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2015 JUN 19 P 2:24

June 19, 2015

Judge George Finkle, Ret.
Hearings Unit
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

In re: Business Health Trust, et al., OIC Matter No. 15-0133

Dear Judge Finkle,

You asked the parties to confer with Premera and provide you with a statement of what they believe should be done with this matter regarding consolidation. I have conferred with Gwendolyn Payton, counsel for Premera, and Mr. Birmingham, counsel for the Petitioners. The parties agree that there are two central issues in this case: 1) Do the Petitioners constitute a single "employer" under the definition incorporated into state law from ERISA? and 2) Do association health plans that qualify as a single large employer have to structure their rates at the association employer level, or can each individual member employer be rated differently within an association?

Ms. Payton relayed to me that particularly regarding the rating issue, as long as Premera is facing the possibility of future enforcement action by the OIC for the disapproved 2014 health plans, Premera believes consolidation is appropriate, and that the briefing schedule issued by this court in the Premera Blue Cross Matter, OIC No. 15-0113, is needed in order to obtain a prompt, final, and universally applicable decision. Premera is very concerned that waiting until the fall to brief the issues in this case (in keeping with the briefing schedule issued in the Associated Industries Management Services/Moda matter, OIC Matter Nos. 15-0063/0064) would be detrimental to Premera.

Based on my conversation with Birmingham, it appears the Petitioners and Premera are discussing the possibility of separating the "employer" question from the rating question, and allowing the employer question to be heard on the later briefing schedule provided in the AIMS/Moda matter. In particular Petitioners want to give the federal and state courts in the various actions that have been filed by Business Health Trust and various associations to be decided before this tribunal reaches the merits of this case. Although the OIC disagrees with

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their position, BHT's position is that this tribunal lacks jurisdiction to decide the "employer" issue, and that the federal and state courts are likely to decide these issues before the end of July. Therefore, according to Mr. Birmingham, BHT still prefers the AIMS/Moda briefing schedule for the rating issues as well.

Like Premera, the OIC is keenly interested in a prompt and universally applicable decision on these issues. The OIC respectfully disagrees that the courts are likely to decide these issues promptly. In fact, there is no guarantee that those courts will decide the merits of the issues present in this case. It is equally likely that those matters will be dismissed, and that no decision on the merits will come from the courts. Therefore any waiting may simply postpone a final decision, without any helpful guidance. Further, it remains the OIC's firm position that any challenge to the Commissioner's disapprovals is subject to the exclusive remedy of requesting an administrative hearing, and that the statutorily prescribed administrative process should not be postponed for the sake of various suits that would circumvent that administrative process. Just as the Commissioner has authority to review the "employer" status of an association, this tribunal has authority to review that determination. Further, the OIC believes that a prompt decision from this tribunal (even if appealed) will provide the quickest possible means for a final, and universally applicable decision. Therefore the Commissioner's position is that this matter should be combined, in its entirety, with the Premera matter, and placed on the same briefing schedule currently adopted in that matter.

The Commissioner is very concerned that if these matters are not fully consolidated, there will be an opportunity for multiple appeals of the identical decision, and conflicting arguments. Although Premera and the Petitioners are aligned, their interests and arguments are not identical. In other matters, where the carrier is absent, the OIC has seen certain associations submit arguments that are contrary to the position carriers themselves have taken in other legal proceedings, and that could harm a carrier's legal interests far beyond these cases. In addition, the carrier, not the association, is the entity the Commissioner regulates. Therefore the carrier's presence eliminates some of the questions of standing concerning challenges to the Commissioner's rating decisions.

Sincerely,



MARTA DELEON
Assistant Attorney General

cc: Gwendolyn Payton
Richard Birmingham

MD:da