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BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

IN THE MATTER OF

WASHINGTON COUNTIES INSURANCE
FUND

Docket No. 15-0034

WASHINGTON COUNTIES
INSURANCE FUND'S MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

Washington Counties Insurance Fund ("WCIF"), challenges the Office of Insurance Commissioner's ("OIC") rejections ("the Rejections") of Premera Blue Cross's ("Premera") and Group Health Cooperative's ("Group Health") 2014 rate and form filings with respect to benefit plans offered by WCIF ("the Filings").¹ The OIC's Rejections are without basis in federal or state law, and they have the inequitable effect of prejudicing thousands of public employees in the State of Washington in direct contravention of the central purpose of the Affordable Care Act ("ACA"): to provide individuals with access to affordable health care. WCIF therefore moves for judgment as a matter of law, pursuant to WAC 10-08-135.

¹ Only the rating methodology and rates are at issue.

II. BACKGROUND

A. The Washington Counties Insurance Fund

WCIF is a multi-employer non-profit trust fund formed in the 1950s by the Washington State Association of Counties to provide for the payment of welfare benefits for participating county governments' employees and their dependents. Declaration of Jon Kaino in Support of Washington Counties Insurance Fund's Motion for Summary Judgment ("Kaino Decl."), ¶ 2. In 2014, WCIF provided fully-insured benefit plans ("the Plans") through Premera and Group Health (collectively, "the Carriers") to 78 public employers and publicly-funded non-profit employers ("Participating Employers"). The Participating Employers, in turn, offered the Plans to their employees and their employees' eligible dependents ("Members"). *Id.* at ¶ 3. Approximately 6,959 Members were enrolled in the Plans in 2014: 1,547 Members with Group Health and 5,412 Members with Premera. *Id.*

B. The Carriers' 2014 Filings

In mid-February 2014, Premera and Group Health submitted the Filings at issue in this appeal (the 2014 rate and form filings associated with the Plans)² to the OIC, via the System for Electronic Rate and Form Filing ("SERFF"). Kaino Decl. at ¶ 4. While the Filings are filed by the Carriers, they are the result of a collaborative process that includes WCIF. *Id.* at ¶ 5.

Just as had been the case in past years, the 2014 Filings included multiple Risk Levels³ with different monthly rates associated with each Risk Level. *Id.* at ¶ 6. The rating was established at the Participating Employer level, rather than applying a single Risk Level to the association (WCIF). *Id.* Each Participating Employer was assigned to one of 21 Risk Levels determined on the basis of factors such as the Participating Employer's geographic location, sub-

² This appeal stems from four Rejections issued by the OIC as to four Filings: two involving Group Health (GHCC - 129421102 and GHCC - 129421076 (Group Health Options)) and two involving Premera (PBCC-129415186 and PBCC-129414875 (Lifewise, a Premera company)). Kaino Decl., ¶ 4.

³ The Rejections also refer to the Risk Levels as "Risk Tiers" and "Rate Levels." See Kaino Decl., Exs. 15-18. For the sake of consistency, they will be referenced as "Risk Levels" throughout this Memorandum.

1 industry classification, and contribution. *Id.* No health status-related factors were utilized in
2 assigning Participating Employers to Risk Levels and in setting rates. *Id.* Only non-health
3 status-related, aggregate factors, such as the ones noted above, were used to set the rates. *Id.*

4 This approach is illustrated in the following hypothetical:

- 5 • Participating Employer A is assigned to Risk Level 5, based on Participating
6 Employer A's geographic location, sub-industry classification, and contribution
7 level. All Members employed by Participating Employer A pay the rates
8 associated with Risk Level 5, regardless of their age or health status.
- 9 • Participating Employer B is assigned to Risk Level 10, based on Participating
10 Employer B's geographic location, sub-industry classification, and contribution.
11 All Members employed by Participating Employer B pay the rates associated with
12 Risk Level 10, regardless of their age or health status.
- 13 • The Members who are employees of Participating Employer A and the Members
14 who are employees of Participating Employer B pay different monthly rates,
15 because the Participating Employers are assigned to different Risk Levels. Thus,
16 a 30-year-old employee of Participating Employer A pays the rates associated
17 with Risk Level 5, while a 30-year-old employee of Participating Employer B
18 pays the different rates associated with Risk Level 10.

19 This method of rating -- establishing multiple Risk Levels at the Participating Employer
20 level -- is not new to the Carriers' 2014 Filings. The OIC accepted this method of rating and
21 approved the Carriers' rate and form filings associated with WCIF benefit plans in 2011, 2012,
22 and 2013. *Id.* at ¶ 7.

23 C. The OIC's April Objection Letters

24 On April 23, 2014, the OIC sent the Carriers nearly identical Objection Letters through
25 SERFF. *Id.* at Exs. 1-3. They read, in relevant part:

26 For all large groups, including associations who qualify under the
ERISA 3(5) definition of an employer, the federal Health
Insurance Portability and Accountability Act (HIPAA) prohibits
discrimination against participants and beneficiaries based on a
[sic] health status-related factors. Specifically, a group health plan,
and health insurance issuer offering group health coverage in
connection with a group health plan, may not establish rules for
eligibility (including continued eligibility) of any individual related
to the health-related factors. Federal law prohibits use of the
following factors: health status, medical condition (including both
physical and mental illnesses), claims experience, receipt of health

1 care, medical history, genetic information, evidence of insurability,
2 and disability. 29 CFR Chapter XXV, Section 2590.702.

3 As a result, under HIPAA an issuer or association must not use
4 health-status related data or information from a specific
5 participant, a subgroup of participants, or a participating
6 purchasing group within the association to establish rates for the
7 participant or the group purchaser. This includes specific health
8 status, claims experience, participating requirements, etc. As an
9 example, for any two similarly situated individuals (the same age
10 group and gender) within the association employer, the association
11 health plan as the group health plan or the carrier as the issuer
12 cannot charge higher rates for one individual simply because the
13 one individual has more medical claim history or existing medical
14 conditions than the other individual.

15 Issuers are permitted to use non-health status-related rating factors
16 permitted by federal or state law for a particular large group health
17 plan. Permitted factors include demographics, age, area, and
18 gender.

19 *Id.* (emphases added). The Objection Letters noted that the Carriers' rate schedules identified 21
20 Risk Levels for each plan design, and the OIC asked that the Carriers "[e]xplain in detail how
21 you define the risk level including the factors used to assign a risk level." *Id.* The Carriers
22 responded to the OIC's Objection Letters in May 2014, clarifying the non-health status-related
23 factors underlying the Risk Levels. *Id.* at ¶ 9 and Exs. 4-6.

24 **D. The OIC's October Objection Letters**

25 Six months later, the OIC sent the Carriers nearly identical Objection Letters through
26 SERFF on October 28, 2014. *Id.* at ¶ 10 and Exs. 7-9. In the Objection Letters, the OIC asked
the Carriers, "[p]ursuant to 26 CFR § 54.98021(d)," to "identify the bona fide employment-based
classification upon which the 21 Rate Levels (Risk Tiers) are based." *Id.* at Exs. 7-9. The
Carriers responded to the October Objection Letters on November 5, 2014, clarifying, once
again, that the Rate Levels were based on aggregate group characteristics, including Participating
Employers' geographic locations, sub-industry classifications, and contribution. *Id.* at ¶ 11 and
Exs. 10-12.

1 In addition, WCIF's Executive Director, Jon Kaino, provided a summary to the OIC on
2 October 29, 2014, further explaining how the Carriers rated their Members. *Id.* at ¶ 12 and Ex.
3 13. That summary read, in part:

4 In the discussion pertaining to the WCIF rate filing for 2014, you
5 indicated that your staff had some concerns regarding our rate
6 structure. This was surprising to me since in our discussion in July
7 of this year, you indicated that there were no concerns with our
8 rates and based on that information I recommended to my Board of
9 Trustees that we continue the existing rate structure for 2015,
10 which they approved at our August meeting. We have since been
11 quoting many new groups for 2015 based on the current rating
12 model. Below is the synopsis of our position on our rate filing I
13 agreed to provide for your review.

14 As you know, since our medical plans are fully insured through
15 Premera Blue Cross and Group Health, our rates are filed by the
16 carriers but they are the result of a collaborative process that
17 includes WCIF, our consultants, and in this case, your office as
18 well. The resulting rating models were specifically designed to
19 comply with all regulatory requirements, and were modified to
20 comply with comments and direction from your office.

21 In April of this year, both Premera and Group Health received an
22 objection letter on their WCIF filing submission. Their responses
23 to the questions clearly illustrate that our rates do not violate the
24 HIPAA nondiscrimination provisions as no health related factors
25 are used to determine individual or group rates. We do not ask for
26 any health related data and do not consider it in any way when
providing rates to our members.

Id. at Ex. 13 (emphases added).

18 **E. WCIF's Meeting With the OIC in December**

19 Mr. Kaino, WCIF's Deputy Director, Terri Luther, and WCIF's attorney met with
20 representatives of the OIC, including Commissioner Kreidler, on December 8, 2014. *Id.* at ¶ 13.
21 The OIC indicated that they did not have adequate information to make a determination on the
22 rate filings and agreed to accept "supplemental information" from the Carriers, but did not
23 indicate what supplemental information it was seeking. *Id.*

24 In a follow-up email of December 22, 2014, Mr. Kaino notified the OIC of the following:

25 As promised, I have discussed with both carriers your request for
26 additional information on the WCIF filings. While the carriers are

1 not opposed to your request, they both feel that their filing
2 documents and subsequent responses to the OIC objection letters
3 were fully detailed and complete and there is significant confusion
4 as to what additional information is being requested.

5 As part of my discussions with the carriers, I was able to review
6 the full extent of the carriers' filings in addition to their responses
7 to the objection letters. After this review, I have to agree that the
8 information provided seems to clearly illustrate the respective
9 rating models.

10 If you could provide me with the specific issues that require
11 additional clarification, I would be happy to re-approach the
12 carriers to provide that information.

13 *Id.* at Ex. 14 (emphases added). The OIC did not respond to the request for clarification. *Id.* at ¶
14 14.

15 **F. The OIC's Rejections of the Filings**

16 On January 15, 2015, the OIC issued its Rejections of the Filings. *Id.* at ¶ 15 and Exs.
17 15-18. The Rejections of Group Health's and Premera's Filings were substantively similar. *See*
18 *id.* at Exs. 15-18.

19 The Group Health Rejections provided as follows:

20 Your rate and form filings for Washington Counties Insurance
21 Fund (WCIF) are disapproved and closed under the authority of
22 RCW 48.46.060(4).

23 The rating methodology and rates filed on behalf of the
24 Washington State Association of Counties and Washington
25 Counties Insurance Fund (WCIF) are inconsistent with the fact that
26 you filed one single large employer group.

In the rate schedule, there are 21 Rate Levels for each plan design
for active employees. For example, for the benefit plan WCIF
HSA, an employee can be charged a monthly rate ranging from
\$307.98 to \$696.79. In our rate objections, we asked you to
explain in detail how you define a Rate Level and the factors used
to assign an employee to a Risk Level. We also asked you to
provide detailed calculations of the rates assigned to each Risk
Level. Your response to the first objection letter indicated that you
have separately rated various "member groups" within the
Washington State Association of Counties. This means that your
rates filed are for various "employers" -- contrary to your form
filing for one employer only.

1 We also asked you to identify the bona fide employment-based
2 classifications upon which the 21 Risk Levels are based (per 26
3 CFR § 54.9802-1(d). (Examples for bona fide employment-based
4 classifications include current versus former employees, and
5 employees located in different geographic areas.) Your response
6 stated that the bona fide employment based classifications include
7 geographic location, employer's sub-industry classification, and
8 employer's contribution level. However, the "employer" used in
9 the rating response is the "subgroup" and not the employer, the
10 Washington State Association of Counties, filed in the form filing.
11 Your response failed to identify how each Risk Level is related to
12 bona fide employment-based classifications.

13 This tells us that your rates, filed for various employers, are
14 unreasonable in relation to the amount charged for the contract for
15 one single employer, the Washington State Association of
16 Counties. Therefore, your rate and form filings are disapproved
17 and closed under the authority of RCW 48.46.060(4).

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

24 *Id.* at Exs. 17-18.

25 Similarly, the Premera Rejections provided:

26 Your rate and form filings for Washington Counties Insurance
Fund (WCIF) are disapproved and closed under the authority of
RCW 48.44.020(3).

The rating methodology and rates filed on behalf of the
Washington State Association of Counties and Washington
Counties Insurance Fund (WCIF) are inconsistent with the fact that
you filed one single large employer group.

In the rate schedule, there are 21 Risk Tiers for each plan design.
For example, for the benefit plan WCIF 200, an employee can be
charged a monthly rate ranging from \$548.53 to \$1,241.03. In our
rate objections, we asked you to explain in detail how you define a
Risk Tier or Risk Level and the factors used to assign an employee
to a Risk Level. We also asked you to provide detailed
calculations of the rates assigned to each Risk Level. Your
response to the first objection letter indicated that you have
separately rated various "purchasing employers" within the
Washington State Association of Counties. You also stated that
each "participating employer" within the association is assigned

1 rates inclusive of the list of rate adjustments summarized in the
2 "Association Tables," the Tables used to rate participating
3 employers within the association. This means that your rates filed
4 are for various "employers" -- contrary to your form filing for one
5 employer only.

6 We also asked you to identify the bona fide employment-based
7 classifications upon which the 21 Risk Levels are based (per 26
8 CFR § 54.9802-1(d)). (Examples for bona fide employment-based
9 classifications include current versus former employees, and
10 employees located in different geographic areas.) Your response
11 failed to identify how each Risk Level is related to bona fide
12 employment-based classifications.

13 This tells us that your rates, filed for various employers, are
14 unreasonable in relation to the amount charged for the contract for
15 one single employer, the Washington State Association of
16 Counties. Therefore, your rate and form filings are disapproved
17 and closed under the authority of RCW 48.44.020(3).

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

24 *Id.* at Exs. 15-16.

25 WCIF filed its timely Demand for Hearing, pursuant to RCW 48.04.010 *et seq.*, on
26 February 11, 2015, challenging the OIC's Rejections. *See* Demand for Hearing.

27 III. STANDARD OF DECISION

28 Summary judgment in an administrative proceeding is appropriate "if the written record
29 shows that there is no genuine issue as to any material fact and that the moving party is entitled
30 to judgment as a matter of law." WAC 10-08-135; *see also Stewart v. Dep't of Soc. & Health*
31 *Servs.*, 162 Wn. App. 266, 270, 252 P.3d 920 (2011). All facts are viewed "in the light most
32 favorable to the nonmoving party." *Granton v. Wash. State Lottery Comm'n*, 143 Wn. App. 225,
33 230, 177 P.3d 745 (2008).

34 Here, the Parties agree that this matter presents legal issues that would be decided most
35 efficiently via dispositive motions. *See* Prehearing Conference Order at 2.

1 **IV. ARGUMENT**

2 The OIC lacks any foundation in state or federal law to reject the Filings at issue. These
3 baseless Rejections will deprive thousands of county government employees and their
4 dependents of affordable health care options. Specifically, the OIC takes issue with the fact that
5 the Plans involve multiple Risk Levels applied at the Participating Employer Level, rather than
6 to the association (WCIF). See Kaino Decl., Exs. 15-18. But absolutely nothing in state or
7 federal law prohibits such an approach or authorizes the OIC to reject the Filings on that basis.

8 When the courts examine administrative decisions upon judicial review, they:

9 will reverse an administrative decision that (1) violates a
10 constitutional provision on its face or as applied, (2) lies outside
11 the agency's lawful authority or jurisdiction, (3) is a result of an
12 erroneous interpretation or application of the law, (4) is not based
13 on substantial evidence, or (5) is arbitrary or capricious.

14 *Granton*, 143 Wn. App. at 231; see RCW 34.05.570(3). The OIC's Rejections fall into several
15 of the categories justifying reversal were the OIC's decisions to be appealed to the Superior
16 Court. The Rejections "lie[] outside the agency's lawful authority or jurisdiction," as there is no
17 legal basis for the OIC's disapproval of the Filings. *Granton*, 143 Wn. App. at 231. Indeed, the
18 Rejections are "a result of [the OIC's] erroneous interpretation or application of the law," and
19 their lack of any legal support renders them "arbitrary." *Id.*

20 **A. The OIC's Position is Not Supported by State Law**

21 **1. RCW 48.46.060(4) and RCW 48.44.020(3) Do Not Support the OIC's**
22 **Position**

23 In its Rejections, the OIC expressly relies upon RCW 48.46.060(4) (as to Group Health)
24 and RCW 48.44.020(3) (as to Premera), stating:

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

1 Kaino Decl., Exs. 15-16; *compare id.* at Exs. 17-18 (disapproving Group Health’s Filings under
2 the purported authority of RCW 48.46.060(4)).

3 RCW 48.46.060(4) and RCW 48.44.020(3) do not provide any “authority” or basis for
4 rejection of the Filings. The two provisions are substantively identical,⁴ providing: “[T]he
5 commissioner may disapprove any agreement if the benefits provided therein are unreasonable in
6 relation to the amount charged for the agreement.” RCW 48.46.060(4) (emphasis added); RCW
7 48.44.020(3) (emphasis added). The OIC has made no assertion whatsoever that the benefits
8 provided under the Plans are somehow unreasonable in relation to the amount charged for the
9 agreements. The provisions to which the OIC cites are simply inapplicable here.

10 The OIC appears to have implicitly recognized the inapplicability of the provisions, as it
11 added non-existent language to the provisions in its Rejections. Rather than disapproving the
12 Filings because “the benefits provided therein are unreasonable in relation to the amount charged
13 for the agreement,”⁵ as the statutes provide, the OIC has disapproved the Filings because the
14 “rates, filed for various employers, are unreasonable in relation to the amount charged for the
15 contract for one single employer.” Kaino Decl., Exs. 15-18 (emphasis added). That is not what
16 the statutes provide.

17 The cited provisions do not provide the OIC with the authority to reject Filings based on
18 the rates charged to Members. The term “benefits” is not synonymous with the term “rates.”
19 “[T]he legislature is deemed to intend a different meaning when it uses different terms.” *State v.*
20 *Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005). Significantly, the same statutory
21 provisions mention “rates” – but do not authorize the Commissioner to reject filings on the
22 grounds that differing Member rates are purportedly unreasonable in relation to the amount
23 charged for the agreement. RCW 48.46.060(4); RCW 48.44.020(3) (both providing: “Rates, or
24

25 ⁴ RCW 48.46 applies to health maintenance organizations (“HMOs”) like Group Health;
26 RCW 48.44 applies to Health Care Service Contractors, like Premera. In all respects relevant
here, the two provisions are identical.

⁵ RCW 48.46.060(4) (emphasis added); RCW 48.44.020(3) (emphasis added).

1 any modification of rates effective on or after July 1, 2008, for individual health benefit plans
2 may not be used until sixty days after they are filed with the commissioner.”) The Legislature
3 clearly intended “benefits” and “rates” to mean two different things; they are not
4 interchangeable. *See Roggenkamp*, 153 Wn.2d at 625; *In re Forfeiture of One 1970 Chevrolet*
5 *Chevelle*, 166 Wn.2d 834, 838-39, 215 P.3d 166 (2009) (holding that “the ordinary meaning of
6 words . . . and the statutory context” factor into a determination of legislative intent).

7 Nor do the cited statutes apply special restrictions on filings related to associations.
8 They mean exactly what they say and no more: that “the commissioner may disapprove any
9 agreement if the benefits provided therein are unreasonable in relation to the amount charged for
10 the agreement.” RCW 48.46.060(4); RCW 48.44.020(3). “When a statute is plain on its face,
11 we give effect to that plain meaning as an expression of legislative intent.” *In re Forfeiture of*
12 *One 1970 Chevrolet Chevelle*, 166 Wn.2d at 838. A “court will not read into [a] statute the
13 language that it believes was omitted.” *State v. Moses*, 145 Wn.2d 370, 374, 37 P.3d 1216
14 (2002). If the Legislature had intended to refer to “rates” as a basis for disapproval in RCW
15 48.46.060(4) and RCW 48.44.020(3), it would have done so.

16 The inapplicability of RCW 48.46.060(4) and RCW 48.44.020(3) is further emphasized
17 by the regulation implementing those provisions. WAC 284-43-915, entitled “Demonstration
18 that benefits provided are not reasonable in relation to the amount charged for a contract per
19 RCW 48.44.020 and 48.46.060,” outlines the circumstances under which “[b]enefits will be
20 found not to be unreasonable:”

21 if the projected earned premium for the rate renewal period is
22 equal to the following:

23 (a) An actuarially sound estimate of incurred claims associated
24 with the filing for the rate renewal period, where the actuarial
25 estimate of claims recognizes, as applicable, the savings and
costs associated with managed care provisions of the plans
included in the filing; plus

26 (b) An actuarially sound estimate of prudently incurred expenses
associated with the plans included in the filing for the rate

1 renewal period, where the estimate is based on an equitable and
2 consistent expense allocation or assignment methodology; plus

3 (c) An actuarially sound provision for contribution to surplus,
4 contingency charges, or risk charges, where the justification
5 recognizes the carrier's investment earnings on assets other
6 than those related to claim reserves or other similar liabilities;
7 minus

8 (d) An actuarially sound estimate of the forecasted investment
9 earnings on assets related to claim reserves or other similar
10 liabilities for the plans included in the filing for the rate
11 renewal period.

12 WAC 284-43-915(2) (emphasis added). These calculations clearly relate to the value of the
13 benefits received for the overall amount charged, not to the purported unreasonableness of
14 individual Members' rates when compared to one another.

15 The statutes cited by the OIC do not apply to these circumstances and do not provide the
16 OIC with a legitimate basis for its Rejections.

17 **2. No Other State Law Supports the OIC's Position**

18 The sole statutory provisions to which the OIC points are inapplicable to its articulated
19 reason for the Rejections: the fact that the Plans involve multiple Risk Levels established at the
20 Participating Employer level. Neither is there any other basis in state law for the OIC's
21 Rejections. There is no state statute or regulation that provides the OIC with the authority to
22 reject filings based on rating methodology. And there is no state statute or regulation that
23 prohibits an association health plan from utilizing a rating methodology that establishes rates at
24 the Participating Employer level. In fact, there is no state statute or regulation that addresses the
25 rating methodology used by large group association health plans at all.

26 The OIC focused its attention – and its Objection Letters – on the manner in which the
Carriers established the Risk Levels, including the factors considered. *See Kaino Decl., Exs. 15-*
18. But that issue is irrelevant. The OIC had no authority to base its Rejections of the Filings on
the Carriers' rating methodology. Indeed, the OIC's interpretation and application of federal law
as a basis for its Rejections is outside the scope of its authority.

1 **B. The OIC's Position is Not Supported by Federal Law**

2 The Rejections do not cite to any basis in federal law for its decision to reject the Filings,
3 nor is there any applicable federal basis for doing so. Simply put, there is no federal law that
4 prohibits an association health plan from utilizing a rating methodology that establishes rates at
5 the Participating Employer level. The OIC may attempt to say otherwise, pointing to its prior
6 Objection Letters. That argument fails on its face because the Rejections were not issued on the
7 basis of federal law. Even if that were not the case, any attempt to now point to federal law fails
8 for the reasons set forth below.

9 **1. The HIPAA Non-Discrimination Provisions Do Not Support the OIC's**
10 **Position**

11 The OIC's April and October Objection Letters cited to the Health Insurance Portability
12 and Accountability Act ("HIPAA") non-discrimination provisions.⁶ See Kaino Decl., Exs. 1-3,
13 7-9.

14 The HIPAA non-discrimination provisions provide, in relevant part:

15 A group health plan may not require an individual, as a condition
16 of enrollment or continued enrollment under the plan, to pay a
17 premium or contribution that is greater than the premium or
18 contribution for a similarly situated individual (described in
19 paragraph (d) of this section) enrolled in the plan based on any
20 health factor that relates to the individual or a dependent of the
21 individual.

22 26 C.F.R. § 54.9802-1(c)(1)⁷ (emphases added). The provisions further provide:

23 **Group rating based on health factors not restricted under this**
24 **section.** Nothing in this section restricts the aggregate amount that

25 ⁶ The HIPAA non-discrimination provisions are found in the Tri-Department Rule
26 adopted by the Department of Health and Human Services (codified at 45 C.F.R. § 146.121), the
Department of Labor, Employee Benefits Security Administration ("EBSA") (codified at 29
C.F.R. § 2590.702), and the Department of the Treasury (codified at 26 C.F.R. § 54.9802-1).
The identical language found in all three code sections is referred to, collectively, as the "HIPAA
non-discrimination provisions."

⁷ For purposes of brevity, only the Treasury Department's version of the HIPAA non-
discrimination provisions will be cited. The other two Departments' versions are identical. See
n.6, *supra*.

1 an employer may be charged for coverage under a group health
2 plan.

3 26 C.F.R. § 54.9802-1(c)(2)(i) (some emphasis added).

4 “The requirements of [the provisions] apply only within a group of individuals who are
5 treated as similarly situated individuals.” 26 C.F.R. § 54.9802-1(d).

6 [A] plan may treat participants as two or more distinct groups of
7 similarly situated individuals if the distinction between or among
8 the groups of participants is based on a bona fide employment-
9 based classification consistent with the employer’s usual business
10 practice. . . . [E]xamples of classifications that, based on all the
11 relevant facts and circumstances, may be bona fide include full-
12 time versus part-time status, different geographic location,
13 membership in a collective bargaining unit, date of hire, length of
14 service, current employee versus former employee status, and
15 different occupations. However, a classification based on any
16 health factor is not a bona fide employment-based classification . .

17 26 C.F.R. § 54.9802-1(d)(1) (emphasis added).

18 Notably, the OIC’s April Objection Letters cited different purported concerns under the
19 HIPAA non-discrimination provisions than did the October Objection Letters. Kaino Decl., Exs.
20 1-3, 7-9. And the OIC’s Rejections did not cite to the HIPAA non-discrimination provisions at
21 all. *Id.* at Exs. 15-18.

22 In its April Objection Letters, the OIC noted:

23 [U]nder HIPAA an issuer or association must not use health-status
24 related data or information from a specific participant, a subgroup
25 of participants, or a participating purchasing group within the
26 association to establish rates for the participant or the group
 purchaser. This includes specific health status, claims experience,
 participating requirements, etc. . . .

 [HIPAA] prohibits discrimination against participants and
 beneficiaries based on a [sic] health status-related factors.
 Specifically, a group health plan, and health insurance issuer
 offering group health coverage in connection with a group health
 plan, may not establish rules for eligibility (including continued
 eligibility) of any individual related to the health-related factors.

1 Kaino Decl., Exs. 1-3. The OIC required the Carriers to “[e]xplain in detail how you define the
2 risk level including the factors used to assign a risk level,” suggesting concern that the rating
3 methodology involved health status-related factors. *Id.*

4 In its October Objection Letters, the OIC shifted its focus, demanding that the Carriers
5 “identify the bona fide employment-based classification upon which the 21 Rate Levels (Risk
6 Tiers) are based,” “[p]ursuant to 26 CFR § 54.98021(d).” *Id.* at Exs. 7-9. Thus, the OIC’s new
7 concern appeared to be the issue of whether Members employed by different Participating
8 Employers constituted “distinct groups of similarly situated individuals.” *See* 26 C.F.R. §
9 54.9802-1(d)(1).

10 None of the concerns implied in the April or October Objection Letters were justified by
11 the HIPAA non-discrimination provisions. To the extent the OIC’s Rejections are purportedly
12 based upon those provisions, that reliance is misplaced. As with the state statutes to which the
13 OIC cited, the HIPAA non-discrimination provisions are completely inapplicable to the Filings
14 for three primary reasons: (1) the provisions address the issue of discriminatory premiums at the
15 individual level; (2) Members employed by Participating Employers and their dependents are
16 distinct groups of similarly situated individuals, and Participating Employers’ Members cannot
17 be compared to one another for purposes of the non-discrimination provisions; and (3) the non-
18 discrimination provisions prohibit only rates based on health-related factors.

19 The HIPAA non-discrimination provisions explicitly allow aggregate rating at the
20 employer level, even if that rating is based on health factors (and here, it is not based on health
21 factors). *Id.* The provisions do not carve out any exception to that general rule for association
22 health plans. *Id.* Indeed, the provisions only address rating methodology at the individual level,
23 prohibiting discriminatory rating based on health factors associated with individuals. 26 C.F.R.
24 § 54.9802-1(c)(1). Differing aggregate rates at the employer level, even when (unlike here)
25 those rates are based on rating that takes into account aggregate health status data, is not only not
26 prohibited, but is expressly permitted. 26 C.F.R. § 54.9802-1(c)(2)(i).

1 The fact that rating at the Participating Employer level is not prohibited by the HIPAA
2 non-discrimination provisions was further confirmed by EBSA, in the Frequently Asked
3 Questions it issued in connection with the provisions, which included the following exchange:

4 **Q:** Can a health insurance issuer charge an employer different
5 premiums for each individual within a group of similarly situated
6 individuals based on each individual's health status?

7 **A:** No. Issuers may not charge or quote an employer or group
8 health plan separate rates that vary for individuals (commonly
9 referred to as "list billing"), based on any of the health factors.

10 This does not prevent issuers from taking the health factors of each
11 individual into account when establishing a blended, aggregate rate
12 for providing coverage to the employment-based group overall.
13 The issuer may then charge the employer (or plan) a higher overall
14 rate, or a higher blended per-participant rate.^{18]}

15 Here, the differing rates are applied at the Participating Employer level – which is
16 expressly permitted by the provisions – not at the individual level. No individual is charged a
17 higher premium "based on any health factor that relates to the individual or a dependent of the
18 individual."⁹ 26 C.F.R. § 54.9802-1(c)(1) (emphasis added). Instead, an employee of
19 Participating Employer A may pay a higher rate than an employee of Participating Employer B
20 because of aggregate (rather than individual) factors affecting the Risk Level assigned to each
21 Participating Employer.

22 The OIC appears to be asserting that WCIF must be treated as a single employer for
23 purposes of rate filing, and utilize a single employer rate at the association level, simply because
24 a bona fide association of employers is deemed to be an "employer" under the Employee
25 Retirement Income Security Act ("ERISA") § 3(5). Yet the concepts are not analogous; an
26 association's status as an employer for purposes of ERISA has no bearing on its ability to rate at
the Participating Employer level. There is simply no basis for treating WCIF as a single

⁸ http://www.dol.gov/ebsa/faqs/faq_hipaa_ND.html (DOL website, with EBSA FAQ)
(last visited Mar. 28, 2015) (emphasis added).

⁹ Neither are higher rates based on health factors, as discussed below.

1 “employer” for filing purposes, turning a blind eye to the reality that WCIF, as an association, is
2 comprised of multiple, separate Participating Employers.

3 Even if the OIC were correct – and it is not – in deeming WCIF the overarching
4 “employer,” “[t]he requirements of [the provisions] apply only within a group of individuals who
5 are treated as similarly situated individuals.” 26 C.F.R. § 54.9802-1(d).

6 [A] plan may treat participants as two or more distinct groups of
7 similarly situated individuals if the distinction between or among
8 the groups of participants is based on a bona fide employment-
9 based classification consistent with the employer’s usual business
10 practice. . . . [E]xamples of classifications that, based on all the
11 relevant facts and circumstances, may be bona fide include full-
12 time versus part-time status, different geographic location,
13 membership in a collective bargaining unit, date of hire, length of
14 service, current employee versus former employee status, and
15 different occupations. However, a classification based on any
16 health factor is not a bona fide employment-based classification . .

17 26 C.F.R. § 54.9802-1(d)(1) (emphasis added). If factors such as “different geographic location”
18 and “membership in a collective bargaining unit” constitute bona fide employment-based
19 classifications, then surely employment by separate Participating Employers is unquestionably a
20 bona fide employment-based classification, warranting different rates for these “distinct groups
21 of similarly situated individuals.” *Id.* Such distinctions have long been consistent with WCIF’s
22 business practices, and the OIC has never previously objected to WCIF’s approach. Kaino Decl.,
23 ¶¶ 6-7. Thus, a comparison of an employee of Participating Employer A with an employee of
24 Participating Employer B is not appropriate under the provisions.

25 Even if the HIPAA non-discrimination provisions limited rating at the Participating
26 Employer level, as the OIC mistakenly asserts, and even if the Participating Employers were not
permissible “distinct groups of similarly situated individuals,” the HIPAA non-discrimination
provisions are still inapplicable here. That is because the rating is not based on health status-
related factors. Kaino Decl., ¶ 6. The HIPAA non-discrimination provisions only prohibit
charging an individual a higher premium “based on any health factor that relates to the individual

1 or a dependent of the individual.” 26 C.F.R. § 54.9802-1(c)(1) (emphasis added). The OIC itself
2 has acknowledged:

3 Issuers are permitted to use non-health status-related rating factors
4 permitted by federal or state law for a particular large group health
5 plan. Permitted factors include demographics, age, area, and
6 gender.

7 Kaino Decl., Exs. 2-4 (emphasis added). Regardless of whether rating is established at the
8 individual or Participating Employer level, differences in rates are completely irrelevant where,
9 as here, they are not based on health status-related factors. *Id.* at ¶ 6; 26 C.F.R. § 54.9802-
10 1(c)(1).

11 **2. No Other Federal Law Supports the OIC’s Position**

12 The HIPAA nondiscrimination provisions are the only federal provisions to which the
13 OIC has expressly pointed in connection with the Filings – and then only in the Objection
14 Letters, not in the Rejections. As delineated above, those provisions do not apply to the Filings.
15 And there is no other basis in federal law for the OIC’s Rejections. To the extent the OIC relies
16 loosely on “the Affordable Care Act” for its Rejections, it has failed to cite to any particular
17 provision of the Act. Nor could it do so, as no language in the ACA supports the OIC’s position.

18 **C. The OIC Lacks the Authority to Impose its Proposed Remedy**

19 The OIC, in its Rejections, mandates a remedy that does not flow from its decisions. The
20 Rejections state:

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

27 Kaino Decl., Exs. 15-18 (emphasis added).

28 The OIC has rejected the Carriers’ 2014 Filings. *Id.* As of the date of this Motion, WCIF
29 has received no indication that the OIC has not rejected the Carriers’ 2015 Filings, involving the
30 Plans in which Members are currently enrolled. Kaino Decl., ¶ 16. Because the OIC has made

1 no decision regarding the currently-applicable Plans, it cannot mandate that current enrollees
2 transfer to different plans.

3 **D. Equitable Considerations Further Weigh Against the OIC's Position**

4 The OIC's Rejections lack any basis whatsoever under state or federal law. Its arbitrary
5 and baseless disapprovals of the Filings will negatively impact thousands of public employees
6 (and their dependents) throughout the State of Washington if the OIC's proposed remedy is
7 imposed. Members will be obligated to transfer to other benefit plans that may have
8 substantially higher premiums. Kaino Decl., ¶ 17. This result is directly contrary to the
9 underlying purpose of the ACA: to provide citizens with affordable health care.

10 This result is particularly egregious given the OIC's prior acquiescence to WCIF's and
11 the Carriers' rating methodology and its substantial delay in issuing its Rejections.

12 In 2011, 2012, and 2013, the OIC approved the Carriers' WCIF-related rate filings that
13 involved the very same type of Risk Levels utilized in the 2014 Filings. *Id.* at ¶ 7. There has
14 been no change in the law since then that would justify a different result, including the ACA.

15 Although the Carriers submitted the 2014 Filings in mid-February 2014, the OIC did not
16 issue its Rejections for nearly a year – until January 15, 2015. *Id.* at ¶ 4 and Exs. 15-18. The
17 OIC did not issue its initial Objection Letters until three months after the Carriers submitted the
18 Filings. *Id.* at Exs. 1-3. After the Carriers' prompt responses, another five months passed before
19 the OIC issued its follow-up Objection Letters. *Id.* at Exs. 7-9. Again, the Carriers promptly
20 responded, but the OIC still did not issue its Rejections for two more months. *Id.* at Exs. 15-18.
21 Had the OIC acted reasonably promptly, WCIF and the Carriers could have had sufficient time to
22 make changes to their 2015 benefit plans before those plans went into effect. The OIC's delay
23 has placed WCIF, the Carriers, the Participating Employers, and their Members in the
24 inequitable position of facing a significant, negative, and abrupt change to their benefit plans in
25 the middle of a plan year.

1 **V. CONCLUSION**

2 For the reasons set forth above, WCIF respectfully requests that the OIC's Rejections be
3 overturned and that the 2014 rate and form Filings be approved by the OIC.

4 Dated this 1st day of April, 2015.

5 STOEL RIVES LLP

6 

7 Maren R. Norton, WSBA # 35435

8 Robin L. Larmer, WSBA #46289

9 Karin D. Jones, WSBA # 42406

10 600 University St., Ste. 3600

11 Seattle, WA 98101

12 Phone: (206) 624-0900

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14 maren.norton@stoel.com

15 robin.larmer@stoel.com

16 karin.jones@stoel.com

17 Attorneys for WCIF

1 **CERTIFICATE OF SERVICE**

2 I, Juli Waldschmidt, certify under penalty of perjury under the laws of the State of
3 Washington that, on April 1, 2015, I caused the foregoing document to be served on the persons
4 listed below in the manner shown:

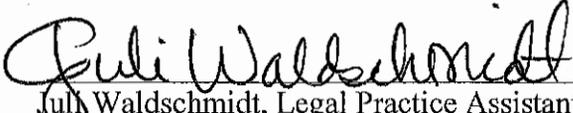
5 Judge George Finkle (Ret.)
6 Presiding Officer
7 Office of the Insurance Commissioner
8 PO Box 40255
9 Olympia, WA 98504-0255
10 Email: kellyc@oic.wa.gov

11 *Via email and U.S. Mail*

12 Mike Kreidler, Insurance Commissioner
13 Email: mikek@oic.wa.gov
14 James T. Odiorne, J.D., CPA, Chief Deputy
15 Insurance Commissioner
16 Email: jameso@oic.wa.gov
17 Molly Nollette, Deputy Commissioner, Rates and
18 Forms Division
19 Email: mollyn@oic.wa.gov
20 AnnaLisa Gellermann, Deputy Commissioner,
21 Legal Affairs Division
22 Email: annalisag@oic.wa.gov
23 Charles Brown, Sr., Insurance Enforcement
24 Specialist, Legal Affairs Division
25 Email: charlesb@oic.wa.gov
26 Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Via email and U.S. Mail

17 Dated this 1st day of April, 2015, at Seattle, Washington.

18
19 
20 Juli Waldschmidt, Legal Practice Assistant
21 STOEL RIVES LLP

FILED

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BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

IN THE MATTER OF

WASHINGTON COUNTIES INSURANCE
FUND

Docket No. 15-0034

DECLARATION OF JON KAINO IN
SUPPORT OF WASHINGTON
COUNTIES INSURANCE FUND'S
MOTION FOR SUMMARY
JUDGMENT

1. I am the Executive Director of the Washington Counties Insurance Fund ("WCIF"), a position I have held since June 1, 2012. I am above the age of 18 and competent to testify to the matters set forth herein.

2. WCIF is a multi-employer non-profit trust fund formed in the 1950s by the Washington State Association of Counties to provide for the payment of welfare benefits for participating county governments' employees and their dependents.

3. In 2014, WCIF provided fully-insured benefit plans ("the Plans") through Premiera Blue Cross ("Premera") and Group Health Cooperative ("Group Health") (collectively, "the Carriers") to 78 public employers and publicly-funded non-profit employers ("Participating

DECLARATION OF JON KAINO IN SUPPORT OF WASHINGTON COUNTIES INSURANCE
FUND'S MOTION FOR SUMMARY JUDGMENT - 1

1 Employers”). The Participating Employers, in turn, offered the Plans to their employees and
2 their employees’ eligible dependents (“Members”). Approximately 6,959 Members were
3 enrolled in the Plans in 2014: 1,547 Members with Group Health and 5,412 Members with
4 Premera.

5
6 4. In mid-February 2014, Premera and Group Health submitted the 2014 rate and
7 form filings associated with WCIF’s Plans (“the Filings”) to the Office of the Insurance
8 Commissioner (“OIC”), via the System for Electronic Rate and Form Filing (“SERFF”).
9 Because the Filings are quite voluminous, WCIF has not attached hard copies of the entire files
10 to this Declaration. The Filings can be downloaded from the OIC’s website at:
11 <https://fortress.wa.gov/oic/onlinefilingsearch/> (last visited Mar. 31, 2015), by entering a search
12 for “Health and Disability,” “H16G Group Health - Major Medical” insurance, and entering
13 “Premera Blue Cross” or “Group Health” under the “Company” category. The SERFF Tracking
14 Numbers of the Filings at issue in this appeal are as follows: (1) PBCC-129415186 (Premera);
15 (2) PBCC-129414875 (Lifewise, a Premera company); (3) GHCC - 129421076 (Group Health
16 Options); and (4) GHCC - 129421102 (Group Health). Should the Administrative Law Judge
17 and/or the OIC prefer hard copies of the complete files, WCIF can provide those.
18

19 5. While the Filings were filed by the Carriers, they were the result of a
20 collaborative process that included WCIF.
21

22 6. Just as had been the case in past years, the 2014 Filings included multiple Risk
23 Levels that applied to the Plans, with different monthly rates associated with each Risk Level.
24 Each Participating Employer was assigned to one of 21 Risk Levels, with that Risk Level
25 determined on the basis of factors such as the Participating Employer’s geographic location, sub-
26

1 industry classification, and contribution level. No health status-related factors were utilized in
2 assigning Participating Employers to Risk Levels and in setting rates. Only non-health status-
3 related, aggregate factors, such as the ones noted above, were used to set the rates. The rating
4 was established at the Participating Employer level, rather than applying a single Risk Level at
5 the association (WCIF) level.
6

7 7. This method of rating -- establishing multiple Risk Levels at the Participating
8 Employer level -- is not new to the Carriers' 2014 Filings. The OIC accepted this method of
9 rating and approved the Carriers' rate and form filings associated with WCIF benefit plans in
10 2011, 2012, and 2013. Such distinctions in rating between Participating Employers have long
11 been consistent with WCIF's business practices, and the OIC has never previously objected to
12 WCIF's approach.
13

14 8. On April 23, 2014, the OIC sent the Carriers nearly identical Objection Letters
15 through SERFF, true and correct copies of which are attached hereto as Exhibits 1 through 3.

16 9. The Carriers responded to the OIC's Objection Letters in May 2014. True and
17 correct copies of those Response Letters are attached hereto as Exhibit 4 through 6.

18 10. The OIC sent the Carriers nearly identical Objection Letters through SERFF on
19 October 28, 2014, true and correct copies of which are attached hereto as Exhibits 7 through 9.
20

21 11. The Carriers responded to the October Objection Letters on November 5, 2014,
22 clarifying, once again, that the Rate Levels were based on aggregate group characteristics,
23 including Participating Employers' geographic locations, sub-industry classifications, and
24 contribution levels. True and correct copies of those Response Letters are attached hereto as
25 Exhibit 10 through 12.
26

DECLARATION OF JON KAINO IN SUPPORT OF WASHINGTON COUNTIES INSURANCE
FUND'S MOTION FOR SUMMARY JUDGMENT - 3

1 12. In addition, I provided a summary to the OIC on October 29, 2014, further
2 explaining how the Carriers rated their Members. A true and correct copy of that summary is
3 attached hereto as Exhibit 13.

4 13. WCIF's Deputy Director, Terri Luther, WCIF's attorney, and I met with
5 representatives of the OIC, including Commissioner Mike Kreidler, on December 8, 2014. The
6 OIC indicated that they did not have adequate information to make a determination on the rate
7 filings and agreed to accept "supplemental information" from the Carriers, but did not indicate
8 what supplemental information it was seeking.

9
10 14. In a follow-up email of December 22, 2014, a true and correct copy of which is
11 attached hereto as Exhibit 14, I notified the OIC of my discussions with the Carriers and asked
12 the OIC to provide me with the specific issues requiring additional clarification. The OIC did
13 not respond to the request for clarification.

14
15 15. On January 15, 2015, the OIC issued its Rejections of the Filings. True and
16 correct copies of those Rejections are attached hereto as Exhibits 15 through 18.

17 16. As of the date of this Motion, WCIF has received no indication that the OIC has
18 taken any action on the Carriers' 2015 Filings, involving the Plans in which Members are
19 currently enrolled.

20 17. If the OIC's requested remedy is imposed, Members will be obligated to transfer
21 to other benefit plans that may have substantially higher premiums.

22
23 I declare under penalty of perjury under the laws of the State of Washington that the
24 foregoing is true and correct to the best of my knowledge.

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DECLARATION OF JON KAINO IN SUPPORT OF WASHINGTON COUNTIES INSURANCE
FUND'S MOTION FOR SUMMARY JUDGMENT - 4

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SIGNED at Seattle, Washington this 31st day of March, 2015.



JON KAINO

DECLARATION OF JON KAINO IN SUPPORT OF WASHINGTON COUNTIES INSURANCE
FUND'S MOTION FOR SUMMARY JUDGMENT - 5

1 **CERTIFICATE OF SERVICE**

2 I, Juli Waldschmidt, certify under penalty of perjury under the laws of the State of
3 Washington that, on April 1, 2015, I caused the foregoing document to be served on the persons
4 listed below in the manner shown:

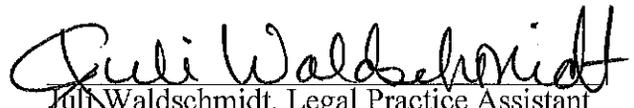
5 Judge George Finkle (Ret.)
6 Presiding Officer
7 Office of the Insurance Commissioner
8 PO Box 40255
9 Olympia, WA 98504-0255
10 Email: kellyc@oic.wa.gov

11 *Via email and U.S. Mail*

12 Mike Kreidler, Insurance Commissioner
13 Email: mikek@oic.wa.gov
14 James T. Odiorne, J.D., CPA, Chief Deputy
15 Insurance Commissioner
16 Email: jameso@oic.wa.gov
17 Molly Nollette, Deputy Commissioner, Rates and
18 Forms Division
19 Email: mollyn@oic.wa.gov
20 AnnaLisa Gellermann, Deputy Commissioner,
21 Legal Affairs Division
22 Email: annalisag@oic.wa.gov
23 Charles Brown, Sr., Insurance Enforcement
24 Specialist, Legal Affairs Division
25 Email: charlesb@oic.wa.gov
26 Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Via email and U.S. Mail

17 Dated this 1st day of April, 2015, at Seattle, Washington.

18
19 
20 Juli Waldschmidt, Legal Practice Assistant
21 STOEL RIVES LLP

State: Washington **Filing Company:** Premera Blue Cross
TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002C Large Group Only - Other
Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA - Washington Counties Insurance Fund (Premera) - Public
Project Name/Number: /WCIF - PBC

Objection Letter

Objection Letter Status	Active Suspense
Objection Letter Date	04/23/2014
Submitted Date	04/23/2014
Respond By Date	05/30/2014

Dear Julie Perez,

Introduction:

Thank you for your filing submission. Our review has been suspended because we require additional information or clarification, detailed in the objections below. Please submit your response by the "Respond By" date. If you do not respond by the "Respond By" date, we will close your filing.

To help you respond to our objections, the following paragraphs outline some federal and state rating requirements related to group health plans.

Rating Requirements for Large Employers:

Effective January 1, 2014, the state small group community rating requirements under RCW 48.44.023, RCW 48.46.066, and RCW 48.21.045 will apply to grandfathered small group health plans only. For all non-grandfathered individual and small group health plans effective January 1, 2014, the federal community rating requirements under 45 CFR §147.102 govern the rating.

Prior to 2014 under RCW 48.44.024, RCW 48.46.068, and RCW 48.21.047, employers purchasing health plans through associations were treated as large employers regardless of their number of employees, and the plans were not subject to the state small group community rating requirements. However, the state laws did not define the "association" to be one large employer. The determination of whether the group health plan exists at the association level or at the participating individual employer level under the Affordable Care Act depends on whether the association itself constitutes "an employer" under ERISA. If the association does not qualify as an employer under ERISA, the association is irrelevant for purposes of health plan filings. If the association does meet the ACA and ERISA employer test, the association itself is considered one large employer for health plan filing purposes and the HIPAA nondiscrimination provisions are enforced on the association level.

For all large groups, including associations who qualify under the ERISA 3(5) definition of an employer, the federal Health Insurance Portability and Accountability Act (HIPAA) prohibits discrimination against participants and beneficiaries based on a health status-related factors. Specifically, a group health plan, and health insurance issuer offering group health coverage in connection with a group health plan, may not establish rules for eligibility (including continued eligibility) of any individual related to the health-related factors. Federal law prohibits use of the following factors: health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability, and disability. 29 CFR Chapter XXV, Section 2590.702.

As a result, under HIPAA an issuer or association must not use health-status related data or information from a specific participant, a subgroup of participants, or a participating purchasing group within the association to establish rates for the participant or the group purchaser. This includes specific health status, claims experience, participation requirements, etc. As an example, for any two similarly situated individuals (the same age and gender) within the association employer, the association health plan as the group health plan or the carrier as the issuer cannot charge higher rates for one individual simply because the one individual has more medical claim history or existing medical conditions than the other individual.

Issuers are permitted to use non-health status-related rating factors permitted by federal or state law for a particular large group health plan. Permitted factors include demographics, age, area, and gender.

With that being said, please respond to the following objections:

EXHIBIT \

State: Washington **Filing Company:** Premiera Blue Cross
TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002C Large Group Only - Other
Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA - Washington Counties Insurance Fund (Premera) - Public
Project Name/Number: /WCIF - PBC

Objection 1

- Public Rates Washington Counties Insurance Fund (Premera), [WCIFHDHP-14, WCIF2000114A, WCIF5000114A, WCIF7500114A, WCIF712500114A, WCIF720000114A, WCIF730000114A] (Rate)

Comments: In the rate schedule, there are 21 risk tier for each plan design. For example, for the benefit plan WCIF 200, an employee can be charged a monthly rate ranging from \$548.53 to \$1,241.03. Please respond to the following questions:

- (a) Explain in detail how you define the risk level including the factors used to assign a risk level.
- (b) Provide detailed calculations of the rates for each risk level. Your response must be detailed enough to allow us to the replicate the rate for any new or existing employee.
- (c) Provide the names of the purchasing groups effective January 1, 2014, and the risk level for each purchasing group.
- (d) For each purchasing group, explain in detail how you develop the rate schedule.

Objection 2

- Public Rates Washington Counties Insurance Fund (Premera), [WCIFHDHP-14, WCIF2000114A, WCIF5000114A, WCIF7500114A, WCIF712500114A, WCIF720000114A, WCIF730000114A] (Rate)

Comments: Please explain whether you or the association requires any new or existing members of the association to provide any information regarding their health or claims history. If yes, please provide the following information:

- a) A copy of the questions or request for information regarding health or claims history;
- b) An explanation as to how the information provided regarding health or claims history is used to determine rates;
- c) How the rate setting using the information on health or claims history complies with the requirements under HIPAA, 29 CFR Chapter XXV, Section 2590.702.

Please note that if a questionnaire or similar document is used as part of the application for the health coverage, it must be included in the form filing.

Conclusion:

Please also note that if carriers fail to comply with state or federal laws or regulations, the OIC has the authority to disapprove rates or forms under RCW 48.18.110, RCW 48.44.020, and RCW 48.46.060.

Sincerely,
Lichiou Lee

State: Washington Filing Company: Group Health Cooperative
 TOI/Sub-TOI: HOrg02G Group Health Organizations - Health Maintenance (HMO)/HOrg02G.003A Large Group Only
 - PPO

Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection

Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1888T14

Objection Letter

Objection Letter Status	Active Suspense
Objection Letter Date	04/23/2014
Submitted Date	04/23/2014
Respond By Date	05/23/2014

Dear Wendy Hertlein,

Introduction:

Thank you for your filing submission. Our review has been suspended because we require additional information or clarification, detailed in the objections below. Please submit your response by the "Respond By" date. If you do not respond by the "Respond By" date, we will close your filing.

To help you respond to our objections, the following paragraphs outline some federal and state rating requirements related to group health plans.

Rating Requirements for Large Employers:

Effective January 1, 2014, the state small group community rating requirements under RCW 48.44.023, RCW 48.46.066, and RCW 48.21.045 will apply to grandfathered small group health plans only. For all non-grandfathered individual and small group health plans effective January 1, 2014, the federal community rating requirements under 45 CFR §147.102 govern the rating.

Prior to 2014 under RCW 48.44.024, RCW 48.46.068, and RCW 48.21.047, employers purchasing health plans through associations were treated as large employers regardless of their number of employees, and the plans were not subject to the state small group community rating requirements. However, the state laws did not define the "association" to be one large employer. The determination of whether the group health plan exists at the association level or at the participating individual employer level under the Affordable Care Act depends on whether the association itself constitutes "an employer" under ERISA. If the association does not qualify as an employer under ERISA, the association is irrelevant for purposes of health plan filings. If the association does meet the ACA and ERISA employer test, the association itself is considered one large employer for health plan filing purposes and the HIPAA nondiscrimination provisions are enforced on the association level.

For all large groups, including associations who qualify under the ERISA 3(5) definition of an employer, the federal Health Insurance Portability and Accountability Act (HIPAA) prohibits discrimination against participants and beneficiaries based on a health status-related factors. Specifically, a group health plan, and health insurance issuer offering group health coverage in connection with a group health plan, may not establish rules for eligibility (including continued eligibility) of any individual related to the health-related factors. Federal law prohibits use of the following factors: health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability, and disability. 29 CFR Chapter XXV, Section 2590.702.

As a result, under HIPAA an issuer or association must not use health-status related data or information from a specific participant, a subgroup of participants, or a participating purchasing group within the association to establish rates for the participant or the group purchaser. This includes specific health status, claims experience, participation requirements, etc. As an example, for any two similarly situated individuals (the same age and gender) within the association employer, the association health plan as the group health plan or the carrier as the issuer cannot charge higher rates for one individual simply because the one individual has more medical claim history or existing medical conditions than the other individual.

Issuers are permitted to use non-health status-related rating factors permitted by federal or state law for a particular large group health plan. Permitted factors include demographics, age, area, and gender.

EXHIBIT 2

State: Washington Filing Company: Group Health Cooperative
TOI/Sub-TOI: HOrg02G Group Health Organizations - Health Maintenance (HMO)/HOrg02G.003A Large Group Only
- PPO

Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection

Product Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1888T14
With that being said, please respond to the following objections:

Objection 1

- Rate Schedule, [C36557] (Rate)

Comments: In the rate schedule, there are 21 risk levels for each plan design. For example, for the benefit plan WCIF HSA, an employee can be charged a monthly rate ranging from \$307.98 to \$878.78. Please respond to the following questions:

- (a) Explain in detail how you define the risk level including the factors used to assign a risk level.
- (b) Provide detailed calculations of the rates for each risk level. Your response must be detailed enough to allow us to replicate the rate for any new or existing employee.
- (c) Provide the names of the purchasing groups effective January 1, 2014, and the risk level for each purchasing group.
- (d) For each purchasing group, explain in detail how you develop the rate schedule.

Objection 2

- Rate Schedule, [C36557] (Rate)

Comments: Please explain whether you or the association requires any new or existing members of the association to provide any information regarding their health or claims history. If yes, please provide the following information:

- a) A copy of the questions or request for information regarding health or claims history;
- b) An explanation as to how the information provided regarding health or claims history is used to determine rates;
- c) How the rate setting using the information on health or claims history complies with the requirements under HIPAA, 29 CFR Chapter XXV, Section 2590.702.

Please note that if a questionnaire or similar document is used as part of the application for the health coverage, it must be included in the form filing.

Conclusion:

Please also note that if carriers fail to comply with state or federal laws or regulations, the OIC has the authority to disapprove rates or forms under RCW 48.18.110, RCW 48.44.020, and RCW 48.46.060.

Sincerely,
Lichiou Lee

State: Washington Filing Company: Group Health Options, Inc.
 TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002B Large Group Only - POS
 Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection
 Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1890T14

Objection Letter

Objection Letter Status	Active Suspense
Objection Letter Date	04/23/2014
Submitted Date	04/23/2014
Respond By Date	05/23/2014

Dear Wendy Hertlein,

Introduction:

Thank you for your filing submission. Our review has been suspended because we require additional information or clarification, detailed in the objections below. Please submit your response by the "Respond By" date. If you do not respond by the "Respond By" date, we will close your filing.

To help you respond to our objections, the following paragraphs outline some federal and state rating requirements related to group health plans.

Rating Requirements for Large Employers:

Effective January 1, 2014, the state small group community rating requirements under RCW 48.44.023, RCW 48.46.066, and RCW 48.21.045 will apply to grandfathered small group health plans only. For all non-grandfathered individual and small group health plans effective January 1, 2014, the federal community rating requirements under 45 CFR §147.102 govern the rating.

Prior to 2014 under RCW 48.44.024, RCW 48.46.068, and RCW 48.21.047, employers purchasing health plans through associations were treated as large employers regardless of their number of employees, and the plans were not subject to the state small group community rating requirements. However, the state laws did not define the "association" to be one large employer. The determination of whether the group health plan exists at the association level or at the participating individual employer level under the Affordable Care Act depends on whether the association itself constitutes "an employer" under ERISA. If the association does not qualify as an employer under ERISA, the association is irrelevant for purposes of health plan filings. If the association does meet the ACA and ERISA employer test, the association itself is considered one large employer for health plan filing purposes and the HIPAA nondiscrimination provisions are enforced on the association level.

For all large groups, including associations who qualify under the ERISA 3(5) definition of an employer, the federal Health Insurance Portability and Accountability Act (HIPAA) prohibits discrimination against participants and beneficiaries based on a health status-related factors. Specifically, a group health plan, and health insurance issuer offering group health coverage in connection with a group health plan, may not establish rules for eligibility (including continued eligibility) of any individual related to the health-related factors. Federal law prohibits use of the following factors: health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability, and disability. 29 CFR Chapter XXV, Section 2590.702.

As a result, under HIPAA an issuer or association must not use health-status related data or information from a specific participant, a subgroup of participants, or a participating purchasing group within the association to establish rates for the participant or the group purchaser. This includes specific health status, claims experience, participation requirements, etc. As an example, for any two similarly situated individuals (the same age and gender) within the association employer, the association health plan as the group health plan or the carrier as the issuer cannot charge higher rates for one individual simply because the one individual has more medical claim history or existing medical conditions than the other individual.

Issuers are permitted to use non-health status-related rating factors permitted by federal or state law for a particular large group health plan. Permitted factors include demographics, age, area, and gender.

EXHIBIT 3

State: Washington Filing Company: Group Health Options, Inc.
TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002B Large Group Only - POS
Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection
Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1890T14
With that being said, please respond to the following objections.

Objection 1

- Rate Schedule, [C36554, C36558, C36559, WCIFHSA] (Rate)

Comments: In the rate schedule, there are 21 risk levels for each plan design. For example, for the benefit plan WCIF HSA, an employee can be charged a monthly rate ranging from \$307.98 to \$878.78. Please respond to the following questions:

- (a) Explain in detail how you define the risk level including the factors used to assign a risk level.
- (b) Provide detailed calculations of the rates for each risk level. Your response must be detailed enough to allow us to replicate the rate for any new or existing employee.
- (c) Provide the names of the purchasing groups effective January 1, 2014, and the risk level for each purchasing group.
- (d) For each purchasing group, explain in detail how you develop the rate schedule

Objection 2

- Rate Schedule, [C36554, C36558, C36559, WCIFHSA] (Rate)

Comments: Please explain whether you or the association requires any new or existing members of the association to provide any information regarding their health or claims history. If yes, please provide the following information:

- a) A copy of the questions or request for information regarding health or claims history;
- b) An explanation as to how the information provided regarding health or claims history is used to determine rates;
- c) How the rate setting using the information on health or claims history complies with the requirements under HIPAA, 29 CFR Chapter XXV, Section 2590.702.

Please note that if a questionnaire or similar document is used as part of the application for the health coverage, it must be included in the form filing.

Conclusion:

Please also note that if carriers fail to comply with state or federal laws or regulations, the OIC has the authority to disapprove rates or forms under RCW 48.18.110, RCW 48.44.020, and RCW 48.46.060.

Sincerely,
Lichiou Lee

State: Washington Filing Company: Premera Blue Cross
 TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002C Large Group-Only - Other
 Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA - Washington Counties Insurance Fund (Premera) - Public
 Project Name/Number: /WCIF - PBC

Response Letter

Response Letter Status	Submitted to State
Response Letter Date	05/19/2014
Submitted Date	05/30/2014

Dear Lichiou Lee,

Introduction:

Thank you for your correspondence of April 23, 2014. Because our response to the Objection Letter includes descriptions of rating methodology and data that Premera considers to be proprietary, we are submitting our full response under the proprietary rate filing submission, under State Tracking Number 267398.

Response 1

Comments:

Please see our full response under State Tracking Number 267398.

Related Objection 1

Applies To:

- Public Rates Washington Counties Insurance Fund (Premera), [WCIFHDHP-14, WCIF2000114A, WCIF5000114A, WCIF7500114A, WCIF712500114A, WCIF720000114A, WCIF730000114A] (Rate)

Comments: In the rate schedule, there are 21 risk tier for each plan design. For example, for the benefit plan WCIF 200, an employee can be charged a monthly rate ranging from \$548.53 to \$1,241.03. Please respond to the following questions:

- (a) Explain in detail how you define the risk level including the factors used to assign a risk level.
- (b) Provide detailed calculations of the rates for each risk level. Your response must be detailed enough to allow us to replicate the rate for any new or existing employee.
- (c) Provide the names of the purchasing groups effective January 1, 2014, and the risk level for each purchasing group.
- (d) For each purchasing group, explain in detail how you develop the rate schedule.

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Response 2

Comments:

Please see our full response under State Tracking Number 267398.

Related Objection 2

Applies To:

- Public Rates Washington Counties Insurance Fund (Premera), [WCIFHDHP-14, WCIF2000114A, WCIF5000114A, WCIF7500114A, WCIF712500114A, WCIF720000114A, WCIF730000114A] (Rate)

EXHIBIT 4

SERFF Tracking #: PBCC-129415186 State Tracking #: 267407

Company Tracking #: WCIF-PBCEA14 PUBLIC RATE

State: Washington Filing Company: Premiera Blue Cross
TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002C Large Group Only - Other
Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA - Washington Counties Insurance Fund (Premera) - Public
Project Name/Number: /WCIF - PBC

Comments: Please explain whether you or the association requires any new or existing members of the association to provide any information regarding their health or claims history. If yes, please provide the following information:

- a) A copy of the questions or request for information regarding health or claims history;
- b) An explanation as to how the information provided regarding health or claims history is used to determine rates;
- c) How the rate setting using the information on health or claims history complies with the requirements under HIPAA, 29 CFR Chapter XXV, Section 2590.702.

Please note that if a questionnaire or similar document is used as part of the application for the health coverage, it must be included in the form filing.

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Conclusion:

Thank you for your consideration of our response. Should you have any further questions, please contact us.

Sincerely,
Julie Aumick

State: Washington Filing Company: Group Health Cooperative
 TOI/Sub-TOI: HOrg02G Group Health Organizations - Health Maintenance (HMO)/HOrg02G.003A Large Group Only
 - PPO
 Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection
 Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1888T14

Response Letter

Response Letter Status Submitted to State
 Response Letter Date 05/21/2014
 Submitted Date 05/21/2014

Dear Lichiou Lee,

Introduction:

Thank you for responding so quickly to our WCIF filing. We would feel more comfortable filing the responses to some of your objections in the not for public filing. Please let us know if that does not meet your needs.

Response 1**Comments:**

Please see Group Information under supporting documentation Tab in not for public filing. You will need to review both attachments to answers your objections. Apologize for the small print, please zoom to 300% to see all document.

Related Objection 1

Applies To:

- Rate Schedule, [C36557] (Rate)

Comments: In the rate schedule, there are 21 risk levels for each plan design. For example, for the benefit plan WCIF HSA, an employee can be charged a monthly rate ranging from \$307.98 to \$878.78. Please respond to the following questions:

- (a) Explain in detail how you define the risk level including the factors used to assign a risk level.
- (b) Provide detailed calculations of the rates for each risk level. Your response must be detailed enough to allow us to the replicate the rate for any new or existing employee.
- (c) Provide the names of the purchasing groups effective January 1, 2014, and the risk level for each purchasing group.
- (d) For each purchasing group, explain in detail how you develop the rate schedule.

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Response 2**Comments:**

Please see Group Information under supporting documentation Tab in not for public filing. You will need to review both attachments to answers your objections. Apologize for the small print, please zoom to 300% to see all document.

Related Objection 2

Applies To:

- Rate Schedule, [C36557] (Rate)

Comments: Please explain whether you or the association requires any new or existing members of the association to provide any information regarding their health or claims history. If yes, please provide the following information:

- a) A copy of the questions or request for information regarding health or claims history;
- b) An explanation as to how the information provided regarding health or claims history is used to determine rates;
- c) How the rate setting using the information on health or claims history complies with the requirements under HIPAA, 29 CFR Chapter XXV, Section 2590.702.

Please note that if a questionnaire or similar document is used as part of the application for the health coverage, it must be included in the form filing.

EXHIBIT 5

State: Washington **Filing Company:** Group Health Cooperative
TOI/Sub-TOI: HOrg02G Group Health Organizations - Health Maintenance (HMO)/HOrg02G.003A Large Group Only
- PPO
Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection
Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1888T14

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Conclusion:

Thank you for taking the time to review our filing. Once again we hope that you allow us to keep the proprietary information needed to answer the objection filed under the not for public filing.

Sincerely,
Hicham Laksiouer

State: Washington Filing Company: Group Health Options, Inc.
 TOI/Sub-TOI: H16G.Group Health - Major Medical/H16G.002B Large Group Only - POS
 Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection
 Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1890T14

Response Letter

Response Letter Status	Submitted to State
Response Letter Date	05/21/2014
Submitted Date	05/21/2014

Dear Lichiou Lee,

Introduction:

Thank you for responding so quickly to our WCIF filing. We would feel more comfortable filing the responses to some of your objections in the not for public filing. Please let us know if that does not meet your needs.

Response 1

Comments:

Please see Group Information under supporting documentation Tab in not for public filing. You will need to review both attachments to answers your objections. Apologize for the small print, please zoom to 300% to see all document.

Related Objection 1

Applies To:

- Rate Schedule, [C36554, C36558, C36559, WCIFHSA] (Rate)

Comments: In the rate schedule, there are 21 risk levels for each plan design. For example, for the benefit plan WCIF HSA, an employee can be charged a monthly rate ranging from \$307.98 to \$878.78. Please respond to the following questions:

- Explain in detail how you define the risk level including the factors used to assign a risk level.
- Provide detailed calculations of the rates for each risk level. Your response must be detailed enough to allow us to replicate the rate for any new or existing employee.
- Provide the names of the purchasing groups effective January 1, 2014, and the risk level for each purchasing group.
- For each purchasing group, explain in detail how you develop the rate schedule

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Response 2

Comments:

Please see Group Information under supporting documentation Tab in not for public filing. You will need to review both attachments to answers your objections. Apologize for the small print, please zoom to 300% to see all document.

Related Objection 2

Applies To:

- Rate Schedule, [C36554, C36558, C36559, WCIFHSA] (Rate)

Comments: Please explain whether you or the association requires any new or existing members of the association to provide any information regarding their health or claims history. If yes, please provide the following information:

- A copy of the questions or request for information regarding health or claims history;
- An explanation as to how the information provided regarding health or claims history is used to determine rates;
- How the rate setting using the information on health or claims history complies with the requirements under HIPAA, 29 CFR Chapter XXV, Section 2590.702.

Please note that if a questionnaire or similar document is used as part of the application for the health coverage, it must be included in the form filing.

EXHIBIT 6

SERFF Tracking #: GHCC-129421076 State Tracking #: 267370

Company Tracking #: CA1890T14

State: Washington Filing Company: Group Health Options, Inc.
TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002B Large Group Only - POS
Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties
Insurance Fund (WCIF) For Public Inspection
Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties
Insurance Fund (WCIF) For Public Inspection/CA1890T14

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Conclusion:

Thank you for taking the time to review our filing. Once again we hope that you allow us to keep the proprietary information needed to answer the objection filed under the not for public filing.

Sincerely,

Hicham Laksiouer

State: Washington Filing Company: Premera Blue Cross
 TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002C Large Group Only - Other
 Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA - Washington Counties Insurance Fund (Premera) - Public
 Project Name/Number: /WCIF - PBC

Objection Letter

Objection Letter Status	Active Suspense
Objection Letter Date	10/28/2014
Submitted Date	10/29/2014
Respond By Date	11/05/2014

Dear Julie Perez,

Introduction:

Please respond to the following objections by the Respond By date. Please include all relevant facts and circumstances.

Objection 1

- Public Rates Washington Counties Insurance Fund (Premera), [WCIFHDHP-14, WCIF2000114A, WCIF5000114A, WCIF7500114A, WCIF712500114A, WCIF720000114A, WCIF730000114A] (Rate)

Comments: Attach a copy of the tri-department rule. Pursuant to 26 CFR § 54.98021(d), please identify the bona fide employment-based classification upon which the 21 Rate Levels (Risk Tiers) are based.

Objection 2

- Public Rates Washington Counties Insurance Fund (Premera), [WCIFHDHP-14, WCIF2000114A, WCIF5000114A, WCIF7500114A, WCIF712500114A, WCIF720000114A, WCIF730000114A] (Rate)

Comments: Please provide how the employer (Washington Counties Insurance Fund) uses the bona fide employment-based classification for purposes independent of qualifying for health coverage.

Objection 3

- Public Rates Washington Counties Insurance Fund (Premera), [WCIFHDHP-14, WCIF2000114A, WCIF5000114A, WCIF7500114A, WCIF712500114A, WCIF720000114A, WCIF730000114A] (Rate)

Comments: Please provide how this classification is consistent with the employers (Washington Counties Insurance Funds) usual business practice.

Conclusion:

Sincerely,
Lichiou Lee

EXHIBIT 7

State: Washington Filing Company: Group Health Cooperative
 TOI/Sub-TOI: HOrg02G Group Health Organizations - Health Maintenance (HMO)/HOrg02G.003A Large Group Only
 - PPO
 Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection
 Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1888T14

Objection Letter

Objection Letter Status	Active Suspense
Objection Letter Date	10/28/2014
Submitted Date	10/29/2014
Respond By Date	11/05/2014

Dear Wendy Hertlein,

Introduction:

Please respond to the following objections by the Respond By date. Please include all relevant facts and circumstances.

Objection 1

- Rate Schedule, [C36557] (Rate)

Comments: Attach a copy of the tri-department rule. Pursuant to 26 CFR § 54.98021(d), please identify the bona fide employment-based classification upon which the 21 Rate Levels (Risk Tiers) are based.

Objection 2

- Rate Schedule, [C36557] (Rate)

Comments: Please provide how the employer (Washington Counties Insurance Fund) uses the bona fide employment-based classification for purposes independent of qualifying for health coverage.

Objection 3

- Rate Schedule, [C36557] (Rate)

Comments: Please provide how this classification is consistent with the employers (Washington Counties Insurance Funds) usual business practice.

Conclusion:

Sincerely,
Lichiou Lee

EXHIBIT 8

State: Washington Filing Company: Group Health Options, Inc.
 TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002B Large Group Only - POS
 Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection
 Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1890T14

Objection Letter

Objection Letter Status	Active Suspense
Objection Letter Date	10/28/2014
Submitted Date	10/29/2014
Respond By Date	11/05/2014

Dear Wendy Hertlein,

Introduction:

Please respond to the following objections by the Respond By date. Please include all relevant facts and circumstances.

Objection 1

- Rate Schedule, [C36554, C36558, C36559, WCIFHSA] (Rate)

Comments: Attach a copy of the tri-department rule. Pursuant to 26 CFR § 54.98021(d), please identify the bona fide employment-based classification upon which the 21 Rate Levels (Risk Tiers) are based.

Objection 2

- Rate Schedule, [C36554, C36558, C36559, WCIFHSA] (Rate)

Comments: Please provide how the employer (Washington Counties Insurance Fund) uses the bona fide employment-based classification for purposes independent of qualifying for health coverage.

Objection 3

- Rate Schedule, [C36554, C36558, C36559, WCIFHSA] (Rate)

Comments: Please provide how this classification is consistent with the employers (Washington Counties Insurance Funds) usual business practice.

Conclusion:

Sincerely,
Lichiou Lee

EXHIBIT 9

State: Washington Filing Company: Premera Blue Cross
 TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002C.Large Group Only - Other
 Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA - Washington Counties Insurance Fund (Premera) - Public
 Project Name/Number: WCIF - PBC

Response Letter

Response Letter Status Submitted to State
 Response Letter Date 11/05/2014
 Submitted Date 11/05/2014

Dear Lichiou Lee,

Introduction:

Thank you for your correspondence of October 29. Our response to the issues raised in your Objection Letter appear below.

As required by the nondiscrimination provisions of 26 CFR § 54.9802—1, The Washington State Auto Dealers Insurance Trust does not use individual health factors, or other employment-based classifications in setting rates. The 40 rate factors are based on aggregate group characteristics.

Response 1

Comments:

As required by the nondiscrimination provisions of 26 CFR § 54.98021, The Washington Counties Insurance Fund does not use individual health factors, or other employment-based classifications in setting rates. The 21 rate factors are based on aggregate group characteristics.

Related Objection 1

Applies To:

- Public Rates Washington Counties Insurance Fund (Premera), [WCIFHDHP-14, WCIF2000114A, WCIF5000114A, WCIF7500114A, WCIF712500114A, WCIF720000114A, WCIF730000114A] (Rate)

Comments: Attach a copy of the tri-department rule. Pursuant to 26 CFR § 54.98021(d), please identify the bona fide employment-based classification upon which the 21 Rate Levels (Risk Tiers) are based.

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Response 2

Comments:

The association does not use employment-based classification in determining qualification for health coverage, nor in setting rates.

Related Objection 2

Applies To:

- Public Rates Washington Counties Insurance Fund (Premera), [WCIFHDHP-14, WCIF2000114A, WCIF5000114A, WCIF7500114A, WCIF712500114A, WCIF720000114A, WCIF730000114A] (Rate)

Comments: Please provide how the employer (Washington Counties Insurance Fund) uses the bona fide employment-based classification for purposes independent of qualifying for health coverage.

Changed Items:

No Supporting Documents changed.

EXHIBIT C

State: Washington Filing Company: Premera Blue Cross
TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002C Large Group Only - Other
Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA - Washington Counties Insurance Fund (Premera) - Public
Project Name/Number: /WCIF - PBC

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Response 3

Comments:

To the best of our knowledge, The Washington Counties Insurance Fund does not use classifications in any aspect of their business practice. Premera does not use business classifications in rate setting.

Related Objection 3

Applies To:

- Public Rates Washington Counties Insurance Fund (Premera), [WCIFHDHP-14, WCIF2000114A, WCIF5000114A, WCIF7500114A, WCIF712500114A, WCIF720000114A, WCIF730000114A] (Rate)

Comments: Please provide how this classification is consistent with the employers (Washington Counties Insurance Funds) usual business practice.

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Conclusion:

We hope these responses will address your remaining concerns with this submission. Should you require additional information, please contact us. Thank you.

Sincerely,
Julie Aumick

State: Washington Filing Company: Group Health Cooperative
 TOI/Sub-TOI: HOrg02G Group Health Organizations - Health Maintenance (HMO)/HOrg02G.003A Large Group Only
 - PPO
 Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection
 Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1888T14

Response Letter

Response Letter Status	Submitted to State
Response Letter Date	11/05/2014
Submitted Date	11/05/2014

Dear Lichiou Lee,

Introduction:

Response 1

Comments:

The bona fide employment based classifications include geographic location, employers sub-industry classification, and employers contribution level.

Related Objection 1

Applies To:

- Rate Schedule, [C36557] (Rate)

Comments: Attach a copy of the tri-department rule. Pursuant to 26 CFR § 54.98021(d), please identify the bona fide employment-based classification upon which the 21 Rate Levels (Risk Tiers) are based.

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Response 2

Comments:

In addition to qualifying for health coverage, the bona fide employment-based classification offers the following benefits: [PPO medical through Premiera as well as dental plans through Delta Dental and Willamette, vision plans through VSP, life and disability plans through the Standard, and an Employee Assistance Program through Magellan. In addition they also provide extensive administrative support including on site enrollment meetings, online enrollment, single combined billing services, claims and eligibility support, COBRA and retiree administration, HSA and FSA administration, health care reform compliance, as well as training and educational seminars for staff of member employers. Also they provide a wellness program for their members] available to eligible employees of the employer.

Please refer to: Evidence as an Employer attachment under Supporting Documentation

Related Objection 2

Applies To:

- Rate Schedule, [C36557] (Rate)

Comments: Please provide how the employer (Washington Counties Insurance Fund) uses the bona fide employment-based classification for purposes independent of qualifying for health coverage.

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

**EXHIBIT \ **

State: Washington **Filing Company:** Group Health Cooperative
TOI/Sub-TOI: HOrg02G Group Health Organizations - Health Maintenance (HMO)/HOrg02G.003A Large Group Only
- PPO
Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection
Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1888T14
No Rate/Rule Schedule items changed.

Response 3

Comments:

It is WCIF usual business practice to use the identified employment-based classifications to determine rate levels and eligibility for certain benefits provided under its employee benefits plan. Eligible member-employers and their employees may then utilize the benefits and services provided by WCIF.

Related Objection 3

Applies To:

- Rate Schedule, [C36557] (Rate)

Comments: Please provide how this classification is consistent with the employers (Washington Counties Insurance Funds) usual business practice.

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Conclusion:

Thank you for taking time reviewing this filing.

Sincerely,

Hicham Laksiouer

State: Washington Filing Company: Group Health Options, Inc.
 TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002B Large Group Only - POS
 Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection
 Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1890T14

Response Letter

Response Letter Status	Submitted to State
Response Letter Date	11/05/2014
Submitted Date	11/05/2014

Dear Lichiou Lee,

Introduction:

Response 1

Comments:

The bona fide employment-based classifications include geographic location, employers sub-industry classification, and employers contribution level.

Related Objection 1

Applies To:

- Rate Schedule, [C36554, C36558, C36559, WCIFHSA] (Rate)

Comments: Attach a copy of the tri-department rule. Pursuant to 26 CFR § 54.98021(d), please identify the bona fide employment-based classification upon which the 21 Rate Levels (Risk Tiers) are based.

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Response 2

Comments:

In addition to qualifying for health coverage, the bona fide employment-based classification offers the following benefits: [PPO medical through Premera as well as dental plans through Delta Dental and Willamette, vision plans through VSP, life and disability plans through the Standard, and an Employee Assistance Program through Magellan. In addition they also provide extensive administrative support including on site enrollment meetings, online enrollment, single combined billing services, claims and eligibility support, COBRA and retiree administration, HSA and FSA administration, health care reform compliance, as well as training and educational seminars for staff of member employers. Also they provide a wellness program for their members] available to eligible employees of the employer.

Please refer to: Evidence as an Employer attachment under Supporting Documentation

Related Objection 2

Applies To:

- Rate Schedule, [C36554, C36558, C36559, WCIFHSA] (Rate)

Comments: Please provide how the employer (Washington Counties Insurance Fund) uses the bona fide employment-based classification for purposes independent of qualifying for health coverage.

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

EXHIBIT 12

State: Washington Filing Company: Group Health Options, Inc.
TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002B Large Group Only - POS
Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection
Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1890T14

Response 3

Comments:

It is WCIF usual business practice to use the identified employment-based classifications to determine rate levels and eligibility for certain benefits provided under its employee benefits plan. Eligible member-employers and their employees may then utilize the benefits and services provided by WCIF.

Related Objection 3

Applies To:

- Rate Schedule, [C36554, C36558, C36559, WCIFHSA] (Rate)

Comments: Please provide how this classification is consistent with the employers (Washington Counties Insurance Funds) usual business practice.

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Conclusion:

Thank you for taking time reviewing this filing.

Sincerely,

Hicham Laksiouer



October 29, 2014

To: Commissioner Mike Kreidler
Washington State Office of the Insurance Commissioner

From: Jon Kaino, Executive Director
Washington Counties Insurance Fund

Dear Commissioner Kreidler:

I would like to thank you for taking the time to return my call regarding the status of the Washington Counties Insurance Fund (WCIF). As we discussed, while we had previously received a letter from Beth Berendt affirming our status as an "Employer Health and Welfare Benefit Plan", it was reassuring to receive your additional confirmation that the WCIF meets those requirements and will be receiving correspondence acknowledging that determination in the near future.

In the discussion pertaining to the WCIF rate filing for 2014, you indicated that your staff had some concerns regarding our rate structure. This was surprising to me since in our discussion in July of this year, you indicated that there were no concerns with our rates and based on that information I recommended to my Board of Trustees that we continue the existing rate structure for 2015, which they approved at our August meeting. We have since been quoting many new groups for 2015 based on the current rating model. Below is the synopsis of our position on our rate filing I agreed to provide for your review.

As you know, since our medical plans are fully insured through Premera Blue Cross and Group Health, our rates are filed by the carriers but they are the result of a collaborative process that includes WCIF, our consultants, and in this case, your office as well. The resulting rating models were specifically designed to comply with all regulatory requirements, and were modified to comply with comments and direction from your office.

In April of this year, both Premera and Group Health received an objection letter on their WCIF filing submission. Their responses to the questions clearly illustrate that our rates do not violate the HIPAA nondiscrimination provisions as no health related factors are used to determine individual or group rates. We do not ask for any health related data and do not consider it in any way when providing rates to our members.

It appears your office has a concern that employees of the same age working for different member employers may not be afforded identical rates. That is in fact accurate. Member groups are rated based on non-health status-related rating factors with the resulting rates applied to all employees within that member employer group, regardless of the employee's age. Your office, in a variety of forums, has asserted that our current rating model is a

violation of 29 CFR Chapter XXV, Section 2590.702, in that "the rates for two similarly situated individuals (that belong to two participating group purchasers) are likely to be different".

I have thoroughly and completely reviewed Section 2590.702 and while I am admittedly not a legal expert, I can find nothing in that section that supports the position your office has taken on this issue. In fact, my reading of 2590.702 only confirms that our rating model complies with the law.

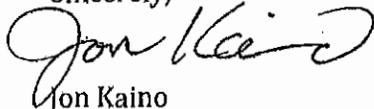
Section 2590.702 expressly allows participants to "be treated as two or more distinct groups of similarly situated individuals" based on any factor, PROVIDED the factor is not health related. The Section also specifically allows these differences in premiums PROVIDED they are not based on "any health factor that relates to the individual or a dependent of the individual".

After a thorough review, we can find no law or regulation, other than the HIPAA non-discrimination rules, which WCIF complies with as noted above, that prohibits separately rating individual employers in an association plan based on non-discriminatory criteria, or that otherwise requires all employers in that association plan to be rated in one pool. It is our position that federal law permits non-discriminatory rating at the employer level, without regard to whether association coverage is involved.

In conclusion, I must admit that I am somewhat puzzled over the intent and motivation behind the current position and interpretations of your office on this issue. It seems that if carried out, disenfranchising thousands of public employees and their dependents from benefit plans they have enjoyed for decades does nothing to further the stated goals of health care reform that we support.

Thank you again for allowing me this forum to clarify the WCIF position, and thank you for taking the time out of your busy schedule to work with me on this critical issue. If you have any questions, please don't hesitate to contact me as I would be happy to discuss this further at your convenience. If there is any way possible to receive a response prior to our WCIF Board of Trustees meeting scheduled for November 5, it would be greatly appreciated.

Sincerely,



Jon Kaino
Executive Director
Washington Counties Insurance Fund

Jon Kaino

From: Jon Kaino
Sent: Monday, December 22, 2014 1:21 PM
To: 'MollyN@oic.wa.gov'
Cc: 'MikeK@oic.wa.gov'
Subject: Washington Counties Insurance Fund

Dear Ms. Nollette:

I would like to thank you for meeting with us to discuss the WCIF rate filings from Premera and Group Health.

As promised, I have discussed with both carriers your request for additional information on the WCIF filings. While the carriers are not opposed to your request, they both feel that their filing documents and subsequent responses to the OIC objection letters were fully detailed and complete and there is significant confusion as to what additional information is being requested.

As part of my discussions with the carriers, I was able to review the full extent of the carriers' filings in addition to their responses to the objection letters. After this review, I have to agree that the information provided seems to clearly illustrate the respective rating models.

If you could provide me with the specific issues that require additional clarification, I would be happy to re-approach the carriers to provide that information.

Thanks again for the meeting and I look forward to hearing from you.

Jon

Jon Kaino
Executive Director



360.292.4466 | 800.344.8570 | 360.754.7859 f | jon@wcif.net
www.wcif.net *Serving Washington State since 1958*

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SERFF Tracking #: PBCC-129415186

State Tracking #: 267407

Company Tracking #: WCIF-PBCEA14 PUBLIC RATE

State: Washington

Filing Company: Premera Blue Cross

TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002C Large Group Only - Other

Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA - Washington Counties Insurance Fund (Premera) - Public

Project Name/Number: /WCIF - PBC

Disposition

Disposition Date: 01/15/2015

Implementation Date:

Status: Disapproved

HHS Status: HHS Denied

State Review: Reviewed by Actuary

Comment: Your rate and form filings for Washington Counties Insurance Fund (WCIF) are disapproved and closed under the authority of RCW 48.44.020(3).

The rating methodology and rates filed on behalf of the Washington State Association of Counties and Washington Counties Insurance Fund (WCIF) are inconsistent with the fact that you filed one single large employer group.

In the rate schedule, there are 21 Risk Tiers for each plan design. For example, for the benefit plan WCIF 200, an employee can be charged a monthly rate ranging from \$548.53 to \$1,241.03. In our rate objections, we asked you to explain in detail how you define a Risk Tier or Risk Level and the factors used to assign an employee to a Risk Level. We also asked you to provide detailed calculations of the rates assigned to each Risk Level. Your response to the first objection letter indicated that you have separately rated various "purchasing employers" within the Washington State Association of Counties. You also stated that each "participating employer" within the association is assigned rates inclusive of the list of rate adjustments summarized in the "Association Tables," the Tables used to rate participating employers within the association. This means that your rates filed are for various "employers" - contrary to your form filing for one employer only.

We also asked you to identify the bona fide employment-based classifications upon which the 21 Risk Levels 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.) Your response 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, the Washington State Association of Counties. 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.

Rate data does NOT apply to filing.

Schedule	Schedule Item	Schedule Item Status	Public Access
	Disability Associations		Yes

SERFF Tracking #: PBCC-129415186

State Tracking #: 267407

Company Tracking #:

WCIF-PBCEA14 PUBLIC RATE

State: Washington

Filing Company:

Premera Blue Cross

TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002C Large Group Only - Other

Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA - Washington Counties Insurance Fund (Premera) - Public

Project Name/Number: WCIF - PBC

Schedule	Schedule Item	Schedule Item Status	Public Access
Supporting Document			
Supporting Document	Disability Rates		Yes
Supporting Document	HCSC Rates		Yes
Supporting Document	PPACA Exemption Request		Yes
Supporting Document	Association/Member-Governed True Employer Group Health Plan Compliance Certification		Yes
Supporting Document	Evidence As An Employer Document		Yes
Rate	Public Rates Washington Counties Insurance Fund (Premera)		Yes

SERFF Tracking #: PBCC-129414875

State Tracking #: 267383

Company Tracking #: WCIF-LWWAEA14

State: Washington Filing Company: LifeWise Health Plan of Washington
 TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002C Large Group Only - Other
 Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA - Washington Counties Insurance Fund (LifeWise)
 Project Name/Number: /

Disposition

Disposition Date: 01/15/2015

Implementation Date:

Status: Disapproved

HHS Status: HHS Denied

State Review:

Comment: Your rate and form filings for Washington Counties Insurance Fund (WCIF) are disapproved and closed under the authority of RCW 48.44.020(3).

The rating methodology and rates filed on behalf of the Washington State Association of Counties and Washington Counties Insurance Fund (WCIF) are inconsistent with the fact that you filed one single large employer group.

In the rate schedule, there are 21 Risk Tiers for each plan design. For example, for the benefit plan WCIF 200, an employee can be charged a monthly rate ranging from \$548.53 to \$1,241.03. In our rate objections, we asked you to explain in detail how you define a Risk Tier or Risk Level and the factors used to assign an employee to a Risk Level. We also asked you to provide detailed calculations of the rates assigned to each Risk Level. Your response to the first objection letter indicated that you have separately rated various "purchasing employers" within the Washington State Association of Counties. You also stated that each "participating employer" within the association is assigned rates inclusive of the list of rate adjustments summarized in the "Association Tables," the Tables used to rate participating employers within the association. This means that your rates filed are for various "employers" - contrary to your form filing for one employer only.

We also asked you to identify the bona fide employment-based classifications upon which the 21 Risk Levels 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.) Your response 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, the Washington State Association of Counties. 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.

Rate data does NOT apply to filing.

Schedule	Schedule Item	Schedule Item Status	Public Access
	Disability Associations		Yes

SERFF Tracking #:

PBCC-129414875

State Tracking #:

267383

Company Tracking #:

WCIF-LWWAEA14

State: Washington Filing Company: LifeWise Health Plan of Washington
 TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002C Large Group Only - Other
 Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA - Washington Counties Insurance Fund (LifeWise)
 Project Name/Number: /

Schedule	Schedule Item	Schedule Item Status	Public Access
Supporting Document			
Supporting Document	Filing Instructions		Yes
Supporting Document	Group Form Filing Requirements - L&D, HCSC		Yes
Supporting Document	PPACA Exemption Request		Yes
Supporting Document	PPACA Uniform Compliance Summary		Yes
Supporting Document	Association / Member-Governed True Employer Group Health Plan Compliance Certification		Yes
Supporting Document	Evidence As Employer Document		Yes
Supporting Document	Custom Enrollment/Application Certification Group Master Application		Yes
Supporting Document	Custom Enrollment/Application Certification Legacy Group Master Application		Yes
Supporting Document	Filing Letter Washington Counties Insurance Fund		Yes
Form	Your Future - HDHP Booklet		Yes
Form	Your Choice \$200 Booklet		Yes
Form	Your Choice \$500 Booklet		Yes
Form	Your Choice - \$750 Booklet		Yes
Form (revised)	Your Choice - \$1,250 Booklet		Yes
Form	Your Choice - \$1,250 Booklet		Yes
Form	Your Choice - \$2,000 Booklet		Yes
Form	Your Choice - \$3,000 Booklet		Yes
Form	Employer Agreement		Yes
Form	Custom App/Enr Washington Counties Insurance Fund Group Master Application		Yes
Form	Custom App/Enr Legacy Washington Counties Insurance Fund Group Master Application		Yes

SERFF Tracking #:

GHCC-129421076

State Tracking #:

267370

Company Tracking #:

CA1890T14

State: Washington **Filing Company:** Group Health Options, Inc.
TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002B Large Group Only - POS
Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection
Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1890T14

Disposition

Disposition Date: 01/15/2015

Implementation Date:

Status: Disapproved

HHS Status: HHS Denied

State Review: Reviewed by Actuary

Comment: Your rate and form filings for Washington Counties Insurance Fund (WCIF) are disapproved and closed under the authority of RCW 48.44.020(3).

The rating methodology and rates filed on behalf of the Washington State Association of Counties and Washington Counties Insurance Fund (WCIF) are inconsistent with the fact that you filed one single large employer group.

In the rate schedule, there are 21 Rate Levels for each plan design. For example, for the benefit plan WCIFHSA, an employee can be charged a monthly rate ranging from \$307.98 to \$696.79. In our rate objections, we asked you to explain in detail how you define a Rate Level and the factors used to assign an employee to a Risk Level. We also asked you to provide detailed calculations of the rates assigned to each Risk Level. Your response to the first objection letter indicated that you have separately rated various "member groups" within Washington State Association of Counties. This means that your rates filed are for various "employers" - contrary to your form filing for one employer only.

We also asked you to identify the bona fide employment-based classifications upon which the 21 Risk Levels 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.) Your response stated that the bona fide employment based classifications include geographic location, employer's sub-industry classification, and employer's contribution level. However, the "employer" used in the rating response is the "subgroup" and not the employer, Washington State Association of Counties, filed in the form filing. Your response 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, Washington State Association of Counties. 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.

Rate data does NOT apply to filing.

SERFF Tracking #: GHCC-129421076

State Tracking #: 267370

Company Tracking #: CA1890T14

State: Washington

Filing Company: Group Health Options, Inc.

TOI/Sub-TOI: H16G Group Health - Major Medical/H16G.002B Large Group Only - POS

Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection

Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1890T14

Schedule	Schedule Item	Schedule 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	Chamber, Association, Trust HIPAA Certification		Yes
Supporting Document	Evidence as an employer		Yes
Supporting Document	Cover Letter		Yes
Rate	Rate Schedule		Yes

SERFF Tracking #:

GHCC-129421102

State Tracking #:

267432

Company Tracking #:

CA1888T14

State: Washington
TOI/Sub-TOI: HOrg02G Group Health Organizations - Health Maintenance (HMO)/HOrg02G.003A Large Group Only - PPO
Filing Company: Group Health Cooperative
Product Name: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection
Project Name/Number: Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1888T14

Disposition

Disposition Date: 01/15/2015

Implementation Date:

Status: Disapproved

HHS Status: HHS Denied.

State Review: Reviewed by Actuary

Comment: Your rate and form filings for Washington Counties Insurance Fund (WCIF) are disapproved and closed under the authority of RCW 48.46.060(4).

The rating methodology and rates filed on behalf of the Washington State Association of Counties and Washington Counties Insurance Fund (WCIF) are inconsistent with the fact that you filed one single large employer group.

In the rate schedule, there are 21 Rate Levels for each plan design for active employees. For example, for the benefit plan WCIFHSA, an employee can be charged a monthly rate ranging from \$307.98 to \$696.79. In our rate objections, we asked you to explain in detail how you define a Rate Level and the factors used to assign an employee to a Risk Level. We also asked you to provide detailed calculations of the rates assigned to each Risk Level. Your response to the first objection letter indicated that you have separately rated various "member groups" within the Washington State Association of Counties. This means that your rates filed are for various "employers" - contrary to your form filing for one employer only.

We also asked you to identify the bona fide employment-based classifications upon which the 21 Risk Levels 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.) Your response stated that the bona fide employment based classifications include geographic location, employer's sub-industry classification, and employer's contribution level. However, the "employer" used in the rating response is the "subgroup" and not the employer, the Washington State Association of Counties, filed in the form filing. Your response 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, the Washington State Association of Counties. Therefore, your rate and form filings are disapproved and closed under the authority of RCW 48.46.060(4).

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.

Rate data does NOT apply to filing.

SERFF Tracking #:

GHCC-129421102

State Tracking #:

267432

Company Tracking #:

CA1888T14

State:

Washington

Filing Company:

Group Health Cooperative

TOI/Sub-TOI:

HOrg02G Group Health Organizations - Health Maintenance (HMO)/HOrg02G.003A Large Group Only - PPO

Product Name:

Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection

Project Name/Number:

Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA-Washington Counties Insurance Fund (WCIF) For Public Inspection/CA1888T14

Schedule	Schedule Item	Schedule Item Status	Public Access
Supporting Document	Chamber, Association, Trust HIPAA Certification		Yes
Supporting Document	Evidence as an employer		Yes
Supporting Document	Cover Letter		Yes
Rate	Rate Schedule		Yes

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BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

IN THE MATTER OF

WASHINGTON COUNTIES INSURANCE
FUND

Docket No. 15-0034

[PROPOSED] ORDER GRANTING
WASHINGTON COUNTIES
INSURANCE FUND'S MOTION FOR
SUMMARY JUDGMENT

THE PRESIDING OFFICER, having reviewed the Washington Counties Insurance Fund's ("WCIF's") Motion for Summary Judgment, the papers filed in opposition, if any, and the papers filed in reply, if any; having heard oral argument from the Parties on WCIF's Motion on May 27, 2015; and being duly advised in the premises,

IT IS HEREBY ORDERED that:

- (1) WCIF's Motion for Summary Judgment is GRANTED; and
- (2) The OIC shall withdraw its January 15, 2015 rejections of Premera Blue Cross's and Group Health Cooperative's 2014 rate and form filings with respect to benefit plans offered by WCIF (SERFF Tracking Numbers PBCC-129415186, PBCC-129414875, GHCC - 129421102, and GHCC - 129421076) ("the Filings") and shall approve the Filings.

[PROPOSED] ORDER GRANTING WASHINGTON COUNTIES INSURANCE
FUND'S MOTION FOR SUMMARY JUDGMENT - 1

1 DATED this ___ day of _____, 2015.

2
3 The Hon. George Finkle (Ret.)
4 Presiding Officer

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[PROPOSED] ORDER GRANTING WASHINGTON COUNTIES INSURANCE
FUND'S MOTION FOR SUMMARY JUDGMENT - 2

1 **CERTIFICATE OF SERVICE**

2 I, Juli Waldschmidt, certify under penalty of perjury under the laws of the State of
3 Washington that, on April 1, 2015, I caused the foregoing document to be served on the persons
4 listed below in the manner shown:

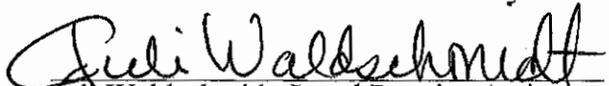
5 Judge George Finkle (Ret.)
6 Presiding Officer
7 Office of the Insurance Commissioner
8 PO Box 40255
9 Olympia, WA 98504-0255
10 Email: kellyc@oic.wa.gov

11 *Via email and U.S. Mail*

12 Mike Kreidler, Insurance Commissioner
13 Email: mikek@oic.wa.gov
14 James T. Odiorne, J.D., CPA, Chief Deputy
15 Insurance Commissioner
16 Email: jameso@oic.wa.gov
17 Molly Nollette, Deputy Commissioner, Rates and
18 Forms Division
19 Email: mollyn@oic.wa.gov
20 AnnaLisa Gellermann, Deputy Commissioner,
21 Legal Affairs Division
22 Email: annalisag@oic.wa.gov
23 Charles Brown, Sr., Insurance Enforcement
24 Specialist, Legal Affairs Division
25 Email: charlesb@oic.wa.gov
26 Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Via email and U.S. Mail

17 Dated this 1st day of April, 2015, at Seattle, Washington.

18
19 
20 Juli Waldschmidt, Legal Practice Assistant
21 STOEL RIVES LLP