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2015 MAY 11 P 4: 24
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May 11, 2015

Via U.S. Mail and email
hearings@oic.wa.gov

Office of Insurance Commissioner
Attention: Administrative Hearings Unit
P.O. Box 40255
Olympia WA 98504-0255

Re: Business Health Trust; Demand for Hearing and Stay of Actions

To Whom It May Concern:

Our office represents Business Health Trust (“BHT”), a third party administrator of 13 industry specific Health Benefit Trusts (“Trusts”); each of the 13 industry specific Health Benefits Trusts and their associations: Aerospace Industry Health Trust, Agriculture Industry Health Trust, Business Services Industry Health Trust, Community Service Organization Industry Health Trust, Healthcare Industry Health Trust, Information Technology Industry Health Trust, End-Line Manufacturing Industry Health Trust, Media Industry Health Trust, Retail Industry Health Trust, Tourism Industry Health Trust, Transportation Industry Health Trust, and Wholesaling Industry Health Trust; each of the sponsoring employers (approximately 661 employers as of January 1, 2015) solely with respect to the insurance coverage provided by such Trusts, with the Seattle Metropolitan Chamber of Commerce serving as a representative for such employers; and the individual participants of such Trusts (approximately 14,892 insureds as of January 1, 2015), with Emmy Jordan serving as a representative for such participants.

The insurance carrier, Premera Blue Cross (“Premera”), received notification on February 17, 2015, that the Office of Insurance Commissioner (the “OIC”) indicated that the associations sponsoring the Trusts would not satisfy the definition of employer within the meaning of Section 3(5) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), in order to qualify for large-group coverage under Washington State law. This notification also indicated that the OIC rejected the rating methodology utilized by Premera for the issuance of health care coverage to the Trusts at large group rates.

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On behalf of the above referenced parties, we hereby demand a hearing before an administrative law judge pursuant to RCW 48.04.010 *et seq.* to challenge the action by the OIC on the grounds set forth below. These grounds, however, may be supplemented at a later date.

The parties also hereby request, pursuant to RCW 48.04.020(2), that the OIC grant a stay of all the OIC directives and actions, pending a decision in this action. In this regard, the parties further request a stay of this administrative action pending the OIC's examination of the 2015 filing by Premera on behalf of the parties. In this regard, the Hearing Examiner should be aware that this hearing request is for an OIC denial based on a 2014 contract filing. There is no one covered under the 2014 policy and the policy is no longer being sold. Therefore, there is no current case or controversy with respect to the 2014 policy. For this reason, the hearing on the 2014 policy should be stayed until the OIC makes a determination on the 2015 policy, and through the subsequent 90 day period to request a hearing. At that point, the two matters could either be consolidated or the parties could agree that any issues under the 2014 policy could be dismissed without further OIC action and that the parties would litigate only the issues under the 2015 policy. The parties request that the Hearing Examiner establish a conference call to determine whether the OIC is agreeable to such a stay. Depending on the results of such a call, the parties may seek a stay by a court.

With regard to the ERISA Section 3(5) issue, it is our clients' position that the OIC's action is improper because it misconstrues applicable Washington State law to give the OIC authority to determine whether each of the Trusts is sponsored by an association or group of employers that meets the definition of "employer" for purposes of Section 3(5) of ERISA. WAC 284-170-958 provides that an issuer may not offer or issue an association health plan a large group insurance contract unless, among other things, the association or member-governed group to whom the insurance is issued constitutes an employer under ERISA Section 3(5). The insurer must also make a good faith effort to ensure that the association that sponsors an insured product meets the applicable requirements. The OIC's action, however misinterprets this provision to give it, rather than the insurer, the responsibility to make the determination of whether each of the Trusts is sponsored by an employer under ERISA Section 3(5). Furthermore, the OIC's action indicates that it has taken upon itself to make a determination on an issue that is solely a federal question, and a matter that is not within the jurisdiction of the OIC or this administrative proceeding. In addition, the OIC's review of ERISA Section 3(5) status with respect to association health plans has been arbitrary and capricious. Moreover, it is the parties' position that the sponsors of the Trust are, nevertheless, ERISA Section 3(5) employers, within the meaning of federal law.

With respect to the rating methodology, our clients take the following positions: (1) the rating methodology utilized by Premera is in compliance with state law and federal law; (2) the OIC's rating methodology violates state law and violates the state court's decision in *Associated Industries of the Inland Northwest and the Association of Washington Businesses*

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v. State of Washington Office of the Insurance Commissioner; Mike Kreidler, No. 2007-02-00592-1, Superior Court, Spokane, August 27, 2007; (3) the OIC's rating methodology is not required by federal law; and, lastly (4) the OIC's unilateral change to the state's rating methodology is an unconstitutional exercise of legislative authority, an issue not within the jurisdiction of this administrative proceeding.

Due to the OIC's action, the rights of the association-sponsors' employees to current coverage under the policies issued by Premera are adversely affected. Premera has been told to discontinue policies and to transition employees. Thus, the insurance coverage of the approximately 14,892 participants will be disrupted. As a result of this disruption, the Trusts' 661 member employers and/or their employees will likely face increased costs for any new coverage that may be obtained in the small group or individual market. Additionally, the small group or individual policies available for purchase will not be tailored to meet the needs of each Trust's industry.

Lastly, if ERISA Section 3(5) status is denied, the business model of our clients will be severely disrupted as the 13 Trusts and the 661 or more sponsoring employers will no longer be permitted to market a large group policy.

We would like to conclude discovery before any dispositive motions are filed. In this regard, we request a status conference to determine the following: (1) permission to serve request for admission, interrogatories and requests for production; and (2) a schedule for dispositive motions after discovery has been produced and review.

Please serve copies of all future papers and proceedings herein upon Richard J. Birmingham and Christine Hawkins at the address listed above.

Yours truly,

Davis Wright Tremaine LLP



Richard J. Birmingham

cc: Commissioner Mike Kreidler (via U.S. Mail)
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