotiations, we will not disapprove an AHP filing on the grounds that it is rated at the employer level, and we will not disapprove filings submitted on behalf of multiple sub-trusts or employer groups that were once part of larger associations, if sufficient information is submitted to demonstrate that each trust complies with the law. This is the same approach applied prior to the implementation of the ACA. In return, the associations agreed to dismiss their appeals. The orders recently entered by the Oregon and Washington courts were a result of this resolution process.

Going forward, the Insurance Commissioner's Office will continue to apply federal and state law toward all AHPs in accordance with Judge Finkle's decision and our settlement agreements, unless and until there are changes to the law that necessitate a change in our approach. I would note that counsel for Business Health Trust (BHT), one of the groups of associations involved in

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Page 2

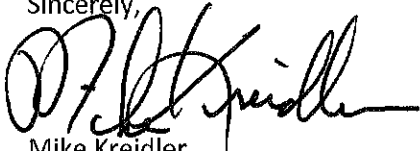
the AHP litigation, indicated that the U.S. Department of Labor (DOL) has initiated an audit of the trusts created under the umbrella of BHT. We will of course abide by any determination made by DOL. I think it is also important to note that, because we recognized that the legal issues involved in these cases were complex, we undertook a process that allowed AHP enrollees to keep their plans during the legal proceedings. No one lost health coverage during this review process and the recent settlement will not change that fact. Similarly, there were no penalties assessed against any of the plan issuers. We took an approach that would allow a legal determination to be made with as little impact to consumers as possible during the pendency of the cases.

Although this has been an arduous process, and not all of the results were as I had hoped, the result is that little changes in Washington's approach toward AHPS unless and until state or federal law changes.

My concern is only following the law and protecting consumers. There appears to be an adverse selection impact on small employers. This is not healthy. If AHPs believe otherwise, I encourage them to answer our questions regarding their rating. To date, most associations have refused. If they are not unfairly discriminating among their members, then the OIC has no problems.

Again, thank you for your letter and for your attention to this important issue. Please contact me if I can be of any further assistance.

Sincerely,



Mike Kreidler

Insurance Commissioner

