

McKenzie Rothwell Barlow & Coughran, P.S.

A PROFESSIONAL SERVICES CORPORATION
ATTORNEYS AT LAW
1325 FOURTH AVENUE, SUITE 910
SEATTLE, WA 98101-2573
206.224.9900
Fax 206.224.9820

DIRECT LINE (206) 674-5211
Email: frankm@mrbclaw.com

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CATHERINE A. ROTHWELL
DAVID S. BARLOW
LES M. COUGHRAN
FRANK J. MORALES
LINDA JOSEPHSON
NOELLE E. DWARZSKI
DOUGLAS M. LASH

BRUCE MCKENZIE**
OF COUNSEL

◇ALSO ADMITTED IN OREGON AND MINNESOTA
◇◇ALSO ADMITTED IN ALASKA
◇ALSO ADMITTED IN CONNECTICUT AND MISSOURI
◇◇ALSO ADMITTED IN MICHIGAN, MONTANA AND OREGON
◇ALSO ADMITTED IN MICHIGAN
◇◇ALSO ADMITTED IN DISTRICT OF COLUMBIA

April 14, 2015

VIA E-MAIL AND U.S. MAIL

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

Re: Demand for Hearing - Dispositions for B861-129451054 and B861-129452066 - Washington State Farm Bureau Health Care Trust

To Whom It May Concern:

This firm serves as legal counsel to the Washington State Farm Bureau Health Care Trust ("Trust"). Pursuant to RCW 48.04.010 *et seq.*, the Trust formally demands a hearing before an administrative law judge to challenge the Office of Insurance Commissioner's ("OIC's") disapproval of Regence BlueShield's and Asuris Northwest Health's (collectively "Regence") 2014 rate and form filings for the Trust. A copy of the OIC's decision subject to this Demand for Hearing is attached.

In its disapproval, the OIC states:

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

The Trust challenges the OIC's decision on the following general grounds set forth below. The Trust reserves the right to raise additional or alternative grounds for challenging the OIC's decision.

1. There is no basis under state or federal law for the OIC's position that a bona fide association must be treated as a single employer for rating purposes. The regulations permit rating at the employer level, even if that employer participates in an association health plan. *See* 45 CFR §146.121(c) and (d).
2. There is no state or federal statute or regulation that prohibits separately rating participating employers based on non-discriminatory criteria, or requires that all

participating employers be rated in one pool when coverage is offered through an association sponsored health plan.

3. Based on the Trust's understanding of the rating factors utilized by Regence, the rating factors are consistent with federal regulations and guidance.
4. The OIC's disapproval is ambiguous and subject to varying interpretations. Specifically, in its disapproval letter the OIC does not state with any specificity why Regence's rates are "unreasonable," why the criteria used by Regence results in "unreasonable" rates, and whether it is some or all of Regence's criteria that resulted in "unreasonable" rates.
5. The OIC's reliance on RCW 48.44.020(3) is misplaced. RCW 48.44.020(3) provides authority for the OIC to "disapprove any contract if the benefits provided therein are unreasonable in relation to the amount charged for the contract." (Emphasis added.) The disapproval notice does not address benefits provided under the plans.
6. RCW 48.44.020(3) also provides that if "the commissioner does not disapprove a rate filing within sixty days after the health care service contractor has filed the documents required in RCW 48.44.017(2) and any rules adopted pursuant thereto, the filing shall be deemed approved." Since Regence's rates were not disapproved sixty days after filing, they must be deemed approved.
7. Finally, the OIC's remedy is unworkable and highly problematic. Specifically, the OIC states: "As a result of this disapproval, it is necessary for all current enrollees to be transitioned to a compliant plan as soon as possible." Compliance with such a remedy issued after the end of the applicable plan year is impossible. Not all members have remained in the Trust's plan and, for those that have, there may be significant cost shifting on a retroactive basis with harmful effects.

For the above reasons, the Trust formally demands a hearing before an administrative law judge.

Very truly yours,

McKENZIE ROTHWELL BARLOW & COUGHRAN, P.S.



Frank J. Morales

cc: Trustees
DiMartino Associates
Regence BlueShield

**II.) REGENCE
BLUESHIELD –OIC FILING**

Disposition for B861-129451054

SERFF Tracking Number: B861-129451054 State: Washington
Filing Company: Regence BlueShield State Tracking Number: 269404
Company Tracking Number: 100000012BM1-100000012BM44
TOI: H16G Group Health - Major Medical Sub-TOI: 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 Farm Bureau - Proprietary

Project Name:

Disposition Date:01/15/2015

Implementation Date:

Status: Disapproved

HHS Status: HHS Denied

State Review: Reviewed by Actuary

Comments: Your rate and form filings for Washington Farm Bureau are disapproved and closed under the authority of RCW 48.44.020(3).

The rating methodology and rates filed on behalf of Washington Farm Bureau and the Washington Farm Bureau Health Care Trust are inconsistent with the fact that you filed one single large employer group.

In the rate schedule, there are 75 Rate Bands for each plan design. For example, for the Copay 80 250 Plan, an employee can be charged a monthly rate ranging from \$264.59 to \$1,736.34. In our rate objections, we asked you to explain in detail how you define a Rate Band and the factors used to assign an employee to a Rate Category. We also asked you to provide detailed calculations of the rates assigned to each Rate Category. Your response to the first objection letter indicated that you have separately rated various “member groups” within Washington Farm

Bureau. You also indicated that a risk factor, a factor assigned at an underwriter's discretion, is built in your rate model. 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 75 Rate Bands are based (per 26 CFR § 54.9802-1(d).) (Examples for bona fide employment-based classifications include current versus former employees, and employees located in different geographic areas.) You stated that "each subgroup" may be treated separately as each subgroup is an independent ongoing business. You further stated that each subgroup is managed separately from other subgroups and "employment" criteria, "employment" needs, benefit mix, may be unique to each subgroup. Your response reiterated that you have separately rated various "member groups." Your response also failed to identify how each Risk Level is related to bona fide employment-based classifications.

This tells us that your rates, filed for various employers, are unreasonable in relation to the amount charged for the contract for one single employer, Washington Farm Bureau. 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.

Company Rate Information							
Company Name:	Overall % Indicated Change:	Overall % Rate Impact:	Written Premium Change for this Program:	Number of Policy Holders Affected for this Program:	Written Premium for this Program:	Maximum % Change (where required):	Minimum % Change (where required):
Regence BlueShield	%	%	\$		\$	%	%
Change Period for Approved Rate:							
Percent Change Approved:							
Minimum:	%		Maximum:	%		Weighted Average:	%

Schedule Items		
Item Type	Item Name	Item Status Public Access
Supporting Document	Disability Associations	No

Supporting Document Disability Rates	No
Supporting Document HCSC Rates	No
Supporting Document PPACA Exemption Request	No
Supporting Document Industry Responses to Objections 1, 2 & 3	Yes
Rate Washington Farm Bureau 0114 OIC (RBS)	No

1.) ASURIS OIC FILING

Disposition for B861-129452066

SERFF Tracking Number: B861-129452066 **State:** Washington
Filing Company: Asuris Northwest Health **State Tracking Number:** 269439
Company Tracking Number: 100000012BMA1-100000012BMA44
TOI: H16G Group Health - Major Medical **Sub-TOI:** 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 Farm Bureau - Proprietary
Project Name:
Disposition Date: 01/15/2015

Implementation Date:

Status: Disapproved

HHS Status: HHS Denied

State Review: Reviewed by Actuary

Comments: Your rate and form filings for Washington Farm Bureau are disapproved and closed under the authority of RCW 48.44.020(3).

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We also asked you to identify the bona fide employment-based classifications upon which the 75 Rate Bands are based (per 26 CFR § 54.9802-1(d).) (Examples for bona fide employment-based classifications include current versus former employees, and employees located in different geographic areas.) You stated that "each subgroup" may be treated separately as each subgroup is an independent ongoing business. You further stated that each subgroup is managed separately

from other subgroups and "employment" criteria, "employment" needs, benefit mix, may be unique to each subgroup. Your response reiterated that you have separately rated various "member groups." Your response also failed to identify how each Risk Level is related to bona fide employment-based classifications.

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Company Rate Information							
Company Name:	Overall % Indicated Change:	Overall % Rate Impact:	Written Premium Change for this Program:	Number of Policy Holders Affected for this Program:	Written Premium for this Program:	Maximum % Change (where required):	Minimum % Change (where required):
Asuris Northwest Health	%	%	\$		\$	%	%
Change Period for Approved Rate:							
Percent Change Approved:							
Minimum:	%		Maximum:	%		Weighted Average:	%

Schedule Items		
Item Type	Item Name	Item Status Public Access
Supporting Document	Disability Associations	No
Supporting Document	Disability Rates	No
Supporting Document	HCSC Rates	No
Supporting Document	PPACA Exemption Request	No
Supporting Document	Industry Responses to Objections 1, 2 & 3	Yes
Rate	Washington Farm Bureau 0114 OIC (ANH)	No