

FILED

04 30
2015 NOV 4 A 10:00
MC

HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

IN THE MATTER OF

KAISER FOUNDATION HEALTH PLAN
OF THE NORTHWEST

Docket No. 15-0205

KFHPNW'S MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

Kaiser Foundation Health Plan of the Northwest ("KFHPNW") respectfully requests that the Presiding Officer grant judgment in its favor as a matter of law, pursuant to WAC 10-08-135, and vacate the Cease and Desist Order issued by the Office of the Insurance Commission ("OIC") on September 2, 2015 ("Order"). The OIC's application of the new definition of "service area" contained in WAC 284-43-130(29) to large group plans is contrary to the intent and purpose of the regulation and to the OIC's policy and practice. Forcing KFHPNW to drop coverage for enrollees in large group plans outside Clark and Cowlitz Counties will unduly harm KFHPNW's enrollees and policyholders, and KFHPNW, without serving any of the purported purposes for requiring county-based service areas. Even if the revised definition of "service area" were applicable to large group plans, the circumstances presented here warrant an exception from the county-based service area requirement. At a minimum, the OIC should not mandate the termination of existing large group plans mid-contract.

KFHPNW'S MOTION FOR SUMMARY JUDGMENT - 1

1 **II. BACKGROUND**

2 **A. KFHPNW and Its Health Plans**

3 KFHPNW is a non-profit corporation that offers health plans to individuals, small groups,
4 and large groups throughout the Northwest, including Washington. Declaration of Maryann
5 Schwab in Support of KFHPNW's Motion for Summary Judgment ("Second Schwab Decl."), ¶
6 2. KFHPNW's primary provider network is comprised of providers associated with Kaiser
7 Permanente, who currently do not contract with any non-KFHPNW health plans.¹ *Id.* at ¶ 3;
8 Declaration of Maryann Schwab in Support of KFHPNW's Motion for Stay of Cease and Desist
9 Order (09/24/15) ("First Schwab Decl."), ¶ 7.

10 In the large group market, KFHPNW does not sell health insurance plans directly to
11 individual enrollees. *See* Declaration of Megan A. Lane in support of KFHPNW's Motion for
12 Stay of Cease and Desist Order (10/16/15) ("First Lane Decl."), ¶ 2. Instead, KFHPNW sells
13 large group plans to the plan sponsors (usually employers). Those large group plan sponsors are
14 the "policyholders" that purchase the actual policies of coverage from KFHPNW. *Id.*
15 "Enrollees" are the individuals (usually employees and their dependents) enrolled under the
16 policies sold by KFHPNW to the policyholders. *Id.*

17 KFHPNW currently offers coverage to two large group employers (Bonneville Hot
18 Springs Resort and Wahkiakum County) that are located in Washington outside of Clark and
19 Cowlitz Counties. First Schwab Decl., ¶ 5. KFHPNW additionally offers coverage to 79 large
20 group employers that are located in Clark and/or Cowlitz Counties, but that have certain
21 employees who live outside those two counties.² *Id.* Specifically, 590 employees of those 79
22 large group employers fall into that category. *Id.* KFHPNW lacks access to data regarding how
23

24
25 ¹ In other words, an individual must be on a KFHPNW plan in order to receive care from a Kaiser provider. Second Schwab Decl., ¶ 3; First Schwab Decl., ¶ 7.

26 ² The Public Employees Benefits Board ("PEBB") is one of those 79 large group employers. First Schwab Decl., ¶ 5.

1 many of those 590 employees work within Clark and Cowlitz Counties, despite residing
2 elsewhere. *Id.*

3 KFHPNW informs policyholders that only eligible employees and dependents may be
4 offered enrollment in KFHPNW's plans. First Lane Decl., ¶ 3. KFHPNW relies on the
5 policyholders to offer the large group plans only to those employees and their dependents who
6 are actually eligible. *Id.*

7 **B. The OIC's Rulemaking Impacting the Definition of "Service Area"**

8 In 2013, the OIC initiated rulemaking to extensively revise and update the provider
9 network regulations, pertaining to provider networks maintained by issuers offering certain types
10 of health plans in Washington. The OIC ultimately adopted the revised regulations, with an
11 effective date of May 29, 2014. The revised regulations included a new definition of "service
12 area," which both defines the territory in which an issuer is approved to offer health plans and
13 provides the unit on which an issuer's provider network(s) will be evaluated for purposes of
14 network adequacy and access. The new definition is as follows:

15 "Service area" means the geographic area or areas where a specific
16 product is issued, accepts members or enrollees, and covers
17 provided services. A service area must be defined by the county or
18 counties included unless, for good cause, the commissioner permits
19 limitation of a service area by zip code. Good cause includes
20 geographic barriers within a service area, or other conditions that
21 make offering coverage throughout an entire county unreasonable.

22 WAC 284-43-130(29) (emphasis added).

23 Notably, the OIC adopted the above definition for the stated purpose of conforming
24 Washington's regulations to federal regulations that apply only to individual and small group
25 health plans offered both inside and outside of Health Benefit Exchanges. Those federal
26 regulations do not apply to large group plans.

27 Prior to April 2015, the OIC gave no indication to KFHPNW that it intended the new
28 service area definition to apply to large group plans. Second Schwab Decl., ¶ 4. Instead, it was
29 KFHPNW's understanding that the definition of "service area" contained in WAC 284-43-

1 130(29) applied only to individual and small group health plans, consistent with the
2 corresponding federal regulations. *Id.* Indeed, in May 2013, as the OIC was working to revise
3 the regulations, the OIC represented to KFHPNW that network adequacy requirements for small
4 group and individual plans would be changing, but that “Large Group and PEBB³ are still ‘good
5 to go’ with the existing KPNW Service Area, and are not impacted by the 2014 SG [small group]
6 and ID [individual] Service Area discussion.” *Id.* at ¶ 5 and Ex. A.

7 Previously, KFHPNW’s service area in Washington had included particular zip codes in
8 which KFHPNW’s network of providers offered services, even in counties in which the network
9 did not extend throughout the entire county. *Id.* at ¶ 6. KFHPNW determined that, if the
10 network of providers were required to extend throughout an entire county, only Clark County
11 and Cowlitz County presently meet that definition, despite the fact that certain zip codes outside
12 those counties include a robust network of providers for enrollees in KFHPNW’s plans and
13 despite the fact that enrollees located in zip codes immediately adjacent to Clark and Cowlitz
14 Counties have ready access to providers in those counties. *Id.* KFHPNW revised its service area
15 for its individual and small group plans, changing that service area to Clark and Cowlitz
16 Counties. *Id.* at ¶ 7.

17 Consistent with its understanding that the new service area definition did not extend to
18 large group plans, KFHPNW continued to file large group plans with the OIC with a service area
19 that included zip codes outside Clark and Cowlitz Counties. *Id.* Prior to April 2015, the OIC
20 did not object to those filings. *Id.*

21 **C. The OIC’s April 2015 Objections and KFHPNW’s Responses**

22 KFHPNW’s first notice of the OIC’s assertion that the service area for large group plans
23 would be limited to full counties occurred on April 1, 2015, when the OIC issued an objection
24 letter in the System for Electronic Rate and Form Filing (“SERFF”) with respect to KFHPNW’s
25

26 ³ PEBB is one of 79 large group employers with certain enrollees residing outside Clark and Cowlitz
Counties. First Schwab Decl., ¶ 5.

1 Group Health Filing No. KFNW-129667876. *Id.* at ¶ 8 and Ex. B. One of the OIC's comments
2 included in its objection letter was as follows:

3 The definition of "Service Area" provided indicates the service
4 area consists of certain geographic areas in the Northwest as
5 designated by ZIP code. The definition continues on to advise the
6 service area may change. Under WAC 284-43-130 (29) a service
7 area must be defined by county or counties and may not be defined
8 by ZIP code unless allowed by the Commissioner for good cause,
9 such as geographic barriers which make offering coverage
10 throughout an entire county unreasonable. You must redefine your
11 service area by county and remove language indicating the service
12 area may be changed.

13 *Id.* at Ex. B.

14 KFHPNW responded to the OIC's comment on April 8, 2015, noting:

15 It is our understanding that WAC 284-43-130 (29) applies to
16 individual and Small group plans offered both inside and outside of
17 the exchange and our individual and Small Group plans comply
18 with this provision. However, the definition contained in WAC
19 284-43-130 (29) does not apply to Large Group plans since the
20 federal provisions impacting Qualified Health Plans and health
21 plans offered outside the exchange that underlies the state
22 requirement are not applicable to Large Group Plans.

23 *Id.* at ¶ 8 and Ex. B.

24 The OIC responded on April 10, 2015, stating only that the OIC "disagrees the WAC
25 does not apply to large group plans," without analysis. *Id.* at ¶ 9 and Ex. C. In a response of
26 April 20, 2015, KFHPNW requested that the OIC reconsider its position:

Our organization respectfully disagrees with the assessment that
WAC 284-43-130 (29) applies to large group plans. We request
that the Commissioner reconsider this assessment, taking the
following into account:

We understand the revision to the service area definition in WAC
284-43-130 (29) was made to align state law requirements with
federal health care reform network adequacy requirements for
qualified health plans (QHPs) in 45 CFR 156.230. These access
requirements apply to QHPs and health plans offered outside the
exchange for the small group and individual market segments, not
large group market segments (please see also the purpose
statement for both WSR 14-07-102 and WSR 14-10-017 filed 03-
19-14 and 04-25-14). Further, the section provides that the
definitions in WAC 284-43-130 apply unless a term is defined in

1 other subchapters or the context requires otherwise. We feel it is
2 clear that the context requires otherwise and that it was not the
intent of the OIC to apply this definition to the large group market
segment as evidence by 2014 form and access plan filings.

3
4 Furthermore, application of the definition in WAC 284-43-130
5 (29) to the LBG market segment would be injurious to consumers
6 and disruptive to the marketplace. The OIC has not communicated
7 any intent to apply the more restrictive standard to the LBG market
8 segment, nor is there any underlying requirement or rationale to do
9 so. Applying this standard in the LBG segment will result in a
10 decrease in consumer choice as carriers will be forced to withdraw
from counties in which they do not currently offer coverage in all
zip codes. This change will likely come as a surprise to many
employer groups who will have little to no notice to enable them to
examine their reduced options. The reduced choice in the
marketplace may leave consumers with reduced access to
providers.

11 *Id.* It is not unusual for the OIC to reconsider a position expressed in an objection to a filing
12 after engaging in discussions with KFHPNW. *Id.* at ¶ 10.

13 **D. Bonneville Plan Renewal Prior to the OIC's Response**

14 Following its April 20, 2015 response and request that the OIC reconsider its position
15 regarding application of the "service area" definition to large group plans, KFHPNW followed
16 up with the OIC on April 28, 2015, requesting a meeting to discuss the issue. Declaration of
17 Megan Lane in Support of KFHPNW's Motion for Summary Judgment ("Second Lane Decl."),
18 ¶ 2 and Ex. A. The OIC did not provide a substantive response until May 11, 2015, when it
19 stated that its position was that "the definition of service area [WAC 284-43-130(29)] applies to
20 any health benefit plan sold in Washington state." *Id.* The OIC did not issue a formal response
21 to KFHPNW's April 20, 2015 comment in SERFF until June 16, 2015, when it asserted:

22 . . . The definition of service area applies to all plans; there is no
23 exclusion for large group plans. . . . The rules are not limited to
the individual and small group market, but apply to all "plans
24 offered outside the exchange", which includes large group plans. . .

25 Second Schwab Decl., ¶ 11 and Ex. D.

26
KFHPNW'S MOTION FOR SUMMARY JUDGMENT - 6

1 Well before the OIC even issued its first objection regarding KFHPNW's service area for
2 its large group plans, KFHPNW provided policyholder Bonneville Hot Springs Resort
3 ("Bonneville") with a quote for the June 1st renewal of its large group plan ("the Bonneville
4 Plan") on February 19, 2015.⁴ First Lane Decl., ¶ 5. Bonneville accepted that quote on May 7,
5 2015, creating a binding contract with KFHPNW regarding the Plan to be offered commencing
6 June 1, 2015. *Id.* As noted above, KFHPNW attempted to communicate with the OIC in the
7 weeks leading up to Bonneville's acceptance of the quote for the Bonneville Plan, seeking
8 guidance as to their differing interpretations of application of the service area definition to large
9 group plans. *Id.* at ¶ 6. Only after Bonneville's acceptance of the quote did the OIC confirm its
10 position, but it nonetheless continued to suggest discussions with KFHPNW regarding "next
11 steps" involving KFHPNW's existing plans. *Id.*; Second Lane Decl., Ex. A.

12 KFHPNW expressly notified the OIC, on May 26, 2015, that the Bonneville Plan was set
13 to renew on June 1, 2015. First Lane Decl., ¶ 6; Second Lane Decl., Ex. B. The OIC did not
14 provide KFHPNW with guidance on disposition of that Plan when it learned of the renewal.
15 First Lane Decl., ¶ 6. In fact, after the renewal date, the OIC noted, with respect to Bonneville
16 and Wahkiakum County: "We will provide additional direction on those groups soon." Second
17 Lane Decl., Ex. B.

18 KFHPNW has not entered into contracts to offer large group plans to any new
19 policyholders situated outside Clark or Cowlitz Counties since the OIC's April 1, 2015
20 objection. Second Schwab Decl., ¶12. Bonneville is the only policyholder located outside
21 Clark or Cowlitz Counties with a contract that has renewed since that time, although the renewal
22 process commenced prior to April 1st. *Id.*; First Lane Decl., ¶ 5.

23
24
25

26 ⁴ KFHPNW, like most issuers, typically provides quotes to current and prospective large group policyholders well in advance of the plan's effective date. First Lane Decl., ¶ 4.

1 **E. KFHPNW's Continuing Communications With the OIC**

2 In the ensuing weeks, KFHPNW continued to attempt to engage in discussions with the
3 OIC in a good faith effort to obtain guidance regarding the disposition of its existing large group
4 plans with policyholders located outside Clark and Cowlitz Counties (Bonneville and
5 Wahkiakum County). Second Lane Decl., ¶ 4 and Ex. C. For example, KFHPNW Regulatory
6 Consultant Megan Ochs⁵ wrote the OIC on June 10, 2015, stating:

7
8 I do still have an outstanding question about how we are to handle
9 existing large groups (we have identified 2) that are located outside
10 of Clark and Cowlitz counties. We are hoping to minimize
11 disruption to these groups and term them at their next renewal. Is
12 that still being discussed? . . .

13 *Id.* Ms. Ochs sent follow-up emails, requesting guidance on this issue, on June 16, 2015, June
14 22, 2015, and July 8, 2015, with no substantive response from the OIC. *Id.* On July 31, 2015,
15 KFHPNW Regulatory Consultant Merlene Converse again contacted the OIC, once again
16 seeking guidance as to the issue of “[l]eaving partial counties for large group (mid-year/set date
17 for termination vs. waiting until renewal.” Declaration of Merlene Converse in Support of
18 KFHPNW’s Motion for Summary Judgment (“Converse Decl.”), ¶ 2 and Ex. A. Ms. Converse
19 noted: “For all the groups that are impacted, we have an organizational desire to have the change
20 happen upon renewal to limit disruption to the employer groups.” *Id.* at Ex. A.

21 Jennifer Kreitler with the OIC finally discussed the issue with Ms. Converse on August 3,
22 2015, a conversation that Ms. Converse memorialized that same day as follows:

23 I was able to connect with Jennifer Kreitler at the OIC today on the
24 topic of the timing for group terminations due to the partial county
25 issue. Jennifer says that the OIC is still in the process of having
26 internal discussions on this topic. They expect to wrap up those
discussions in the next week or two and will communicate back to
us. Jennifer let me know that there is internal concern that waiting
until 2016 to implement the service area change for affected
groups may be too long. However, the OIC is being mindful of the

⁵ Ms. Ochs has since changed her name to Megan Lane. Second Lane Decl., ¶ 1.

1 impact to the large employers and is weighing that against the
2 timing. Discussions continue.

3 *Id.* at ¶ 3 and Ex. B.

4 On August 18, 2015, Ms. Converse followed up with Ms. Kreitler via another telephone
5 discussion. *Id.* at ¶ 4. Ms. Kreitler indicated that the OIC was still in the process of determining
6 whether termination of the large group plans located outside the updated service area would
7 occur at renewal, at termination, or on a specific calendar date. *Id.*

8 On August 25, 2015, KFHPNW attempted to reach Ms. Kreitler again but was
9 unsuccessfully. KFHPNW subsequently contacted Molly Nollette, who agreed to schedule a
10 conference call to discuss the timing of the terminations. *Id.* at ¶ 5 and Ex. C. Ms. Converse
11 sent the OIC an email, in preparation for the meeting, confirming information regarding
12 Bonneville, Wahkiakum County, and WA PEBB, a large group policyholder located within the
13 service area, but with some enrollees who neither lived nor worked in the updated service area.
14 *Id.* at ¶ 6 and Ex. D. KFHPNW expected the conference call, which occurred on September 1,
15 2015, to involve receipt of the OIC's guidance as to the disposition of its existing large group
16 plans. *Id.* at ¶ 7. Instead, to KFHPNW's surprise, the OIC informed KFHPNW during the call
17 that it was issuing a Cease and Desist Order. *Id.*

18 **F. The Cease and Desist Order**

19 Despite the parties' ongoing discussions, the OIC issued the Cease and Desist Order ("the
20 Order") on September 2, 2015, ordering KFHPNW:

21 to immediately cease and desist from:

- 22 A. Offering, selling or renewing any plans to any consumer that is
23 ineligible because he or she does not currently work or live in
24 Kaiser Foundation Health Plan of the Northwest's (Kaiser)
25 Washington service area of Clark and Cowlitz counties;
- 26 B. By December 31, 2015, providing coverage to all current
enrollees who do not currently live or work in Clark and
Cowlitz counties. This includes, but is not limited to enrollees
receiving coverage through Wahkiakum County – group
#16676, Bonneville Hot Springs Resort – group #16311, and

KFHPNW'S MOTION FOR SUMMARY JUDGMENT - 9

1 the Public Employees Benefits Board also known as PEBB.
2 Affected enrollees must receive discontinuation notice pursuant
to 48.43.035.

3 Order, p. 1. The Order also mandated that, by September 16, 2015, KFHPNW:

4 will report to the Insurance Commissioner the following
5 information relating to plans offered or sold to consumers who
neither live nor work in Clark and Cowlitz counties:

- 6 • The number of plans offered or sold;
- 7 • The number of enrollees in the plans;
- 8 • The premium charged enrollees; and
- 9 • An estimate of all current out of pocket expenses incurred
10 by enrollees to date.

11 . . . [and] Kaiser will draft a lawful discontinuation notice of these
12 policies and submit that draft for approval to the Insurance
Commissioner. This notice will inform enrollees that their
coverage will end as of December 31, 2015.

13 . . . After approval of the notice by the Insurance Commissioner,
14 Kaiser will timely issue this notice to the enrollees of these plans.

15 *Id.* at 2-3. KFHPNW complied by submitting the above-mandated materials to OIC on
16 September 16, 2015. First Schwab Decl., ¶ 4.

17 KFHPNW submitted its Demand for Hearing and accompanying Motion for Stay on
18 September 24, 2015.

19 III. STANDARD OF DECISION

20 Summary judgment in an administrative proceeding is appropriate “if the written record
21 shows that there is no genuine issue as to any material fact and that the moving party is entitled
22 to judgment as a matter of law.” WAC 10-08-135; *see also Stewart v. Dep’t of Soc. & Health*
23 *Servs.*, 162 Wn. App. 266, 270, 252 P.3d 920 (2011). All facts are viewed “in the light most
24 favorable to the nonmoving party.” *Granton v. Wash. State Lottery Comm’n*, 143 Wn. App. 225,
25 230, 177 P.3d 745 (2008).

26
KFHPNW’S MOTION FOR SUMMARY JUDGMENT - 10

1 Here, the Parties agree that this matter presents legal issues that would be decided most
2 efficiently via dispositive motions, as each intends to file a Motion for Summary Judgment.

3 IV. ARGUMENT

4 As discussed more fully below, it is clear from both the context and the OIC's oft-stated
5 purpose for the rulemaking that the new service area definition set forth in WAC 284-43-130(29)
6 was intended to apply only to individual and small group health plans offered both inside and
7 outside of the Exchange, and not to large group health plans. In its Order, however, the OIC has
8 applied the definition to KFHPNW's large group health plans, and it has indicated that it will not
9 approve such plans unless the service areas do not include any partial counties. Moreover,
10 despite the language in the service area definition that allows the OIC to make an exception for
11 "good cause," and evidence of such "good cause" here, the OIC has indicated that it will not
12 grant such an exception.

13 The OIC's determination, if upheld, will eliminate the current health coverage of
14 enrollees who work for employers who have purchased KFHPNW's health plans, but who
15 happen to not live or work at a location outside of KFHPNW's service area. In some cases,
16 enrollees' coverage will be eliminated in the middle of the plan year. Such a result will be
17 harmful to those enrollees and their policyholder employers and will serve to decrease enrollees'
18 access to health care.

19 For the reasons delineated below, KFHPNW respectfully requests that the Presiding
20 Officer vacate the Order and hold that KFHPNW may continue to offer coverage in zip code-
21 based service areas for its large group plans.

22 A. The Service Area Definition is Limited in Application to QHPs and Small Group 23 and Individual Plans

24 The OIC's application of the new service area definition to large group plans is directly
25 contrary to the OIC's articulated purpose for engaging in the rulemaking generally, and for
26

1 adopting the service area definition more specifically: to align the regulatory framework in
2 Washington with the approach reflected in federal regulations adopted subsequent to the ACA.
3 As they pertain to the establishment of service areas, those federal regulations are limited in
4 scope to individual and small group health plans offered both inside and outside of the
5 Exchange; they do not apply to large group plans, nor should the corresponding revised service
6 area definition in WAC 284-43-130(29).

7 Perhaps the clearest expression of OIC's intent to align the network access regulations
8 generally, and the adoption of a service area definition specifically, with federal standards
9 appears in the Concise Explanatory Statement for the Network Access Rule Making ("CES") of
10 April 24, 2015, which contains numerous references to that objective. Declaration of Robin
11 Larmer in Support of KFHPNW's Motion for Summary Judgment ("Larmer Decl."), Ex. A. For
12 example, in response to a request to clarify the circumstances in which continued use of zip-code
13 based service areas would be permitted, the OIC replied:

14 The Commissioner declines to adopt a definition for service area
15 that relies upon zip codes. Federal guidelines require issuers to
16 satisfy county integrity requirements in 45 CFR 155.1055.
17 Additionally, the Washington State Health Benefit Exchange has
18 stated in its "Guidance for Participation in the Washington Health
19 Benefit Exchange" document, Section 2.2.17, that a qualified
20 health plan service area must meet 2705(a) of the PHS Act and 45
21 CFR 145.1055(b) which sets service areas by county. Washington
22 State does not have any counties that would qualify to meet the
23 federal examples of when zip codes service areas would be
24 allowed. Federal guidance is clear that the only reason a zip code
25 service area is approved is due to specific issues such as water or
26 land barriers.

21 *Id.* at p. 15 (emphases added).

22 The Exchange Establishment Standards referenced by the OIC in the CES apply to QHPs
23 offered on the Exchange, providing that:

24 The Exchange must have a process to establish or evaluate the
25 service areas of QHPs to ensure such service areas meet the
26 following minimum criteria:

(a) The service area of a QHP covers a minimum geographical area
that is at least the entire geographic area of a county, or a group of

1 counties defined by the Exchange, unless the Exchange determines
2 that serving a smaller geographic area is necessary,
3 nondiscriminatory, and in the best interest of the qualified
4 individuals and employers.

5 45 C.F.R. § 155.1055; *see also* 45 C.F.R. § 156.230⁶. By its express terms, 45 C.F.R. §
6 155.1055 applies only to QHPs; it does not purport to address large group plans. 45 C.F.R. §
7 155.1055.

8 The OIC also cited to the Washington State Health Benefit Exchange publication,
9 “Guidance for Participation in the Washington Health Benefit Exchange” (“Exchange
10 Guidance”), which states in Section 2.2.17 that:

11 The QHP service area must be established without regard to racial,
12 ethnic, language, or health-status related factors specified under
13 section 2705(a) of the Public Health Service Act, or other factors
14 that exclude specific high utilization, high cost, or medically-
15 underserved populations (45 CFR §155.1055(b)). A QHP service
16 area will be set by county or counties; however, an issuer
demonstrating good cause, as specified in WAC 284-43-130, may
set a QHP service area by zip codes. Good cause includes
geographic barriers within a service area, or other conditions that
make offering coverage throughout an entire county unreasonable.

17 ⁶ 45 C.F.R. § 156.230 provides:

18 Network adequacy standards.

19 (a) **General requirement.** A QHP issuer must ensure that the provider network
20 of each of its QHPs, as available to all enrollees, meets the following
standards—

21 (1) Includes essential community providers in accordance with § 156.235;

22 (2) Maintains a network that is sufficient in number and types of providers,
23 including providers that specialize in mental health and substance abuse
24 services, to assure that all services will be accessible without unreasonable
delay; and,

25 (3) Is consistent with the network adequacy provisions of section 2702(c) of the
PHS Act.

26 (Emphasis in original).

1 Consumers will be able to identify a service area by providing a
2 zip code or county in Healthplanfinder.

3 Larmer Decl., Ex. B (emphases added). The Exchange Guidance is clearly – and appropriately -
4 limited in scope to QHPs. *See id.* The Exchange Guidance also articulates the policy concerns
5 underlying the development of service area standards by the U.S. Department of Health and
6 Human Services (“HHS”): notably, the desire to prevent issuers from drawing service area
7 boundaries in a manner that is designed to exclude areas characterized by low income and high
8 utilization or that is otherwise discriminatory. *Id.* As discussed more fully below, these
9 concerns, while relevant to QHPs, typically do not arise with respect to large group plans.

10 Moreover, there is no clear indication in the applicable Washington statutes or
11 regulations that the service area definition applies to large group plans. In purported support of
12 its application of the service area definition to large groups, the OIC has cited general network
13 access regulations (WAC 284-43-200) and the statutory requirement that members have access
14 to appropriate health care services (RCW 48.43.515). However, neither authority references or
15 addresses service areas or the service area definition.

16 Significantly, WAC 284-43-130 provides that the definitions contained therein apply
17 “[e]xcept as defined in other subchapters and unless the context requires otherwise.” WAC 284-
18 43-130 (emphasis added). The context of the service area definition contained in WAC 284-43-
19 130(29) is informed by the scope of the federal regulations the definition was intended to mirror,
20 as evidenced by the OIC’s frequent and unambiguous references to alignment with federal
21 standards during the rulemaking process. The context is also informed by established OIC
22 practice, in particular the established form and report filing processes, as well as by statements
23 made by OIC staff during and subsequent to the rulemaking. *See, e.g.* Second Schwab Decl., ¶ 5
24 and Ex. A. Also informative are the statements not made – notably, any statement that would
25 clearly indicate that the service area definition would apply to large group plans. Here, the
26

1 relevant context supports the opposite conclusion, that the definition does not apply to large
2 group plans.

3 KFHPNW is entitled to continue offering coverage through large group policyholders
4 outside Clark and Cowlitz Counties. Doing so comports with the spirit and purpose of the
5 revised regulations, including the service area definition intended to apply only to individual and
6 small group plans.

7
8 **B. The Policy Considerations Underlying Revised Service Area Standards Do Not
Apply to Large Group Plans**

9
10 The stated policy considerations underlying the establishment of the service area
11 standards in 45 C.F.R. § 155.1055 are, by and large, simply not present with respect to large
12 group plans.

13 In the small group and individual markets, there is arguably reason for concern that
14 issuers might tend to draw service area boundaries in a manner that would result in the issuers
15 offering plans in only the most “desirable” geographic areas. Such discriminatory practices,
16 including red-lining or “cherry-picking” members by offering plans only in perceived low risk
17 areas, are unfair to consumers and disruptive to the State’s insurance market – and precisely what
18 HHS sought to prevent when it developed the service area standards in 45 C.F.R. § 155.1055.

19 In commentary to the final rule, HHS explained its intent to establish a process by which
20 service areas of QHPs could be evaluated to determine whether the service area: (a) covers a
21 minimum geographic area that meets certain conditions; and (b) was established without regard
22 to racial; ethnic; language; health-status-related factors listed in Section 2705(a) of the Public
23 Health Service Act (“PHSA”); or other factors that exclude specific high-utilizing, high cost, or
24 medically underserved populations. 77 Fed Reg No. 59, March 27, 2012 at 18409-10. HHS
25 expressed confidence that 45 C.F.R. § 155.1055 adequately addresses the underlying causes of
26 red-lining, by both addressing discriminatory service area practices within a county and

1 establishing that service area delineations must be established without regard to a variety of
2 factors that could be used to “cherry-pick” healthy from unhealthy risk by geography. *Id.* at
3 18410.

4 Those concerns are not present in the large group market. Issuers in the large group
5 market offer coverage where their customers – typically, employers – require it in order to serve
6 their employees. Demographics of the population simply do not and cannot drive the service area
7 determination. Indeed, because large groups typically have greater bargaining power than
8 individual enrollees and many small groups, they are less likely in general to be subject to the
9 potential inequities against which the Exchange structure is intended to protect, including
10 “cherry-picking”.

11
12 **C. Application of the Service Area Definition to Large Group Plans Would be an
13 Inequitable Departure From the OIC’s Policy and Practice**

14 Even if application of the definition of service area in WAC 284-43-130(29) could be
15 properly extended to large group plans notwithstanding the more limited scope of the federal
16 regulations it mirrors, such an extension would represent a significant shift in both policy and
17 practice. Such a shift should be made expressly and with transparency, not through the OIC’s
18 expansive post-adoption interpretation of a single, context-informed definition in the WAC. At a
19 minimum, stakeholders should be made aware of the intended scope of proposed regulations and
20 their anticipated effects prior to the adoption of those regulations. *See* RCW 34.05.320.

21 Accordingly, if the OIC intended to require large group plans to use only county-based
22 service areas, the OIC had an obligation to make that intention clear. The OIC had numerous
23 opportunities to do so during the rulemaking process, but it did not. To the contrary, the OIC
24 could not have been more explicit in communicating that the purpose of the rulemaking in
25 general was to align Washington’s regulations with federal network access regulations, which, as
26 relevant here, apply only to QHPs and health plans offered outside the Exchange for small

1 groups and individuals. Furthermore, the OIC represented to KFHPNW, during the rulemaking
2 process, that the regulations would only impact the service area for individual and small group
3 plans and would have no such impact on large group plans. Second Schwab Decl., ¶ 5 and Ex.
4 A.

5 Further evidencing the lack of clear intent to apply the service area definition to large
6 group plans, the OIC's network filing forms and templates continue to treat large group plans
7 differently than small group and individual plans. *Id.* at ¶ 14 and Ex. E. In fact, large group
8 plans are required to be filed in SERFF pursuant to a unique set of instructions that expressly
9 apply only to such plans. In the SERFF filing, such plans are generally identified as "not
10 PPACA-related," further distinguishing them from small group and individual plans. *Id.*

11 There are myriad other ways in which large group plans are treated differently, in law and
12 in practice. There was simply no reason for KFHPNW to presume the service area definition
13 applied to large group plans absent clear and explicit indications of such.

14 The OIC's intentions regarding the scope of the updated service area definition have been
15 at best, nebulous. Had the OIC made its current interpretation clear during the rulemaking
16 process, when it should have done so, or even in the CES, KFHPNW would have been on notice
17 of the need to drastically shift its business practices with respect to large group plans. Instead,
18 KFHPNW was surprised by the OIC's abrupt and unexpected departure from what KFHPNW
19 reasonably understood to be the limited scope of the revised service area definition. KFHPNW's
20 enrollees, its large group policyholders, and KFHPNW itself will be inequitably harmed by the
21 OIC's position, particularly with respect to plans the OIC seeks to terminate mid-plan-year.

22
23 **D. The OIC's Requested Remedy is Overbroad and Will Unfairly Harm KFHPNW,
24 Policyholders, and Enrollees**

25 There is no consumer harm that warrants the remedy sought by the OIC. KFHPNW is
26 unaware of any instance in which a KFHPNW member has been unable to obtain access to

1 appropriate health care within KFHPNW's network. *Id.* at ¶ 13. Each of the large group plans
2 offered by KFHPNW provides coverage that affords members access to an adequate network of
3 providers within a reasonable distance. *Id.* Despite its current focus on shifting large groups
4 plans to a county-based service area, the OIC has never indicated otherwise. *Id.* Indeed, many
5 of the employees living outside the service area are just over the border and within an
6 appropriately short distance of providers. First Schwab Decl., ¶ 10. As noted above, many of
7 those employees may also work within the service area, eliminating any network adequacy
8 concerns even under the OIC's broad application of the "service area" definition. *Id.* at ¶ 9.

9 In fact, implementation of the Order could itself lead to impeded access to health care.
10 Cancelling coverage for employees and their families mid-contract – especially where the
11 employees may have just recently chosen a health plan during a regularly-scheduled open
12 enrollment – will create significant disruption, confusion, and frustration. *Id.* at ¶ 6. Members
13 have an expectation that their coverage will be in force for the 12 months following enrollment,
14 barring any change in their employment status. *Id.*

15 In all cases, the loss of Kaiser coverage will disrupt members' medical care, because
16 KFHPNW's primary provider network for its commercial products has no current contracts with
17 other health plans. *Id.* at ¶ 7. In other words, members who lose coverage under their existing
18 plans will generally be no longer able to receive medical care from their current providers even if
19 they obtain alternate coverage. *Id.* Many members will therefore lose the ability to obtain care
20 from providers with the Kaiser Permanente care team with whom they have long-established
21 relationships.⁷ *Id.*

22 Moreover, the Order inexplicably requires KFHPNW to send discontinuation notices to
23 enrollees who may nevertheless remain eligible for coverage. Specifically, the Order requires
24 that discontinuation notices be sent directly to members who simply have a home address outside

25 ⁷ Not only will members' coverage and care be disrupted, but the OIC's requirement that KFHPNW
26 discontinue coverage (especially mid-contract) will irreparably harm KFHPNW by impacting its business,
reputation, and goal to provide premier customer service. First Schwab Decl., ¶ 8.

1 of KFHPNW's service area. *See* Order. KFHPNW's data includes members' home addresses,
2 but not their work addresses; KFHPNW relies on employers, who have more complete data, to
3 only offer coverage under the plans to their employees who either live or work within the service
4 area. First Schwab Decl., ¶ 9; First Lane Decl., ¶ 3. KFHPNW's data indicates that there are
5 currently 590 members enrolled in KFHPNW's large group plans who live outside of Clark and
6 Cowlitz Counties. First Schwab Decl., ¶ 5. Because KFHPNW does not currently have access
7 to data regarding how many of those members also work outside the service area, compliance
8 with the Order would require KFHPNW to send notices to all 590 employees even though some
9 remain eligible because they work inside the Service Area. *Id.* at ¶ 9. Requiring KFHPNW to
10 send discontinuation notices directly to members who may actually remain eligible to continue
11 coverage under large group plans offered to employers in the service area will unnecessarily
12 alarm and confuse those members and may lead them to seek coverage from other issuers.⁸ *Id.*

13
14 **E. The OIC Has the Ability to Allow an Exception to the County-Based Service Area Requirement**

15
16 Even if the county-based service area definition in WAC 284-43-130(29) applied to large
17 group plans, the OIC is plainly authorized to approve a service area that does not include a whole
18 county for good cause. The service area definition provides:

19 . . . A service area must be defined by the county or counties
20 included unless, for good cause, the commissioner permits
21 limitation of a service area by zip code. Good cause includes
22 geographic barriers within a service area, or other conditions that
23 make offering coverage throughout an entire county unreasonable.

24 WAC 284-43-130(29) (emphasis added); *see also* Larmer Decl., Ex. B, § 2.2.17.

25 Nonetheless, the OIC immediately, and inexplicably, disavowed any such ability, stating
26 in the CES (and demonstrating in practice) that "Washington State does not have any counties

⁸ Significantly, members of employer-sponsored health plans generally do not receive discontinuation notices from carriers based on the group's determination of individual member eligibility, but only receive such notices when a carrier discontinues offering a group plan altogether. First Schwab Decl., ¶ 9.

1 that would qualify to meet the federal examples of when zip code service areas would be
2 allowed.” Larmer Decl., Ex. A, p. 15. The OIC elaborated: “Federal guidance is clear that the
3 only reason a zip code service area is approved is due to specific issues such as water or land
4 barriers.” *Id.* Although KFHPNW recognizes that exceptions will not and should not be granted
5 without justification, KFHPNW is unaware of any Federal guidance that would so severely limit
6 exceptions under federal standards to only circumstances involving “water or land barriers.”⁹

7 Furthermore, the definition in Washington law expressly provides: “Good cause includes
8 geographic barriers within a service area, or other conditions that make offering coverage
9 throughout an entire county unreasonable.” WAC 284-43-130(29) (emphasis added). “[I]t is a
10 fundamental principle of statutory construction that courts must not construe statutes so as to
11 nullify, void or render meaningless or superfluous any section or words’ of the statute.” *In re*
12 *Dependency of K.D.S.*, 176 Wn.2d 644, 656, 294 P.3d 695 (2013) (quoting *Taylor v. City of*
13 *Redmond*, 89 Wn.2d 315, 319, 571 P.2d 1388 (1977)); *see also State v. J.P.*, 149 Wn.2d 444,
14 450, 69 P.3d 318 (2003) (“Statutes must be interpreted and construed so that all the language
15 used is given effect, with no portion rendered meaningless or superfluous.”). “[G]eographic
16 barriers” present only one potential basis for an exception; in accordance with the clear language
17 of the definition, “other conditions” may also support an exception. WAC 284-43-130(29).

18 Here, even if the service area definition were applied to KFHPNW’s large group plans,
19 the circumstances involve precisely the type of “conditions that make offering coverage
20 throughout an entire county unreasonable.” *Id.* Many large group policyholders located in Clark
21 and Cowlitz Counties have employees who live and work just over the borders of those counties.
22 First Schwab Decl., ¶ 10. It would be unreasonable to require a service area to encompass entire
23 adjacent counties simply to accommodate those employees -- and it would be equally
24 unreasonable to arbitrarily cut off coverage for those employees simply because they happen to

25 _____
26 ⁹ In fact, the language allowing for an exception in 45 C.F.R. § 155.1055 is arguably broader than the
language in WAC 284-43-130(29), indicating that exceptions may be made if it is determined that serving a smaller
geographic area is necessary, nondiscriminatory, and in the best interest of the qualified individuals and employers.

1 live across a county line. It is well within the OIC's authority to grant an exception to the service
2 area requirement, and such an exception is warranted under these circumstances.

3
4 **F. Even if the Service Area Definition Applied to Large Groups, KFHPNW Should Not**
5 **be Required to Terminate Contracts Mid-Plan-Year**

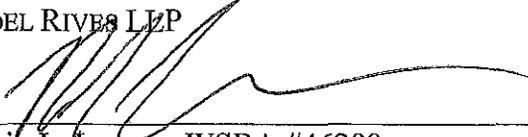
6 At a minimum, KFHPNW should be permitted to continue to provide coverage to large
7 groups through the natural expiration dates of their current contracts with those policyholders,
8 ensuring continuity of coverage and minimizing disruption to policyholders and enrollees. The
9 OIC's sudden and unanticipated application of the service area definition to large groups in April
10 2015, coupled with its failure to provide the clear guidance sought by KFHPNW regarding the
11 disposition of its existing large group plans in the ensuing months, renders mid-contract
12 terminations inequitable. Such mid-contract terminations will unnecessarily disrupt enrollees'
13 health care coverage, directly contrary to the fundamental interests and goals of the OIC. As
14 noted above, allowing coverage to continue until the contracts' expiration dates will not have any
15 adverse impact on enrollees. To the contrary, enrollees will be permitted to continue to receive
16 care from the Kaiser providers to which they have been accustomed -- delaying the harm that
17 will inevitably occur when enrollees' access to those providers is cut off by the OIC's
18 application of the revised service area definition to KFHPNW's large group plans.

19 **V. CONCLUSION**

20 For the reasons set forth above, KFHPNW respectfully requests that the Presiding Officer
21 grant judgment as a matter of law in its favor and vacate the Cease and Desist Order. The
22 service area definition contained in WAC 284-43-130(29) does not apply to large group plans.
23 Even if it did, the circumstances presented here warrant an exception to the county-based service
24 area requirement for good cause. As noted above, at minimum, KFHPNW should be permitted
25
26

1 to continue to provide coverage to large groups through the natural expiration dates of their
2 current contracts with those policyholders.

3 Dated this 30th day of October, 2015.

4
5 STOEL RIVES LLP
6 

7 Robin L. Larmer, WSBA #46289
8 Karin D. Jones, WSBA # 42406
9 600 University St., Ste. 3600
10 Seattle, WA 98101
11 Phone: (206) 624-0900
12 Facsimile: (206) 386-7500
13 Email: robin.larmer@stoel.com
14 Email: karin.jones@stoel.com

15 Attorneys for KFHPNW

1 **CERTIFICATE OF SERVICE**

2 I, Melissa Wood, certify that at all times mentioned herein, I was and am a resident of the
3 state of Washington, over the age of eighteen years, not a party to the proceeding or interested
4 therein, and competent to be a witness therein. My business address is that of Stoel Rives LLP,
5 3600 One Union Square, 600 University Street, Seattle, Washington 98101.

6 On October 30, 2015, I caused a copy of the foregoing document to be served upon the
7 following individual(s) in the manner indicated below:

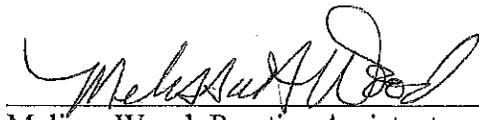
8 Hearings Unit
9 Office of the Insurance Commissioner
10 P.O. Box 40255
11 Olympia, WA 98504-0255
Email: hearings@oic.wa.gov

- hand delivery
- facsimile transmission
- overnight delivery
- first class mail
- e-mail delivery

12 Mandy Weeks
13 Office of the Insurance Commissioner
14 P.O. Box 40255
15 Olympia, WA 98504-0255
Email: MandyW@oic.wa.gov

- hand delivery
- facsimile transmission
- overnight delivery
- first class mail
- e-mail delivery

16 Executed on October 30, 2015, at Seattle, Washington.

17 
18 _____
19 Melissa Wood, Practice Assistant

FILED

Oct 30
2015 NOV 4 A 10:00
KAC

HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

IN THE MATTER OF

KAISER FOUNDATION HEALTH PLAN
OF THE NORTHWEST

Docket No. 15-0205

DECLARATION OF MEGAN LANE IN
SUPPORT OF KFHPNW'S MOTION
FOR SUMMARY JUDGMENT

1. I am employed by Kaiser Foundation Health Plan of the Northwest ("KFHPNW") as a Regulatory Consultant II, a position I have held for approximately three years. I have been employed by KFHPNW for a total of approximately five years. I am above the age of 18 and competent to testify to the matters set forth herein. My previous legal name was Megan Ochs.

2. On April 28, 2015, my colleague, Theresa Neibert, contacted the Office of the Insurance Commissioner ("OIC") by email, with a copy to me, to request a meeting to discuss the issue of the OIC's application of the service area definition in WAC 284-43-130(29) to KFHPNW's large group plans in Washington. Attached hereto as **Exhibit A** is a true and correct copy of that email and of the OIC's response, which I received on May 11, 2015.

3. On May 26, 2015, I sent an email to the OIC, a true and correct copy of which is attached hereto as **Exhibit B**. Exhibit B includes the OIC's response of June 2, 2015.

4. In the ensuing weeks, KFHPNW continued to attempt to engage in discussions with the OIC in a good faith effort to obtain guidance regarding the disposition of its existing

DECLARATION OF MEGAN LANE IN SUPPORT OF KFHPNW'S MOTION FOR SUMMARY
JUDGMENT - 1

1 large group plans with policyholders located outside Clark and Cowlitz Counties (Bonneville
2 Hot Springs Resort and Wahkiakum County). Attached hereto as **Exhibit C** is a true and correct
3 copy of emails I sent to the OIC between June 10, 2015 and July 8, 2015. I did not receive
4 substantive responses to those emails.

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

7 SIGNED at Vancouver, WA this 30th day of October, 2015.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



MEGAN A. LANE

DECLARATION OF MEGAN LANE IN SUPPORT OF KFHPNW'S MOTION FOR SUMMARY
JUDGMENT - 2

1 **CERTIFICATE OF SERVICE**

2 I, Melissa Wood, certify that at all times mentioned herein, I was and am a resident of the
3 state of Washington, over the age of eighteen years, not a party to the proceeding or interested
4 therein, and competent to be a witness therein. My business address is that of Stoel Rives LLP,
5 3600 One Union Square, 600 University Street, Seattle, Washington 98101.

6 On October 30, 2015, I caused a copy of the foregoing document to be served upon the
7 following individual(s) in the manner indicated below:

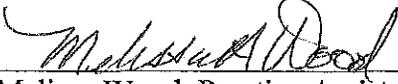
8 Hearings Unit
9 Office of the Insurance Commissioner
10 P.O. Box 40255
11 Olympia, WA 98504-0255
Email: hearings@oic.wa.gov

- hand delivery
- facsimile transmission
- overnight delivery
- first class mail
- e-mail delivery

12 Mandy Weeks
13 Office of the Insurance Commissioner
14 P.O. Box 40255
15 Olympia, WA 98504-0255
Email: MandyW@oic.wa.gov

- hand delivery
- facsimile transmission
- overnight delivery
- first class mail
- e-mail delivery

16 Executed on October 30, 2015, at Seattle, Washington.

17
18 
19 _____
Melissa Wood, Practice Assistant

20
21
22
23
24
25
26
DECLARATION OF MEGAN LANE IN SUPPORT OF KFHPNW'S MOTION FOR SUMMARY
JUDGMENT - 3



FW: Do you have time to discuss an objection
Kreitler, Jennifer (OIC)

to:

Megan L Ochs

05/11/2015 03:28 PM

Cc:

"Nollette, Molly (OIC)", "Philhower, Andrea (OIC)", Theresa A Neibert

Show Details

History: This message has been forwarded.

1 Attachment



Ochs_Megan.vcf

Hi Megan,

Network Access standards [WAC 284-43-200] apply to an issuers network regardless if the health plan being supported by the networks is sold in the large, small, or individual market. While it is true that certain provisions for service areas are only applicable to qualified health plans, such as the requirements in WAC 284-43-222, the definition of service area [WAC 284-43-130(29)] applies to any health benefit plan sold in Washington state.

WAC 284-43-130(29) states a service area must be defined by the county or counties included unless, for good cause, the commissioner permits limitation of a service area by zip code. Good Cause includes geographic barriers within a service area, or other conditions that make offering coverage through an entire county unreasonable.

I understand you have received objections about this issue and have 2 employer health benefit plans that may not meet regulatory requirements. There are a few options available, first, you can expand your service area to be full county(ies) or you can provide additional information demonstrating good cause for why Kaiser requests the commissioner to allow a service area limitation by zip code.

If you would find it beneficial, I would be happy to schedule sometime to discuss these options and next steps with you. Please let me know if you have any additional questions.

Sincerely,

Jennifer Kreidler, ALMI, HIA, MHP

Healthcare Consumer Access Manager

Rates and Forms Division

Washington state Office of the Insurance Commissioner

360-725-7127 | JenniferK@oic.wa.gov | www.insurance.wa.gov

• www.insurance.wa.gov | twitter.com/WA_OIC | wainsurance.blogspot.com |

www.facebook.com/WSOIC

EXHIBIT A

Protecting insurance consumers
(Insurance Consumer Hotline 1.800.562.6900)

From: Megan.L.Ochs@kp.org [mailto:Megan.L.Ochs@kp.org]
Sent: Monday, May 04, 2015 9:06 AM
To: MollyN@oic.wa.govMollyN
Cc: Theresa.A.Neibert@kp.org
Subject: RE: Do you have time to discuss an objection

Hello Molly and Jennifer,

I just wanted to touch base and let you know that Theresa is ill and will be out of the office through Monday, May 11, 2015. I'll be handling things in her absence so please feel free to contact me at (503) 924-9817.

Thanks!

Megan Ochs
Regulatory Consultant II
Regulatory Advocacy and Consulting

Kaiser Foundation Health Plan of the Northwest
500 NE Multnomah St., Suite 100 -- Floor 8
Portland, Oregon 97232

503-924-9817
Megan.L.Ochs@kp.org

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.

From: "Nollette, Molly (OIC)" <MollyN@oic.wa.gov>
To: Theresa A Neibert/OR/KAIPERM@KAIPERM
Cc: Megan L Ochs/OR/KAIPERM@KAIPERM, "Kreitler, Jennifer (OIC)" <JenniferK@oic.wa.gov>
Date: 04/29/2015 01:50 PM
Subject: RE: Do you have time to discuss an objection

Hello Theresa,
Thank you for reaching out to me and sharing your concern on this topic. Jennifer Kreitler is going to be taking the lead on this issue and will be contacting you this week. If you are running into a due date for an objection, please do not hesitate to ask for an extension if necessary.
Thank you,

Molly Nollette
Deputy Insurance Commissioner
Rates & Forms Division

Washington State Office of the Insurance Commissioner
360-725-7117 | mollyn@oic.wa.gov
PO Box 40255
Olympia, WA 98504-0255

www.insurance.wa.gov | twitter.com/WA_OIC | wainsurance.blogspot.com | [email/text alerts](#)
Protecting insurance consumers

Insurance Consumer Hotline 1.800.562.6900

From: Theresa.A.Neibert@kp.org [<mailto:Theresa.A.Neibert@kp.org>]
Sent: Tuesday, April 28, 2015 2:09 PM
To: Nollette, Molly (OIC)
Cc: Megan.L.Ochs@kp.org
Subject: Do you have time to discuss an objection

Hi Molly,

I was hoping to get a few moments of your time in the next day or two. I've included Megan on my team - as she has the details on the rule in question and she is filling in for Merlene.

We have received an objection to our Large Group filings - based on our definition of service area. We have some partial counties for large group. As such, our definition defines service area for Large Group's not by county, but zip code. As you will recall, we had to strip our Service Area down for Small Group a year or so back due to the requirements of ACA for QHP's. We are clear on that issue - but this pertains now to Large Group.

Merlene participated in the rule making - where this topic was put into Washington rule to align with the ACA. Merlene's understanding was that the OIC intent was to match inside and outside the exchange for QHP purposes and align the rules with ACA not to extend this to Large Group.

We shared our understanding when responding to the objection, and were informed via a separate filing that the OIC interpretation and intent was to apply full county requirement to the Large Group market all along. We have two Large Employer Groups in partial counties that will be affected if we must eliminate them from our Service Area. We'd like to revisit this discussion with you and see if there is any allowance for our current interpretation.

I realize you are very busy, and we will keep this as short a discussion as possible.

Thank You,

Theresa

Theresa Neibert
Manager

Kaiser Foundation Health Plan of the Northwest
Regulatory Advocacy & Consulting
500 NE Multnomah, Suite 100
Portland, OR 97232

503-813-2386 (office)
49-2386 (tie-line)
503-813-3985 (fax)
503-686-8476 (mobile phone)

kp.org/thrive

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.



Fw: Large group service area follow-up question
Megan L Ochs to: Theresa A Neibert, Merlene S Converse

09/03/2015 04:38 PM

Follow Up: Normal Priority.

FYI

Megan Ochs, JD
Regulatory Consultant II
Regulatory Advocacy and Consultant

Kaiser Foundation Health Plan of the Northwest
500 NE Multnomah St, Suite 100 – Floor 8
Portland, OR 97232

503-924-9817

kp.org/thrive

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.

----- Forwarded by Megan L Ochs/OR/KAIPERM on 09/03/2015 04:38 PM -----

From: "Nollette, Molly (OIC)" <MollyN@oic.wa.gov>
To: Megan L Ochs/OR/KAIPERM@KAIPERM
Cc: "Kreitler, Jennifer (OIC)" <JenniferK@oic.wa.gov>, Theresa A Neibert/OR/KAIPERM@KAIPERM,
"Philhower, Andrea (OIC)" <AndreaP@OIC.WA.GOV>, "Broyles, Linda (OIC)"
<LindaB@OIC.WA.GOV>
Date: 06/02/2015 12:39 PM
Subject: RE: Large group service area follow-up question

Hello Megan,

We have some additional questions regarding the two groups with enrollment outside of the Cowlitz and Clark counties service area. What is the enrollment, by zip code and by county, for the current enrollment outside of Cowlitz and Clark counties? We will provide additional direction on those groups soon.

For all other large group filings with current enrollment with zip code based service areas completely within Cowlitz and Clark counties, Linda Broyles and Andrea Philhower will provide direction on how to make the corrections.

Thank you for the information that you have been providing.

Molly Nollette
Deputy Insurance Commissioner
Rates & Forms Division
Washington State Office of the Insurance Commissioner
360-725-7117 | mollyn@oic.wa.gov
PO Box 40255
Olympia, WA 98504-0255

EXHIBIT B

www.insurance.wa.gov | twitter.com/WA_OIC | wainsurance.blogspot.com | email/text
[alerts](#)

Protecting insurance consumers

Insurance Consumer Hotline 1.800.562.6900

From: Megan.L.Ochs@kp.org [mailto:Megan.L.Ochs@kp.org]

Sent: Wednesday, May 27, 2015 12:58 PM

To: Nollette, Molly (OIC)

Cc: Kreitler, Jennifer (OIC); Theresa.A.Neibert@kp.org

Subject: RE: Large group service area follow-up question

Hi Molly,

Thank you for talking with me!

Yes - the two groups listed in the email chain below have policyholders located outside of Cowlitz and Clark counties.

We completed an assessment and did not identify any other groups whose policyholder is located outside of Clark and Cowlitz counties. However, per our underwriting guidelines we will issue coverage to members under that policy that live or work within our service area (e.g. Clark and Cowlitz county).

As we discussed - our forms will need to be updated but we will no longer issue a policy to a policyholder located outside of Cowlitz or Clark county

Please let me know if you have questions or would like to discuss.

Thanks!

Megan Ochs, JD

Regulatory Consultant II

Regulatory Advocacy and Consultant

Kaiser Foundation Health Plan of the Northwest

500 NE Multnomah St, Suite 100 - Floor 8

Portland, OR 97232

503-924-9817

kp.org/thrive

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.

From: "Nollette, Molly (OIC)" <MollyN@oic.wa.gov>

To: Megan L Ochs/OR/KAIPERM@KAIPERM

Cc: "Kreitler, Jennifer (OIC)" <JenniferK@oic.wa.gov>
Date: 05/27/2015 12:39 PM
Subject: RE: Large group service area follow-up question

Hi Megan,

I'd like to confirm my understanding, based upon the phone call we just had, that the two groups below have services areas with zip codes outside of Cowlitz and Clark counties. Is that correct?

Other than these two groups, does Kaiser currently have any large group coverage that includes zip codes outside of Cowlitz and Clark counties? That would mean that all other large groups have service areas completely contained within Cowlitz and Clark counties.

Thank you,

Molly Nollette

Deputy Insurance Commissioner
Rates & Forms Division
Washington State Office of the Insurance Commissioner
360-725-7117 | mollyn@oic.wa.gov
PO Box 40255
Olympia, WA 98504-0255

www.insurance.wa.gov | twitter.com/WA_OIC | wainsurance.blogspot.com | [email/text alerts](#)

Protecting insurance consumers

Insurance Consumer Hotline 1.800.562.6900

From: Megan.L.Ochs@kp.org [<mailto:Megan.L.Ochs@kp.org>]
Sent: Tuesday, May 26, 2015 3:43 PM
To: Kreitler, Jennifer (OIC)
Cc: Nollette, Molly (OIC)
Subject: Re: Large group service area follow-up question

Hi Jennifer,

I did! I hope you did as well!

The two groups that we discussed are listed below with their renewal dates:

Wahkiakum County CW- COG - Renewal date: 1/1/15
Bonneville Hotsprings Resort - Renewal date: 6/1/15

Thanks so much for following up! Please let me know if you have questions or would like to discuss.

Megan Ochs, JD

Regulatory Consultant II
Regulatory Advocacy and Consultant

Kaiser Foundation Health Plan of the Northwest
500 NE Multnomah St, Suite 100 – Floor 8
Portland, OR 97232

503-924-9817

kp.org/thrive

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.

From: "Kreitler, Jennifer (OIC)" <JenniferK@oic.wa.gov>
To: Megan L Ochs/OR/KAIPERM@KAIPERM
Cc: "Nollette, Molly (OIC)" <MollyN@oic.wa.gov>
Date: 05/26/2015 12:53 PM
Subject: Large group service area follow-up question

Hi Megan,

I hope you had a nice Memorial Day Weekend.

I would like to ask a follow up question about our conversation last week about large group/service area and the 2 renewal groups. Will you please provide the names and renewal date for the two groups?

Thank you,

Jennifer

Jennifer Kreitler, ALMI, HIA, MHP

Healthcare Consumer Access Manager

Rates and Forms Division

Washington state Office of the Insurance Commissioner

360-725-7127 | JenniferK@oic.wa.gov | www.insurance.wa.gov

*www.insurance.wa.gov | twitter.com/WA_OIC | wainsurance.blogspot.com |

www.facebook.com/WSOIC

Protecting insurance consumers

(Insurance Consumer Hotline 1.800.562.6900)

From: Megan L Ochs/OR/KAIPERM
To: "Kreitler, Jennifer (OIC)" <JenniferK@oic.wa.gov>
Date: 07/08/2015 10:31 AM
Subject: Fw: Kaiser Service Area Issue Resolution

Hi Jennifer!

I hope that you had a lovely holiday weekend. I was hoping that you might have time today to touch base re: the LBG service area issue? We are working on resolution and are missing one piece of guidance that I am hoping you can provide.

I am available at 503-924-9817 today.

Thanks so much!
Megan Ochs, JD
Regulatory Consultant II
Regulatory Advocacy and Consultant
Kaiser Foundation Health Plan of the Northwest
500 NE Multnomah St, Suite 100 – Floor 8
Portland, OR 97232

503-924-9817
kp.org/thrive

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.

----- Forwarded by Megan L Ochs/OR/KAIPERM on 07/08/2015 10:29 AM -----

From: Megan L Ochs/OR/KAIPERM
To: "Kreitler, Jennifer (OIC)" <JenniferK@oic.wa.gov>
Date: 06/22/2015 08:18 AM
Subject: RE: Kaiser Service Area Issue Resolution

Hi Jennifer,

I hope you had a nice weekend! I was hoping that we could touch base on this issue so that Kaiser can get final direction for our remediation plan.

Please let me know if you would like to discuss.

Thanks!

Megan Ochs, JD
Regulatory Consultant II
Regulatory Advocacy and Consultant
Kaiser Foundation Health Plan of the Northwest
500 NE Multnomah St, Suite 100 – Floor 8

EXHIBIT C

Portland, OR 97232

503-924-9817

kp.org/thrive

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.

From: Megan L Ochs/OR/KAIPERM
To: "Kreitler, Jennifer (OIC)" <JenniferK@oic.wa.gov>
Date: 06/16/2015 07:47 AM
Subject: RE: Kaiser Service Area Issue Resolution

Hi Jennifer,

I hope you are doing well! I just wanted to touch base regarding this issue. Please let me know if you would like to discuss.

Thanks!
Megan Ochs, JD
Regulatory Consultant II
Regulatory Advocacy and Consultant
Kaiser Foundation Health Plan of the Northwest
500 NE Multnomah St, Suite 100 – Floor 8
Portland, OR 97232

503-924-9817

kp.org/thrive

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.

From: "Broyles, Linda (OIC)" <LindaB@OIC.WA.GOV>
To: Megan L Ochs/OR/KAIPERM@KAIPERM
Cc: "Philhower, Andrea (OIC)" <AndreaP@OIC.WA.GOV>, "Nollette, Molly (OIC)" <MollyN@oic.wa.gov>, "Kreitler, Jennifer (OIC)" <JenniferK@oic.wa.gov>
Date: 06/10/2015 08:28 AM
Subject: RE: Kaiser Service Area Issue Resolution

Hi Megan,

I will defer to Jennifer Kreitler to provide direction on the two groups located outside of Clark and Cowlitz county.

She is not in the office today but I will discuss the specific issue of whether or not those groups should be endorsed for 2014 with her on her return.

Linda

From: Megan.L.Ochs@kp.org [mailto:Megan.L.Ochs@kp.org]
Sent: Wednesday, June 10, 2015 7:53 AM
To: Broyles, Linda (OIC)
Cc: Philhower, Andrea (OIC); Nollette, Molly (OIC)
Subject: Re: Kaiser Service Area Issue Resolution

Hi Linda,

Thank you for getting these instructions to me. I will share them with my organization and let you know if we have any questions.

I do still have an outstanding question about how we are to handle existing large groups (we identified 2) that are located outside of Clark and Cowlitz counties. We were hoping to minimize disruption to these groups and term them at their next renewal. Is that still being discussed? Also, would we endorse these group contracts as well?

Thanks!

Megan Ochs, JD
Regulatory Consultant II
Regulatory Advocacy and Consultant
Kaiser Foundation Health Plan of the Northwest
500 NE Multnomah St, Suite 100 – Floor 8
Portland, OR 97232

503-924-9817
kp.org/thrive

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.

From: "Broyles, Linda (OIC)" <LindaB@OIC.WA.GOV>
To: Megan L Ochs/OR/KAIPERM@KAIPERM
Cc: "Nollette, Molly (OIC)" <MollyN@oic.wa.gov>, "Philhower, Andrea (OIC)" <AndreaP@OIC.WA.GOV>
Date: 06/10/2015 07:34 AM
Subject: Kaiser Service Area Issue Resolution

Hi Megan,

I have been asked to provide some direction for Kaiser to resolve the service area definition issue in the 2014 and 2015 large group portfolio filings. Please take a look at the following and let me know if you see any action being requested that would cause potential stumbling blocks on your end. If so, let me know why. If not, let's talk about time frames.

For 2014:

As you know WAC 284-43-130(29) was adopted with an effective date of 5-29-2014. We expect Kaiser will file an endorsement to its 2014 large group standard master contracts and fully negotiated filings, replacing the definition of service area from the current language discussing a zip code-based service area to language compliant with the rule. For the record, this office agrees that the definition of service area which is currently filed in Kaiser's small group portfolio is acceptable language, "Our Service Area consists of Clark and Cowlitz counties in the state of Washington."

Kaiser must file one endorsement with a requested effective date of 5-29-2014. The endorsement should be filed according to the Washington State SERFF Health and Disability Form Filing General Instructions, specifically instructions I.D located on page 5 and III.D located on page 10 for standard master contracts and fully negotiated filings respectively. To be clear, Kaiser must file one endorsement for review on the Form Schedule tab of a SERFF submission. Kaiser must also associate the endorsement to all 2014 forms it will endorse (standard master and fully negotiated forms) by listing the previously-approved policy* form numbers and form names to which the endorsement applies on the Form Schedule tab -DO NOT attach the policy* forms being endorsed.

The OIC will approve the 2014 Washington Fire Commissioners Association form filing (KFNW-129938079) with zip code-based service area language intact for its requested effective date of 1-1-2014. This group MUST BE associated to the 5-29-2014 endorsement, i.e. the policy* form number and form name must be listed on the Form Schedule tab of the endorsement filing - DO NOT attach the policy form being endorsed.

Kaiser must provide a listing of all other groups who will receive the endorsement, including both the names of all groups who purchased a 2014 standard master contract off-the-shelf and the names and policy* form numbers for those groups who negotiated rate and form changes in a manner that allowed them to previously be filed as short forms (short forms may not be endorsed, see filing instruction I.D.3 on page 5.) Kaiser may place the listing on the Supporting Documentation tab of the endorsement filing submission.

For 2015:

OIC will write an objection on the April 2015 Salem Contractors Exchange Employee Welfare Benefit Plan and Trust (KFNW-130007052) and an additional objection on each of the 2015 large group standard master contract form filings requesting the service area definition language be modified in compliance with the rule. Under each standard master contract filing OIC will request Kaiser provide a listing of all other groups to whom a reissued certificate with corrected service area definition information will be mailed, including the names of all groups who purchased the 2015 standard master contract off-the-shelf and the names and policy* form numbers of all groups who negotiated rate or form changes in a manner that allowed them to previously be filed as a short form. The OIC will request these listings be placed under the Supporting Documentation tab of the pertinent standard master contract filing submission.

The OIC does expect Kaiser will respond to the outstanding objection under the 2015 Washington Fire Commissioners Association form filing (KFNW-129866696) with appropriate service area definition language.

It is Kaiser's responsibility to ensure all 2014 large group certificates are endorsed and all 2015 large group certificates are reissued; if there is an outstanding filing submission that has not received a final disposition and is not specifically identified within this correspondence Kaiser must bring it into compliance based on the directions for the appropriate year stated above.

Finally, once these actions are completed Kaiser must send a statement, signed by an officer of the company, attesting to the fact that all 2014 and 2015 large group certificates have been endorsed or reissued to correct the definition of the service area. The attestation statement should be mailed to the attention of Molly Nollette, Deputy Insurance Commissioner for Rates and Forms.

*Note: While the general filing instructions request the policy form number be listed, in this instance, because the corrected language lies in the certificate, we are directing Kaiser to provide the form number of the Evidence of Coverage form that contains the service area definition.

Talk to you soon,

Linda

Linda Broyles
Insurance Policy & Compliance Analyst
Rates & Forms Division
Washington state Office of the Insurance Commissioner

360-725-7131 | LindaB@oic.wa.gov | www.insurance.wa.gov
•wainsurance.blogspot.com •twitter.com/WA_OIC •www.facebook.com/WSOIC
email/text alerts

Protecting insurance consumers
(Insurance Consumer Hotline 1.800.562.6900)

1 **CERTIFICATE OF SERVICE**

2 I, Melissa Wood, certify that at all times mentioned herein, I was and am a resident of the
3 state of Washington, over the age of eighteen years, not a party to the proceeding or interested
4 therein, and competent to be a witness therein. My business address is that of Stoel Rives LLP,
5 3600 One Union Square, 600 University Street, Seattle, Washington 98101.

6 On October 30, 2015, I caused a copy of the foregoing document to be served upon the
7 following individual(s) in the manner indicated below:

8
9 Hearings Unit hand delivery
10 Office of the Insurance Commissioner facsimile transmission
11 P.O. Box 40255 overnight delivery
Olympia, WA 98504-0255 first class mail
Email: hearings@oic.wa.gov e-mail delivery

12 Mandy Weeks hand delivery
13 Office of the Insurance Commissioner facsimile transmission
14 P.O. Box 40255 overnight delivery
Olympia, WA 98504-0255 first class mail
Email: MandyW@oic.wa.gov e-mail delivery

15
16 Executed on October 30, 2015, at Seattle, Washington.

17
18 
19 _____
Melissa Wood, Practice Assistant

20
21
22
23
24
25
26
DECLARATION OF MERLENE CONVERSE IN SUPPORT OF KFHPNW'S MOTION FOR
SUMMARY JUDGMENT - 3



time to talk?

Merlene S Converse to: JenniferK

07/31/2015 03:23 PM

Hi Jennifer,

Would you have time to schedule a phone call with me next week? I need to close the loop with you on a couple issues that you and my coworker Megan Ochs were working together on. With Megan on maternity leave, I'm not sure where these issues left off.

1) Leaving partial counties for large group (mid-year/set date for termination vs. waiting until renewal), WA PEBB is getting anxious as their open enrollment is in Nov., and they send out newsletter in Sept. For all of the groups that are impacted, we have an organizational desire to have the change happen upon renewal to limit disruption to the employer groups.

2) Discuss OIC position on variability in signature blocks of our evergreen and fixed term provider templates, which is a departure from what we had negotiated with OIC several years ago. We have objection filing response due date of August 10. I'm just wanting to confirm and understand the OIC's position.

My cell phone is 503-936-3580. I am happy to make myself available at whatever time slot works for you.

Please let me know if there is a good time when we can talk.

Thank you.

Merlene Converse
Regulatory Consultant II
Regulatory Advocacy and Consulting

Kaiser Foundation Health Plan of the Northwest
500 NE Multnomah St., Suite 100 -- Floor 8
Portland, Oregon 97232

503-936-3580 (cell)
Merlene.S.Converse@kp.org

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.

EXHIBIT A



status update on OIC discussions for leaving partial counties

Merlene S Converse to: Julie A Posch, Hilary K Getz, Dionne
M Findlay, Matt Schaeffer, Linsey R Johnson 08/03/2015 02:35 PM

Cc: Theresa A Neibert

Good afternoon,

I was able to connect with Jennifer Kreidler at the OIC today on the topic of the timing for group terminations due to the partial county issue. Jennifer says that the OIC is still in the process of having internal discussions on this topic. They expect to wrap up those discussions in the next week or two and will communicate back to us. Jennifer let me know that there is internal concern that waiting until 2016 to implement the service area change for affected groups may be too long. However, the OIC is being mindful of the impact to the large employers and is weighing that against the timing. Discussions continue.

Action item: Please confirm that there are only two groups plus WA PEBB that are affected by this change. In one of the emails, Jennifer had seen, she thought we had disclosed that there were more than three groups. If there are more than these three groups, please send me the details.

WA PEBB request: I also requested on behalf of WA PEBB that this group be allowed an exception to the partial county rule. The OIC is taking this under consideration and will communicate back to us whether this will be an option. If the answer is that WA PEBB cannot have an exception, then the OIC will tell us what the timing of the change needs to be. I explained the open enrollment cycle and PEBB's September newsletter. Jennifer stated that WA PEBB has not contacted the OIC so far about this topic.

I will update you with the OIC's decision on this topic as soon as I hear about it.

Thank you for your continued patience on this topic.

Merlene Converse
Regulatory Consultant II
Regulatory Advocacy and Consulting

Kaiser Foundation Health Plan of the Northwest
500 NE Multnomah St., Suite 100 -- Floor 8
Portland, Oregon 97232

503-936-3580 (cell)
Merlene.S.Converse@kp.org

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.

EXHIBIT B



Meeting with Molly
Ritchie, Suzanne (OIC)
to:
Merlene S Converse
08/25/2015 10:38 AM
Hide Details
From: "Ritchie, Suzanne (OIC)" <SuzanneR@oic.wa.gov>

To: Merlene S Converse/OR/KAIPERM@Kaiperm

History: This message has been replied to.

Hi, Merlene – hope you are doing well. Molly asked me to schedule a meeting/phone conference with you next week to discuss service area. Jennifer Kreitler will also participate in the meeting. In looking at both of their calendars, I see that 10:30 – 11:30 am on Tuesday, September 1 is available. Will this time work for you as well? If not, I will go back to the drawing board to see what else I can find. Thanks,

Suzanne Ritchie

Administrative Assistant to Deputy Insurance Commissioner Molly Nollette
Rates & Forms Division

Washington State Office of the Insurance Commissioner

360-725-7114 | suzanner@oic.wa.gov | PO Box 40255

Olympia, WA 98504-0255

www.insurance.wa.gov | twitter.com/WA_OIC | wainsurance.blogspot.com | [email/text alerts](#)

Protecting insurance consumers

Insurance Consumer Hotline 1.800.562.6900

EXHIBIT C



info for discussion on Tuesday, Sept. 1
Merlene S Converse to: MollyN, JenniferK

08/25/2015 04:06 PM

Hi Molly and Jennifer,

For our meeting on Tuesday, here is the information about the two groups that are located outside of our Washington service area.

- Wahkiakum County -- group #16676, 33 members. This is a January group, and the current contract expires at the end of December 2015.
- Bonneville Hot Springs Resort -- group #16311, 24 members, This is a June group, and the current contract expires at the end of May 2016. (This group's renewal cycle occurred during the time frame in which we were seeking clarification from the OIC on correcting the 2014/2015 filed documents. The group was quoted on 2/19/15, accepted the renewal offer on 5/7/15, and renewed on 6/1/15.)

WA PEBB is a group that is located within our service area but has some enrollees that neither live nor work in our updated service area. So, the group overall is eligible, but certain members would no longer meet the eligibility requirements.

While we are on the phone with you, I would also like to confirm that we need to provide the group with a 90-day notice of non-renewal. (This would be October 1 for Wahkiakum County.) If the time period needs to be longer than 90 days, please let me know.

My manager, Theresa Neibert, would also like to attend the call. I asked Suzanne to use my conference call number, which she has added to the meeting notice.

I hope the remainder of your week goes well. We look forward to talking with you on Tuesday.

Merlene Converse
Regulatory Consultant II
Regulatory Advocacy and Consulting

Kaiser Foundation Health Plan of the Northwest
500 NE Multnomah St., Suite 100 -- Floor 8
Portland, Oregon 97232

503-936-3580 (cell)
Merlene.S.Converse@kp.org

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.

EXHIBIT D

FILED

04 30
2015 NOV 11 A 10:00
KAC

HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

IN THE MATTER OF

KAISER FOUNDATION HEALTH PLAN
OF THE NORTHWEST

Docket No. 15-0205

DECLARATION OF MARYANN
SCHWAB IN SUPPORT OF
KFHPNW'S MOTION FOR
SUMMARY JUDGMENT

1. I am employed by Kaiser Foundation Health Plan of the Northwest ("KFHPNW") as the Regional Compliance Officer, a position I have held since March 2008. I am above the age of 18 and competent to testify to the matters set forth herein.

2. KFHPNW is a non-profit corporation that offers health plans to individuals, small groups, and large groups throughout the Northwest, including Washington.

3. KFHPNW's primary provider network is comprised of providers associated with Kaiser Permanente, who currently do not contract with any non-KFHPNW health plans for commercial or individual products. An individual enrolled in such plans must be on a KFHPNW plan in order to receive care from a Kaiser provider.

4. Prior to April 2015, the OIC gave no indication to KFHPNW that it intended the new "service area" definition in WAC 284-43-130(29) to apply to large group plans. Instead, it was KFHPNW's understanding that the definition of "service area" contained in WAC 284-43-

DECLARATION OF MARYANN SCHWAB IN SUPPORT OF KFHPNW'S MOTION FOR
SUMMARY JUDGMENT - 1

1 130(29) applied only to qualified health plans (“QHPs”) and small group plans, consistent with
2 the corresponding federal regulations.

3 5. In May 2013, as the OIC developed its new regulations, the OIC represented to me
4 and my colleagues at KFHPNW that network adequacy requirements for small group and
5 individual plans would be changing, but that large group plans would not be impacted. Attached
6 hereto as **Exhibit A** is a true and correct copy of an email I wrote on May 24, 2013,
7 memorializing that conversation.

8 6. Previously, KFHPNW’s service area in Washington included particular zip codes
9 in which KFHPNW’s network of providers offered services, even in counties in which the
10 network did not extend throughout the entire county. KFHPNW determined that, if the network
11 of providers were required to extend throughout an entire county, only Clark County and Cowlitz
12 County presently meet that definition, despite the fact that certain zip codes outside those
13 counties include a robust network of providers for enrollees in KFHPNW’s plans and despite the
14 fact that enrollees located in zip codes immediately adjacent to Clark and Cowlitz Counties have
15 ready access to providers in those counties.

16 7. KFHPNW revised its service area for its individual and small group plans,
17 changing that service area to Clark and Cowlitz Counties. Consistent with its understanding that
18 the new service area definition did not extend to large group plans, KFHPNW continued to file
19 large group plans with the OIC with a service area that included zip codes outside Clark and
20 Cowlitz Counties. Prior to April 2015, the OIC did not object to those filings.

21 8. KFHPNW’s first notice of the OIC’s assertion that the service area for large
22 group plans would be limited to full counties occurred on April 1, 2015, when the OIC issued an
23 objection letter in the System for Electronic Rate and Form Filing (“SERFF”) with respect to
24 KFHPNW’s Group Health Filing No. KFNW-129667876. Attached hereto as **Exhibit B** is a
25 true and correct copy of KFHPNW’s April 8, 2015 response in SERFF, which incorporates the
26 April 1, 2015 objection.

DECLARATION OF MARYANN SCHWAB IN SUPPORT OF KFHPNW’S MOTION FOR
SUMMARY JUDGMENT - 2

1 9. Attached hereto as **Exhibit C** is a true and correct copy of KFHPNW's April 20,
2 2015 response in SERFF to the OIC's April 10, 2015 objection, which is incorporated in Exhibit
3 C.

4 10. It is not unusual for the OIC to reconsider a position expressed in an objection to a
5 filing after engaging in discussions with KFHPNW.

6 11. The OIC did not issue a formal response to KFHPNW's April 20, 2015 comment
7 in SERFF until June 16, 2015. A true and correct copy of the OIC's response is attached as
8 **Exhibit D**.

9 12. KFHPNW has not entered into contracts to offer large group plans to any new
10 policyholders situated outside Clark or Cowlitz Counties since the OIC's April 1, 2015
11 objection. Bonneville Hot Springs Resort is the only policyholder located outside Clark or
12 Cowlitz Counties with a contract that has renewed since that time, although the renewal process
13 commenced prior to April 1st.

14 13. KFHPNW is unaware of any instance in which a KFHPNW member has been
15 unable to obtain access to appropriate health care within KFHPNW's network. Each of the large
16 group plans offered by KFHPNW provides coverage that affords members access to an adequate
17 network of providers within a reasonable distance. Despite its current focus on shifting large
18 groups plans to a county-based service area, the OIC has never indicated otherwise.

19 14. The OIC's SERFF Form Filing Instructions, a true and correct copy of which is
20 attached hereto as **Exhibit E**, continue to distinguish small group and individual plans from large
21 group plans. Large group plans are generally identified in the SERFF filing as "not PPACA-
22 related," whereas small group and individual plans are identified as "PPACA-related" and filed
23 pursuant to a different set of instructions.

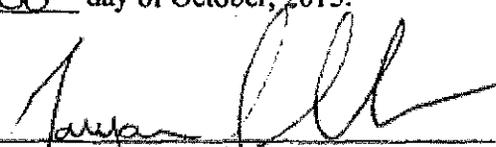
24
25
26

DECLARATION OF MARYANN SCHWAB IN SUPPORT OF KFHPNW'S MOTION FOR
SUMMARY JUDGMENT - 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

SIGNED at Portland, OR this 30 day of October, 2015.



MARYANN SCHWAB

DECLARATION OF MARYANN SCHWAB IN SUPPORT OF KFHPNW'S MOTION FOR SUMMARY JUDGMENT - 4

1 **CERTIFICATE OF SERVICE**

2 I, Melissa Wood, certify that at all times mentioned herein, I was and am a resident of the
3 state of Washington, over the age of eighteen years, not a party to the proceeding or interested
4 therein, and competent to be a witness therein. My business address is that of Stoel Rives LLP,
5 3600 One Union Square, 600 University Street, Seattle, Washington 98101.

6 On October 30, 2015, I caused a copy of the foregoing document to be served upon the
7 following individual(s) in the manner indicated below:

8
9 Hearings Unit hand delivery
10 Office of the Insurance Commissioner facsimile transmission
11 P.O. Box 40255 overnight delivery
Olympia, WA 98504-0255 first class mail
Email: hearings@oic.wa.gov e-mail delivery

12 Mandy Weeks hand delivery
13 Office of the Insurance Commissioner facsimile transmission
14 P.O. Box 40255 overnight delivery
Olympia, WA 98504-0255 first class mail
Email: MandyW@oic.wa.gov e-mail delivery

15
16 Executed on October 30, 2015, at Seattle, Washington.

17
18 
19 _____
Melissa Wood, Practice Assistant



Re: UPDATE: WA Service Area Conversation

Maryann X Schwab to: Aaron X Patnode

05/24/2013 01:14 PM

Alison K Nicholson, Bess Jacobo, Casper R Yu, Karen L Schartman, Cc: Mark A Charpentier, Merlene S Converse, Michael P Fossier, Niki K Aberle, Robert L Martin, Robert S Pickard, Sue M Hennessy, Susan

History: This message has been forwarded.

Just a couple of additional notes:

- Beth made the position of the OIC very clear with regards to its network adequacy requirements. They are looking at small group and individual products in WA as a "brand new day." All filings will be scrutinized for network adequacy, and as Aaron stated below, if KP does not secure a contract with St. John's by 7/31, our filing for Cowlitz county will be denied. She did state that she feels that we are "good to go" in Clark County.
- She indicated that they expect all parties to negotiate in good faith, and that similar contracting issues are occurring between PH and Regence and UnitedHealthcare. She stated that the OIC, HCA and the governor's office are watching PH's actions very closely, and that she will be following up with legislators about the issues carriers are having with PH, and that their refusal to negotiate in good faith will block access of low income citizens to tax credits available through the exchange.
- Beth also stated that, if the OIC approves our request to use an alternative network for our existing products, it is only a tool to bring pressure on St. John's to come back to the bargaining table. The OIC expects to see progress, and an eventual contract, between KP and PH for all of our products. If they do not see progress in that direction, then we will need to "pull the plug" on Cowlitz County for all of the commercial products we currently sell there. Those were her words.
- Beth also noted that she will be meeting with PH on Tuesday for a conversation about these issues, and her expectation that they make contact with us to re-start negotiations. She also suggested that we contact PH, but wait until after her conversation on Tuesday.

Maryann Schwab, CHC
 Northwest Region Compliance Officer
 500 NE Multnomah St., Suite 100
 Portland, OR 97232
 (503) 813-3922 (phone)
 49-3922 (tie line)
 (503) 813-4912 (fax)
 Assistant: Genna Comara
 (503) 813-4051(phone)
 49-4051 (tie line)

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.

Aaron X Patnode

Hello all, I'm writing to you this afternoon to infor...

05/24/2013 12:21:21 PM

From: Aaron X Patnode/OR/KAIPERM
 To: Alison K Nicholson/OR/KAIPERM@kaiperm, Bess Jacobo/OR/KAIPERM@kaiperm, Casper R Yu/OR/KAIPERM@kaiperm, Karen L Schartman/PO/KAIPERM@kaiperm, Mark A Charpentier/OR/KAIPERM@kaiperm, Maryann X Schwab/OR/KAIPERM@kaiperm, Merlene S Converse/OR/KAIPERM@kaiperm, Michael P Fossier/PO/KAIPERM@kaiperm, Niki K Aberle/OR/KAIPERM@kaiperm, Sue M Hennessy/OR/KAIPERM@kaiperm, Susan T Tanner/PO/KAIPERM@kaiperm, Theresa A Neibert/OR/KAIPERM@kaiperm, William R Ely/OR/KAIPERM@KAIPERM, Robert S Pickard/OR/KAIPERM@KAIPERM, Robert L Martin/PO/KAIPERM@KAIPERM

Date: 05/24/2013 12:21 PM
Subject: UPDATE: WA Service Area Conversation

Hello all,

I'm writing to you this afternoon to inform you of the outcome of the conversation we had with Beth Berendt (WA Office of the Insurance Commissioner) this morning regarding KPNW's Service Area in WA. Here are some important notes from the conversation.

- Beth Berendt began the conversation by identifying the exact role the OIC plays in the 2014 filing review process. The OIC is retaining its traditional functions, and will be determining Network Adequacy for all carriers submitting plans.
- Should a carrier make the determination to NOT include a county in its 2014 Small Group (SG) and Individual (ID) Service Area, the next opportunity for the carrier to add those excluded counties would be for the filing process for 2015 products (i.e. this time next year). There will be no mid-year adjustments allowed for SG and ID Service Areas.
- The Alternative Delivery Network that KPNW has been putting together will only apply to our existing book of business, and will not be allowed for any new business.
- Beth Berendt has been in touch with Peace Health (PH) and will be (using her terms) "sharing the reality of the new market" with them further on Tuesday, 5/28. She went on to state that if we were unable to secure a hospital contract in Cowlitz County, that this county would not be approved as part of our 2014 SG and ID Service Area.
- The message Beth will be delivering to PH is as follows: PH must fully understand the ramifications of being the sole hospital in a county. If St. John's/PH refuse to contract, then all of Cowlitz Co. will be deprived of the opportunity to secure insurance coverage.
- Beth went on to state that her expectation (and that of the commissioner) is that PH and carriers negotiate and work in good faith to come to terms on contracts.
- Large Group and PEBB are still "good to go" with the existing KPNW Service Area, and are not impacted by the 2014 SG and ID Service Area discussion. That being said, the request was made to have KPNW start setting up provider contracts in our existing service area that would eventually allow us full-county coverage for ALL service area definitions. As providers are added to the network, they should be added to the Form A filing. Beth requested/suggested this work start ASAP.
- KPNW must have a contract in place with St. John's Hospital by 7/31, or we will have to withdraw Cowlitz Co. from our 2014 SG and ID Service Area.

Takeaway:

- The WA OIC has indicated that we can submit a service area including full-county coverage for Clark and Cowlitz counties.
- The WA OIC has stated that unless we have a hospital contract in place with St. John's hospital by 7/31/13, we will need to also remove Cowlitz Co. from our 2014 SG and ID Service Area.
- KPNW will be able to add Lewis, Wahkiakum, and Skamania Counties back to our SG and ID Service Area in subsequent years, but only after demonstrating adequate provider networks in those counties.

Maryann Schwab and Alison Nicholson also participated in the call this morning. Maryann and Alison--if you have more to add, please feel free to do so.

Thank you all for your continued attention to this topic.

Kind regards,

Aaron

Aaron Patnode, MBA, MHA
Executive Consultant
Regional Manager for Health Reform Implementation

Kaiser Permanente
Strategic Planning and Health Plan Services

500 NE Multnomah St, Suite 100
Portland, OR 97232

503-813-4798 (office)
49-4798 (tie-line)
503-813-4408 (fax)
503-490-8715 (mobile phone)
Stephanie Michael (assistant)
Stephanie.K.Michael@kp.org
503-813-3653

kp.org/thrive

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.

Response Letter for KFNW-129667876

SERFF Tracking Number:	KFNW-129667876	State:	Washington
Filing Company:	Kaiser Foundation Health Plan of the Northwest	State Tracking Number:	275068
Company Tracking Number:	EWLGHDHP0115		
TOI:	H16G Group Health - Major Medical	Sub-TOI:	H16G.002C Large Group Only - Other
Product Name:	Std Master Cont Large Group High Deductible Health Plan		
Project Name:	EWLGHDHP0115		

Status :

Submitted to State

Submitted Date:

04/08/2015 05:19 PM

Dear Linda Broyles,

Introduction:

Thank you for allowing us to respond to your objection letter dated April 1, 2015. Our responses below:

Objection 1

Applies To:

- WWLG0115, Policy/Contract/Fraternal Certificate, Large Group Plan Group Agreement (Form)

Comment: Under the "Members to whom this "Medicare as Primary Payer" section applies" provision on page 2 you have bracketed the paragraph regarding premium amounts. You have not provided an explanation of variability associated with this bracketing. Will the language be strictly in or out, and if so under what circumstances, or will there be variations on the language within this paragraph, and if so what will the variable language look like?

Response 1:

Comments: *

Medicare premium amounts only apply to our Traditional Copayment Plans. For all other product types, including Deductible Plans, High Deductible Health Plans, and Added Choice plans, the entire bracketed section is deleted. Because we use the same form for all of these product types, we have chosen to bracket this information to indicate it is variable and will only be included for Traditional Copayment Plans. The bolded brackets at the beginning and end of this section indicate the entire section will be removed for Deductible Plans, High Deductible Health Plans, and Added Choice plans. The brackets within this section near the dollar signs indicate these premium amounts will vary when we include this section for our Traditional Copayment Plans.

Changed Items:

- No Form Schedule items changed.
- No Rate/Rule Schedule items changed.
- No Supporting Documents changed.

Objection 2

Applies To:

EXHIBIT B

- EWLGHDHP0115, Certificate, Large Group High Deductible Health Plan Evidence of Coverage (Form)

Comment: The definition of "Service Area" provided indicates the service area consists of certain geographic areas in the Northwest as designated by ZIP code. The definition continues on to advise the service area may change. Under WAC 284-43-130 (29) a service area must be defined by county or counties and may not be defined by ZIP code unless allowed by the Commissioner for good cause, such as geographic barriers which make offering coverage throughout an entire county unreasonable. You must redefine your service area by county and remove language indicating the service area may be changed.

Response 2:**Comments: ***

It is our understanding that WAC 284-43-130 (29) applies to individual and Small group plans offered both inside and outside of the exchange and our individual and Small Group plans comply with this provision. However, the definition contained in WAC 284-43-130 (29) does not apply to Large Group plans since the federal provisions impacting Qualified Health Plans and health plans offered outside the exchange that underlies the state requirement are not applicable to Large Group Plans.

Changed Items:

No Form Schedule Items changed.

No Rate/Rule Schedule Items changed.

No Supporting Documents changed.

Objection 3**Applies To:**

- EWLGHDHP0115, Certificate, Large Group High Deductible Health Plan Evidence of Coverage (Form)

Comment: Please verify you cover immunosuppressive drugs as part of your "Transplant Services" benefit.

Response 3:**Comments: ***

Immunosuppressive drugs are covered at the applicable cost share outlined in the Outpatient Prescription Drug Rider Benefit Summary section. For 2015, we transferred this coverage from the "Transplant Services" section of the EOC to the Outpatient Prescription Drug Rider. Because these drugs are covered as any other drug in the formulary, we did not include specific verbiage within the rider for this type of drug.

Changed Items:

No Form Schedule Items changed.

No Rate/Rule Schedule Items changed.

No Supporting Documents changed.

Objection 4**Applies To:**

- EWLGHDHP0115, Certificate, Large Group High Deductible Health Plan Evidence of Coverage (Form)

Response Letter for KFNW-129667876

SERFF Tracking Number:	KFNW-129667876	State:	Washington
Filing Company:	Kaiser Foundation Health Plan of the Northwest	State Tracking Number:	275068
Company Tracking Number:	EWLGHDHP0115		
TOI:	H16G Group Health - Major Medical	Sub-TOI:	H16G.002C Large Group Only - Other
Product Name:	Std Master Cont Large Group High Deductible Health Plan		
Project Name:	EWLGHDHP0115		

Status : Submitted to State

Submitted Date: 04/20/2015 06:58 PM

Dear Linda Broyles,

Introduction:

Thank you for allowing us to respond to your concerns contained in your objection letter dated April 10, 2015. Please find below our responses and any edits that we made to our forms according to your concerns.

Objection 1

Applies To:

- EWLGHDP0115, Certificate, Large Group High Deductible Health Plan Evidence of Coverage (Form)

Comment: Thank you for your response regarding the service area definition contained in the Washington Administrative Code. Our office respectfully disagrees the WAC does not apply to large group plans. We are therefore requesting once again that you modify your definition of "Service Area" in compliance with Washington regulation. [WAC 284-43-130 (29)]

Response 1:**Comments:**

Our organization respectfully disagrees with the assessment that WAC 284-43-130 (29) applies to large group plans. We request that the Commissioner reconsider this assessment, taking the following into account:

We understand the revision to the service area definition in WAC 284-43-130 (29) was made to align state law requirements with federal health care reform network adequacy requirements for qualified health plans (QHPs) in 45 CFR 156.230. These access requirements apply to QHPs and health plans offered outside the exchange for the small group and individual market segments, not large group market segments (please see also the purpose statement for both WSR 14-07-102 and WSR 14-10-017 filed 03-19-14 and 04-25-14). Further, the section provides that the definitions in WAC 284-43-130 apply unless a term is defined in other subchapters or the context requires otherwise. We feel it is clear that the context requires otherwise and that it was not the intent of the OIC to apply this definition to the large group market segment as evidenced by 2014 form and access plan filings.

Furthermore, application of the definition in WAC 284-43-130 (29) to the LBG market segment would be injurious to consumers and disruptive to the marketplace. The OIC has not communicated any intent to apply the more restrictive standard to the LBG market segment, nor is there any underlying requirement or rationale to do so. Applying this standard in the LBG segment will result in a decrease in consumer choice as carriers will be forced to withdraw from counties in which they do not currently offer coverage in all zip codes. This change will likely come as a surprise to many employer groups who will have little to no notice to enable them to examine their reduced options. The reduced choice in the marketplace may leave consumers with reduced access to providers.

Changed Items:

No Form Schedule Items changed.

No Rate/Rule Schedule Items changed.

No Supporting Documents changed.

Objection 2

Applies To:

- EWLGHDP0115, Certificate, Large Group High Deductible Health Plan Evidence of Coverage (Form)

Comment: The OIC's 4-1-2015 inquiry regarding immunosuppressive drugs was based on the fact that, in the past, Kaiser has always called out coverage for such drugs within the "Transplant Services" provision. That provision is silent in regards to such drugs this year so this agency was attempting to verify the drugs are still being covered, either under the "Transplant Services" provision or perhaps under the "Benefits for Inpatient Hospital Services" provision. Kaiser's response, however, indicates the coverage for immunosuppressive drugs has been transferred from the "Transplant Services" section of the EOC to the Outpatient Prescription Drug Rider. Your response is concerning to this agency; are you saying that immunosuppressive drugs are only covered on an outpatient basis? You must explain what would occur if a member, whose group did not elect to purchase an Outpatient Prescription Drug Rider,

EXHIBIT C

Response Letter for KFNW-129866696

SERFF Tracking Number: KFNW-129866696 **State:** Washington
Filing Company: Kaiser Foundation Health Plan of the Northwest **State Tracking Number:** 280819
Company Tracking Number: WWLGTRAD45650115
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 Fire Commissioner Association
Project Name: WWLGTRAD45650115

Status : Submitted to State

Submitted Date: 06/16/2015 07:42 PM

Dear Linda Broyles,

Introduction:

Thank you for allowing us to respond to your concerns.

Objection 1

Applies To:

- EWLGTRAD45650115, Certificate, Large Group Traditional Copayment Plan Evidence of Coverage (Form)

Comment: There is no ambiguity in WAC 284-43-130(29) or in Chapter 284-43 WAC, Subchapter B. The definition of service area applies to all plans; there is no exclusion for large group plans. The network access rules were intended to, and by their terms do, apply to all health care plans and stand-alone dental plans offering the pediatric oral EHB. Unless a particular rule states that it specifically applies only to certain plans, all network access rules apply to all plans. This is explicitly stated in WAC 284-43-200(1), which provides that "An Issuer must maintain EACH provider network for EACH health plan" in compliance with the network access requirements. Contrast that with subsection (14), which explicitly applies the rules to stand-alone dental plans intended to provide the pediatric oral EHB. Please also see the Purpose Statement for WSR 14-07-102, which states that the network rules "Both qualified health plans and health plans offered outside of the exchange must have networks that at a minimum ensure access to covered services without unreasonable delay and address the needs of the specific population served." The rules are not limited to the individual and small group market, but apply to all "plans offered outside the exchange", which includes large group plans. See, also, the Concise Explanatory Statement which explains the anti-discrimination rationale behind the requirement that service areas be defined by county unless a specific exception has been approved by the Commissioner.

Please provide corrected language for our review.

Response 1:

Comments:

We have revised our "Service Area" definition to indicate that the service area consist of Clark and Colitz counties in the State of Washington.

Changed Items:

Form Schedule Item Changes

Form Name	Form Number	Form Type *	Action **	Action Specific Data	Readability Score	Attachments	Submitted
Large Group Traditional Copayment Plan Evidence of Coverage	EWLGTRAD45650115	CER	Revised	Previous Filing # KFNW-129379618 Replaced Form # EWLGTAD45650114		EWLGTRAD45650115.pdf	Date Submitted 06/16/2015 By: Maurik Marquez
<i>Previous Version</i>							
Large Group Traditional Copayment Plan Evidence of Coverage	EWLGTRAD45650115	CER	Revised	Previous Filing # KFNW-129379618 Replaced Form # EWLGTAD45650114		EWLGTRAD45650115.pdf	Date Submitted 04/20/2015 By: Maurik Marquez
Large Group Traditional Copayment Plan Evidence of Coverage	EWLGTRAD45650115	CER	Revised	Previous Filing # KFNW-129379618 Replaced Form # EWLGTAD45650114		EWLGTRAD45650115.pdf	Date Submitted 04/13/2015 By: Maurik Marquez
Large Group Traditional Copayment Plan Evidence of Coverage	EWLGTRAD45650115	CER	Revised	Previous Filing # KFNW-129379618 Replaced Form # EWLGTAD45650114		EWLGTRAD45650115.pdf	Date Submitted 01/12/2015 By: James Chambers

No Rate/Rule Schedule Items changed.

Supporting Document Schedule Item Changes

Redline EOC due to Objection Letter dated 04/21/15

EXHIBIT D

Washington State SERFF Health and Disability Form Filing General Instructions

Contents

- I. Filing Requirements for All Health and Disability Filers 2
 - A. All health and disability policy forms must be filed in SERFF..... 2
 - B. Instructions for filing all forms:..... 3
 - C. SERFF amendment process vs. contract endorsements:..... 4
 - D. Filing endorsements:..... 5
 - E. Renewal, discontinuation, and termination notices:..... 5
 - F. Custom applications and enrollment forms: 6
 - G. Health plan issued to an association or member-governed group: 6
 - H. Taft-Hartley plans: 7
- II. General Requirements for Disability (Insurance) Company Form Filings..... 8
 - A. Out-of-state groups [WAC 284-30-600]:..... 8
- III. General Requirements for Filings by HCSCs and HMOs..... 8
 - A. Standard Master contract filings: 8
 - B. Short Form filings:..... 9
 - C. Fully Negotiated contracts:..... 9
 - D. Endorsement of Fully Negotiated contracts mid-plan year:..... 10
- IV. 2016 Individual and Small Group Non-Grandfathered Health Plan Filings 10
 - A. Filing of rates, forms, and binders: 11
 - B. "Include Exchange Intentions" field:..... 11
 - C. "PPACA" field: 11
 - D. If you are filing revised versions of previous year's forms: 11
 - E. You must include all forms, in final format..... 12
 - F. You may not use variability to define product design. 12
 - G. You must submit on the supporting documentation tab a properly completed Analyst Checklist to support your initial submission..... 12
 - H. Issuer Snapshot:..... 13
 - I. Unique benefit design..... 13

J.	Forms, rates, and binder must all be consistent with one another.....	14
V.	Formulary Filings [WAC 284-43-878(6)(f)(i)]	14
A.	When to file:	14
B.	You must file each formulary on the form schedule tab.	14
C.	Product name for Formularies:.....	14
D.	Separate filings for each market.....	14
E.	Strike out / underline versions and certifications.....	14
VI.	Provider and Facility Agreement Filings.....	15
A.	Contract Templates.....	15
B.	Negotiated Provider and Facility agreements	16
C.	Intermediary Network Arrangement (leased administrative service arrangements):	17
D.	Provider Agreement "Implementation Date" field in SERFF	18
VII.	Your Filing Will Be Rejected If:.....	18
A.	Your filing does not comply with Chapter 284-44A, 284-46A, or 284-58 WAC.	18
B.	It is not timely filed.	18
C.	Your Short Form filing does not include the correct form, submitted correctly.	19
D.	You have attempted to endorse a short form filing	19
E.	Missing certification.....	19
F.	Incorrect product name	19
G.	We cannot download your filing into our back office system.	19
H.	Rejected filings will not be re-opened	19
VIII.	SERFF Objection Letter Response Requirements for Form Filings.....	20
A.	All attachments to responses must be in PDF format.	20
B.	When responding to an objection letter, you must:	20
C.	Strike out / Underline versions required:	20
IX.	After a final disposition by OIC analyst	20
X.	For questions related to SERFF filing procedures, contact:	20

I. Filing Requirements for All Health and Disability Filers

A. All health and disability policy forms must be filed in SERFF.

1. Please see the NAIC Uniform Life, Accident & Health, Annuity and Credit Coding Matrix for the list of these products.
 - a. The matrix can be found on the OIC's website. Click on the "For Insurers" tab and choose "SERFF Filing Guidelines" under Filing Instructions.

- b. The matrix is also available on the Filing Rules tab, General Instructions section of SERFF.
- 2. NAIC Uniform Transmittal Forms are not required when submitting SERFF filings.
- 3. Network Access reports may not be filed in SERFF.

B. Instructions for filing all forms:

- 1. All forms that are part of the health plan contract must be filed.¹ This includes the application, enrollment form, policy form, certificate of coverage/benefit booklet, riders, and disclosures.
 - a. You may attach supporting documentation for a specific form under the Supporting Documentation tab.
- 2. You must follow the SERFF Submission Requirements applicable to the type of filing you are submitting.
- 3. In your initial submission, all forms that comprise your filing must be in final format and attached on the Form Schedule tab. Each form filed for approval must contain a unique form number in the lower left hand corner of the document.
 - a. You must list all filed forms on the Form Schedule tab, and enter form numbers correctly.
 - b. Each form must have a unique identifying number and a way to distinguish it from new forms.
 - i. A form must retain the same form number, with no changes, throughout the review process. This means that, even when a form is revised as a result of objections or allowed amendments during the review process, it must retain the same form number.
 - ii. A form which has undergone any revision outside the review process is a new form. This means you may not file a revised version of an approved form using the same form number.
- 4. Forms accepted for review generally cannot be changed, other than changes required to be made in response to objections.
 - a. To request to make a change to a form after it has been accepted for review:
 - i. You must send a Note to Reviewer requesting to replace, modify, add, amend, or withdraw a form after it has been accepted for review. The Note to Reviewer must be sent in the filing you are requesting to change.
 - ii. Your analyst will notify you in a Note to Filer whether your request is accepted or denied.
 - iii. If your request is denied you may not modify the filing. You may request that the filing be withdrawn.
 - iv. If your request is accepted you may update your filing as directed in the Note to Filer.

1. RCW 48.18.100, RCW 48.43.730, RCW 48.44.040, RCW 48.46.060, WAC 284-43-220(2), WAC 284-43-330 and WAC 284-43-920. "Form" is defined for HCSCs in WAC 284-44A-010(4), and for HMOs in WAC 284-46A-010(4).

- v. Modification made without proper notice will be disapproved.

C. SERFF amendment process vs. contract endorsements:

1. Form filings generally cannot be changed once accepted by the SERFF Intake Desk, other than changes required to be made in response to objections. Where a filing has been accepted for review, and you need to make a change to one or more of the forms in your filing, you will either need to request permission to amend the form(s) or file an endorsement to that form. A filing of an endorsement is a separate SERFF submission.
2. The terms "amendment" and "endorsement" tend to be used interchangeably, but they are not the same.
 - a. An amendment changes the terms of the plan starting on the effective date of the plan. Generally, an amendment is a change to a filing upon which final action has not yet been taken. (In other words, the forms are pending review or are under active review.)
 - b. An endorsement is a legal document that changes the terms of a plan mid-plan year, not from the effective date of the plan. Endorsements are documents that change the terms of a contract, and must be issued to all current enrollees on the plan(s) to which the endorsed form pertains, as well as any future enrollees under the plan(s). Generally, an endorsement is a change to a contract upon which final action has been taken, and where the plan is currently in effect for at least one enrollee. See section IX, below.
 - c. There are situations where the "general" rules would lead to undesirable results such as unnecessary filings, additional unnecessary work, or consumer confusion. If you are unsure which process to use, or you believe that there is a reason that one process or the other is necessary, contact your analyst.
3. If you want to change a form, and the change dates back to the effective date of the plan(s) with which the form is associated, you must request permission to amend the form.
 - a. Example 1: A large group fully-negotiated major medical plan has current enrollees and you wish to extend the contract period for that plan. The filing for that plan is pending review. You would need to request to extend the contract period through an amendment because the proposed change dates back to the effective date of the plan.
 - b. Example 2: You filed an individual major medical plan to be sold both on and off the Exchange for the upcoming plan year. The filing is under active review. You realize you have inadvertently included an error or typo that you would like to change. You would need to request to make this change through an amendment because the change will be in place from the plan's effective date.
 - c. Example 3: The same facts as Example 2, except that final action has been taken on your filing. This is a situation where the "general rules" can lead to confusion and undesirable results. The general rule is that a change to a plan upon which final action has been taken may only be made by filing an endorsement. See section IX, below. However, in this case, the change would date back to the effective date of the plan, which means the change should be made by an amendment. Endorsement would lead to undesirable results because there would already be an endorsement to your new plan before it had even been issued to any enrollees. In this case, you would need to call your analyst to discuss the situation. (Note that, per section IX below, a filing upon which final action has been taken cannot be changed. Thus,

amending a plan upon which final action has been taken will not be allowed absent extraordinary circumstances.)

- d. Example 4: You realize there is a typo in your forms you want to make a change to correct it.
4. You will file an endorsement to the form if the change is to take place mid-plan year.
 - a. Example 1: A large group fully-negotiated major medical filing has current enrollees and the group wishes to add a new benefit. That benefit change would not date back to the effective date of the plan, but would have a later effective date. Therefore, you could not amend the forms initially filed, because this new benefit was not a benefit under the plan for part of the plan year. You would make this change by filing an endorsement.
 - b. Example 2: A large group outside market stand alone employee-only dental plan has current enrollees, and the employer policyholder wishes to drop coverage of orthodontia. This benefit change would not date back to the effective date of the plan, but would have a later effective date. For the same reason as in Example 1, above, you would make this change by filing an endorsement.

D. Filing endorsements:

1. Endorsements filed for review must be listed and attached, in final form, on the Form Schedule tab.
2. Endorsements must be associated with the form(s) they endorse. To do this, you must list the previously-approved policy form number(s) and form name(s) to which the endorsement applies on the Form Schedule tab. **DO NOT** attach the policy forms being endorsed.
3. Endorsements may not be used with the Short Form filing process.
 - a. If a group whose plan has been filed using the Short Form process negotiates a new contract provision during the contract or plan year, the issuer must make this change by submitting a fully negotiated contract according to the instructions set forth in section III.C of these instructions, below.

E. Renewal, discontinuation, and termination notices:

1. Major medical plans must file these notices as a separate filing.
2. Notices filed for review must be listed and attached, in final form, on the Form Schedule tab.
3. These notices must be associated with the forms to which they apply. To do this, you must list the previously-approved policy form number(s) and form name(s) with which the notice will be used on the Form Schedule tab, using the correct form numbers. **DO NOT** attach the previously-approved policy forms.
4. For plans in the individual market (both inside and outside the Exchange), you must use the state-specific notices published by OIC. No deviations from these templates will be allowed. For plans in the small group market, you may, but are not required to, use the state-specific notices published by OIC.
 - a. These notices may be found on OIC's web site. Click on the "For Insurers" tab and choose "Health Care and Disability Filings" under Filing Instructions.
5. For notices in both the individual and small group markets, you must conform to the naming conventions found in the SERFF submission requirements.

F. Custom applications and enrollment forms:

1. You must follow the SERFF submission requirements.
2. Custom applications and enrollment forms filed for review must be attached, in final form, on the Form Schedule tab.
3. You must complete the Form Name field using the following naming convention: Custom App/Enr [ABC Company]. "ABC Company" means the specific group, trust, association, etc..
4. These custom forms must be associated with the form(s) with which they will be used. If they are to be used with previously-approved forms, you must list the previously-approved policy form number(s) and form name(s) with which the custom application or enrollment form will be used on the Form Schedule tab, using the correct form numbers. **DO NOT** attach the previously-approved policy forms.
 - a. This requirement is met if:
 - i. you are filing a custom application or enrollment form as part of a Fully Negotiated filing that includes for review all forms with which the custom application will be used; OR
 - ii. you are filing a custom application or enrollment form as part of a Short Form filing, IF the custom application or enrollment form will only be used with the Standard Master filing listed on the SHORTFORM ED2.
5. For each custom application and enrollment form submitted, you must attach a completed and signed "Custom Enrollment/Application Certification" on the Supporting Documentation tab.

G. Health plan issued to an association or member-governed group:

1. You must follow the SERFF Submission requirements.
 - a. You must state in the Filing Description field whether this is an in-state or out-of-state group filing.
 - b. You must use the following product name convention: "Association or member-governed true employer group under 29 U.S.C. Section 1002(5) of ERISA- [Name of the Association]" in the Product Name field on the General Information tab.
2. The group to whom the health plan is issued must constitute a true employer group under 29 U.S.C. § 1002(5) of the Employee Retirement Income Security Act (ERISA) of 1974. WAC 284-170-958(1) and (2).
 - a. The health plan must be filed as, and conform to the requirements for, a small group health plan if the number of participants is fifty or less (for plan years beginning on or after January 1, 2016, a small group plan will be a group of 100 or less). See section I of these instructions.
3. You must file all forms comprising the contract, including the group master application, enrollment form, policy, certificate of coverage(s), and other documents as appropriate. Each policy form submitted for review must be listed and attached on the Form Schedule tab. Each form must be in single case format. (Single case format means group-specific language with no bracketing or variability.)
4. Your filing must include a certification from an officer of the company, attached on the Supporting Documentation tab.
 - a. The certification must state that the group health insurance coverage in connection with this large group health plan meets the requirements of the Health Insurance

Portability and Accountability Act (HIPAA) 29 CFR § 2590.702, which prohibits discrimination against participants and beneficiaries based on a health status-related factor.

- b. The certification must include statements that the rules for the eligibility (including continued eligibility) of any individual to enroll under the terms of the large group health plan are not based on any of the following health status-related factors (prescribed in HIPAA) in relation to the individual or a dependent of the individual:
 - i. Health status;
 - ii. Medical condition (including both physical and mental illnesses);
 - iii. Claims experience;
 - iv. Receipt of health care;
 - v. Medical history;
 - vi. Genetic information;
 - vii. Evidence of insurability (including conditions arising out of acts of domestic violence); or
 - viii. Disability.
5. Major medical plan filings must attach a PDF document titled "Evidence as an Employer" on the Supporting Documentation tab. The document must include, at a minimum, the following information:
 - a. A copy of the association bylaws; and
 - b. A copy of the trust agreement or other organizational document which shows the purpose of the association and who governs the association; and
 - c. A statement of the association's history; and
 - d. A copy of the occupational categories/ industry classifications comprising the employers in the association; and
 - e. An advisory opinion from the Federal Department of Labor demonstrating that the group is qualified to purchase association coverage;
 - f. In the absence of a Federal Department of Labor opinion, an opinion from an attorney explaining how and why the association qualifies as a true employer under 29 U.S.C. § 1002(5) of the Employee Retirement Income Security Act (ERISA) of 1974.
6. The filing must include any applicable group-specific or unique application or enrollment forms. The forms must be listed and attached on the Form Schedule tab for review.
 - a. The forms must use the prescribed form name requirements, e.g., "Custom App/Enr [ABC Company]"
 - b. The filing must include a completed and signed "Custom Enrollment/Application Certification" for each unique application or custom enrollment form submitted for review. The certification(s) must be attached on the Supporting Documentation tab.
7. These requirements apply only to "health plans"; they do not apply to "excepted benefits" as those terms are defined in 29 CFR §2590.732.

H. Taft-Hartley plans:

1. Taft-Hartley plans are filed as large group employer plans, following the instructions in sections I.A, I.B., above.

2. Taft-Hartley plans filed by Disability companies also follow the instructions in section II.A, below, as applicable.
3. Taft-Hartley plans filed by HCSCs or HMOs also follow the instructions in section III below, as applicable.
4. You must state on the General Information tab that the filing is a Taft-Hartley plan.

II. General Requirements for Disability (Insurance) Company Form Filings

A. Out-of-state groups [WAC 284-30-600]:

1. Forms to be used to cover Washington residents under a health plan issued to an out of state group must be filed as a new submission. You may not request to re-open a previously-approved form or rate filing to modify its contents or to have it apply to new groups.
2. You must file for approval all certificates providing health plan coverage in the state of Washington. A complete submission must include any applications, riders, or endorsements. All forms filed for approval must be listed and attached on the Form Schedule tab.
 - a. Groups other than employer groups must file in single case format. "Single case format" means group-specific language with no bracketing or variability.
 - b. Employer groups, as defined in RCW 48.24.020, need not file in single case format. For an employer group to be exempted from the single case filing requirement, you must specify "employer group" and only "employer group" in the "Group Market Type" field.
3. If previously-approved applications, riders, or endorsements are to be used with the new certificate, they must be associated with the new certificate. To do this, all such previously-approved forms must be listed on the Form Schedule tab. **Do NOT** attach the previously-approved form(s).
4. You must disclose in the Filing Description field that this is an Out-Of-State Group Filing and follow the prescribed Product Name convention in the SERFF Submission Requirements.
5. If Producer solicitation of the product is allowed, you must file a disclosure statement for approval on the Form Schedule tab. WAC 284-30-610.

III. General Requirements for Filings by HCSCs and HMOs

A. Standard Master contract filings:

1. A "Standard Master Contract" is a large-group contract that is intended to be sold by an HCSC or HMO to multiple large groups. (Disability Companies may not use the Standard Master and Short Form processes because Disability filings require prior approval.)
2. Standard Master Contracts are filed according to Section I of these instructions.

B. Short Form filings:

1. The Short Form filing process may be used only for large employer group plans sold by HCSCs or HMOs. Association health plans may not be filed using the Short Form process.
2. In order to use the Short Form filing process, an HCSC or HMO must have a filed Standard Master Contract. The Short Form filing process is used to file a negotiated large group contract that has 12 or fewer deviations from a filed Standard Master Contract. The process may not be used where a filing has more than 12 deviations from a filed Standard Master Contract.
3. The filing must include a properly completed "Short Form Filing Summary" as set forth in form SHORTFORM ED2, or as updated from time to time.
 - a. SHORTFORM ED2 is a form prescribed by and available from the Commissioner. It can be found on the OIC's website. Click on the "For Insurers" tab and choose "SERFF Filing Guidelines" under Filing Instructions.
 - b. The form number may not be modified, deleted, or removed from SHORTFORM ED2.
 - c. The completed SHORTFORM ED2 must be listed and attached on the Form Schedule tab.
4. If there are form deviations in the negotiated filing, the SHORTFORM ED2 must include the For-Public rate schedule.
5. The filing must include any applicable group-specific or unique application or enrollment forms. The forms must be listed and attached on the Form Schedule tab for review.
 - a. The forms must use the prescribed form name requirements, e.g., "Custom App/Enr [ABC Company]"
 - b. The filing must include a completed and signed "Custom Enrollment/Application Certification" for each unique application or group enrollment form submitted for review. The certification(s) must be attached on the Supporting Documentation tab.
6. The filing must indicate in the SHORTFORM ED2 whether a proprietary rate filing will be submitted.
7. You may not file an endorsement to a plan that was filed using the Short Form filing process.
 - a. If a group whose plan has been filed using the Short Form process negotiates a new contract provision during the contract or plan year, the issuer must make this change by submitting a fully negotiated contract according to the instructions set forth in section III.C of these instructions, below.

C. Fully Negotiated contracts:

1. A "Fully Negotiated contract" is a large group contract sold to one large group, which contract includes 13 or more deviations from any approved Standard Master contract.
2. A complete filing according to Section I of these instructions must be made for Fully Negotiated contracts.
3. The issuer must provide the following information in a separate document on the Supporting Documentation tab:
 - a. The number of employees in the group (see RCW 48.43.005(15) for definition of "employee");

- b. The number of enrolled employees; and
 - c. An explanation for any filing delay beyond the 30 day period in WAC 284-43-920(2).
4. The filing must include any applicable group-specific or unique application or enrollment forms. The forms must be listed and attached on the Form Schedule tab for review.
- a. The forms must use the prescribed form name requirements, e.g., "Custom App/Enr [ABC Company]"
 - b. The filing must include a completed and signed "Custom Enrollment/Application Certification" for each unique application or custom enrollment form submitted for review. The certification(s) must be attached on the Supporting Documentation tab.

D. Endorsement of Fully Negotiated contracts mid-plan year:

- 1. The endorsement must be listed and attached on the Form Schedule tab for review.
- 2. Endorsements must be associated with the form(s) they endorse. To do this, you must list the previously-approved policy form number(s) and Form Name(s) to which the endorsement applies on the Form Schedule tab. **DO NOT** attach the policy forms being endorsed on the Form Schedule tab.

IV. 2016 Individual and Small Group Non-Grandfathered Health Plan Filings

The Washington Health Benefit Exchange (WAHBE) has provided the following guidance for individual and small group filings intended for certification as qualified health plans (QHPs) or qualified dental plans (QDPs) for plan year 2016:

- 1. Individual Market:
 - i. The WAHBE Board will certify both QHPs and QDPs for plan year 2016. Major medical plans intended for QHP must not include the pediatric dental essential health benefit.
 - ii. The pediatric dental essential health benefit must be offered in a stand alone dental plan for QDP certification. A stand-alone QDP that offers the pediatric dental essential health benefit may be offered as a pediatric-only plan or as a family plan that includes adult dental benefits. The WAHBE Board may certify stand-alone family and pediatric-only QDPs to be offered in the outside market in 2016. The WAHBE Board may certify pediatric-only QDPs to be offered inside the Exchange in 2016, and may potentially certify family QDPs to be offered inside the Exchange in 2016, pending a decision by the WAHBE Board regarding offering family dental plans in the Exchange.
- 2. Small Group (SHOP) Market:
 - i. The WAHBE Board will only certify QHPs for availability in the SHOP market for plan year 2016. In the SHOP market, the pediatric dental essential health benefit must be embedded in the major medical plan.
 - ii. The WAHBE Board may certify stand-alone QDPs for plan year 2016 to be offered in the off-Exchange small group market. These plans must include the pediatric dental essential health benefit and must meet all certification criteria applicable to plans offered outside the Exchange.
 - iii. The SHOP will continue to support list billing for rates for plan year 2016. Composite rating will not be supported in the SHOP for plan year 2016.

A. Filing of rates, forms, and binders:

1. Forms for Exchange and outside market products will be filed separately but concurrently with the rates and network access reports. Binders will be filed separately from the rates and forms.
2. Forms must be filed according to section I of these instructions.
3. You must follow the SERFF Submission Requirements.

B. "Include Exchange Intentions" field:

1. Major medical plan submissions must properly complete the "Include Exchange Intentions" field on the General Information tab as prescribed in the SERFF submission requirements.
2. You must follow the SERFF Submission Requirements, which require you to populate this field with "Exchange Only", "Outside Market Only", or "Exchange and Outside Market."

C. "PPACA" field:

1. Individual and small group Major medical plan submissions must populate the "PPACA" field as "Non-grandfathered Immed Mkt Reform".
2. If you check other boxes in this field your filing will require modification.
3. For large group submissions, you will generally select "Not PPACA-Related". However, you must populate this field with the option that accurately describes the particular filing.
4. Information on this requirement is available by clicking on the "What is PPACA" link in SERFF directly below this field.

D. If you are filing revised versions of previous year's forms:

1. If you are filing forms that are revised versions of the previous year's approved forms:
 - a. You must file the revised forms on the Form Schedule tab with unique form numbers.
 - b. When you load the revised form on the Form Schedule tab, you must populate the "Action" field with "Revised". You will then be prompted to enter "Action Specific Data". In the Action Specific Data field, you must enter the form number of the previous year's form (the one you are replacing) and the SERFF Tracker ID under which the previous year's form was filed.

(A SERFF screen shot is attached on the following page. See "Action" and "Action Specific Data" columns.)

Form Type *	Action *	Action Specific Data	R#	Sc
- PFI	Revised	Previous Filing # Replaced Form #	ACME-012345678	
			ACME Contract 6789076	
- CER	Revised	Previous Filing # Replaced Form #	ACME - 012345678	
			Awesome 1000 Booklet (01-2015)	
- CERA	Revised	Previous Filing # Replaced Form #	ACME-012345678	
			Awesome 500 Booklet (01-2015)	
AEF	Revised	Previous Filing # Replaced Form #	ACME - 012345678	
			ACME MGA (01-2015)	
AEF	Revised	Previous Filing # Replaced Form #	ACME - 012345678	
			Awesome Booklet Insert (01-2015)	
AEF	Initial			

c. You must attach a strike out / underline of the changes from the previous year's forms on the Supporting Documents tab.

E. You must include all forms, in final format.

F. You may not use variability to define product design.

1. Language deviations must be filed as a unique product filing.
2. Limited variability will be accepted for administrative purposes only, such as but not limited to signature blocks, company name, and street address. Small Group filings for the SHOP may include variability for the employee-only and family coverage options.

G. You must submit on the supporting documentation tab a properly completed Analyst Checklist to support your initial submission.

1. You must complete one Analyst Checklist for each market you have filed to participate in, based on one product/plan.
 - a. Identify the product/plan upon which the checklist is based by including that information on the checklist itself.
 - b. Your completed Analyst Checklist must be based upon the product you have identified in your Issuer Snapshot as the recommended primary product for review.
 - c. The completed Analyst Checklist must be submitted with each product filing.
 - d. If your recommended primary product for review is not accepted as the primary product for review, the analyst will request a completed Analyst Checklist for the product that will be used as the primary product for review.
2. Forms will be reviewed using the applicable Analyst Checklist.
 - a. If the analyst is unable to find a particular provision by using the Analyst Checklist completed by the issuer (i.e., if the provision is not found in the location indicated on

the issuer's completed Analyst Checklist), the analyst will attempt to locate the provision in the filing. If the analyst is unable to locate the provision, the analyst will send an objection indicating that the provision cannot be found.

- b. If the analyst is unable to find three separate provisions by using the Analyst Checklist (e.g., there are three instances where the provision is not found in the location indicated on the issuer's completed Analyst Checklist), the analyst will cease review of the filing. The analyst will send an objection indicating that review has ceased and requesting a corrected Analyst Checklist.
- c. After the analyst checklist has been received, review of the filing will recommence in the appropriate order of priority, as determined by the review team.

H. Issuer Snapshot:

1. You must submit a properly completed Issuer Snapshot to support your initial submission.
2. There will be only one Issuer Snapshot per issuer, per market. (In other words, the same group of products and plans included on one binder are also included together on one Issuer Snapshot.) A copy of the Issuer Snapshot should be attached to the Supporting Documentation tabs for the product's **rate** filing and the recommended primary form filing. Since there is only one snapshot per issuer, per market, the same snapshot will be attached to both the rate and recommended primary form filing.
3. The snapshot form and instructions for completing it are available on OIC's webpage. Click on the "For Insurers" tab and choose "Health Care and Disability Filings" under Filing Instructions.
4. The snapshot form and instructions for completing it are also available on the Filing Rules tab, General Instructions Section of SERFF.
5. Updated Issuer Snapshots will only be required if specifically requested by the analyst during the review process.

I. Unique benefit design

1. If you are filing any plan with unique benefit design in the individual or small group medical market, a completed Unique Plan Design Benefit Crosswalk is required.
2. You must attach this document on the Supporting Document tab in the rate filing and in the particular product form filing that has the unique plan design.
 - a. Example: An issuer has two unique benefit design plans in the individual market and the two unique plans are filed under two separate product form filings. The issuer must attach a Unique Plan Design Benefit Crosswalk in each form filing, The issuer must also file both Unique Plan Design Benefit Crosswalk documents in the rate filing.
3. The Unique Plan Design Benefit Crosswalk document must be in PDF format and attached on the Supporting Documentation tab. The file name must include the wording: "[Plan Name] Unique Plan Design Benefit Crosswalk." (e.g. Plan XYZ Unique Plan Design Benefit Crosswalk). The PDF file submitted in SERFF should not include the instructions from the Unique Plan Design Benefit Crosswalk template.
4. The Unique Plan Design Benefit Crosswalk Template and the instructions for completing it are available on OIC's webpage. Click on the "For Insurers" tab and choose "Health Care and Disability Filings" under Filing Instructions. The Unique Plan Design Benefit Crosswalk Template and the instructions for completing it are also available on the Filing Rules tab, General Instructions Section of SERFF.

J. Forms, rates, and binder must all be consistent with one another.

1. If the analyst determines that the information in the Binder does not match the information in the Form, the analyst will send an objection indicating that there is an inconsistency and requesting that the issuer amend the Binder to match the form.
2. If the analyst finds that there are five or more inconsistencies between the form and the Binder, the analyst will cease review of the Binder. The analyst will send an objection indicating that review has ceased and requesting a corrected Binder.
3. After the corrected Binder has been received, review of the Binder will recommence in the appropriate order of priority, as determined by the review team.

V. Formulary Filings [WAC 284-43-878(6)(f)(i)]

A. When to file:

1. The first quarter Formulary filing is the one filed on the Prescription Drug Formulary Template in the Binder for that plan year. **These instructions pertain to the 2nd, 3rd, and 4th quarter Formulary filings.**
2. The Formularies must be filed prior to the beginning of the quarter during which they will be in effect. Therefore, the 2nd quarter filings are due prior to April 1, the 3rd quarter filings are due prior to July 1, and the 4th quarter filings are due prior to October 1.

B. You must file each formulary on the form schedule tab.

C. Product name for Formularies:

1. You must complete the Product Name field using the following naming convention: "X" Quarter Year Formulary.
 - a. Example: in plan year 2015, issuers will submit the following Formulary filings: 2nd Quarter 2015 Formulary, 3rd Quarter 2015 Formulary, 4th Quarter 2015 Formulary.

D. Separate filings for each market

1. You must make a separate Formulary submission for your small group and individual plans.
2. You may file all Formularies for the market in one SERFF submission; e.g., all Formularies for all plans in the small group market may be filed together.
3. You must file your Formulary filings on the following Sub-TOI's as appropriate:
 - a. Disability and HCSC filers must use: "H16I.005C Individual – Other"
 - b. Disability and HCSC filers must use: "H16G.003G - Small Group Only – Other"
 - c. HMO filers must use: "HOrg02I.005C Individual – Other"
 - d. HMO filers must use: "HOrg02G.004E Small Group Only – Other"

E. Strike out / underline versions and certifications

1. You must attach a complete list of the changes to each Formulary on the Supporting Documentation tab. You may do this by either:
 - a. Attaching a red line version of changes, or

- b. Attaching a Formulary Change List which documents the specific drug changes made to the formulary for that quarter.
2. You must submit a certification signed by an officer of the issuer confirming that modifications to the formulary, as approved for the first quarter of the plan year, continue to comply with the requirements WAC 284-43-878(6). This certification should be attached on the Supporting Documentation tab.

VI. Provider and Facility Agreement Filings

Under RCW 48.43.730 and WAC 284-43-330 participating provider and facility contract forms must be filed for prior approval for Health Care Service Contracts, Health Maintenance Organizations, and Disability Issuers.

A. Contract Templates

1. You must make a separate submission for each contract template.
2. You must properly identify the type of agreement being filed by following the Product Name field requirements set forth in the SERFF Submission Requirements.
3. You must clearly state whether the filing is "for public" or "not for public" in both the Filing Description and the Product Name fields.
4. "For public" Filings:
 - a. A Washington State specific template must include all forms, exhibits, and appendices [minus the rate compensation schedule] filed on the Form Schedule tab.
 - b. A National Template with a Washington State Regulatory Appendix must include all forms, exhibits, regulatory appendix [minus the rate compensation schedule], etc., filed on the Form Schedule tab.
 - c. If you are filing a "for public" document only, you must clearly identify in the General Information tab that a "not for public" filing is not required and a detailed explanation. For example, an issuer need not file a concurrent "not for public" filing when they are filing an amendment to only change contract provisions. Please note: new and revised contract templates must be filed with a concurrent "not for public" filing.
 - d. A contract addendum or amendment filing must include all forms, exhibits, and appendices [minus the rate compensation schedules] that comprise a complete contract template being used in the marketplace.
5. "Not for public" Filings:
 - a. A properly identified "not for public" filing [See VI.A.3] will be updated by the SERFF Intake desk to assure it is not available on-line for public review. The filing "Set the Public Access" function will be updated to "does NOT allow public access."
 - b. You do not need to refile the "for public" submission concurrently if there are no changes to the contract template agreement. The Filing Description field must clearly state no "for public" filing is required. You must provide a list of the agreement(s) with which the new compensation exhibit will be used on the Supporting Documentation tab.
 - c. The compensation schedule(s) must be filed on the Form Schedule tab.

- d. If you are requesting to use brackets in the compensation schedule, a Variability Statement must be filed on the Supporting Documentation tab. The Variability Statement may only identify the following three types of bracketing on the compensation exhibit: dollars, percentages, and conversion factor. No other bracketing will be accepted; and
 - i. A matrix identifying all combinations of rate(s), percentage(s) and/or conversion factor(s) that will be used for each provider and facility type.
 - ii. A list identifying the agreement(s) with which the compensation exhibit(s) will be used.
6. Revised template agreements must have a unique form number and include a strike out and/or underline version showing the changes to the documents [WAC 284-43-330(2)]. This document must be filed on the Supporting Documentation tab.

B. Negotiated Provider and Facility agreements

1. You must make a separate submission for each negotiated agreement.
2. You must properly identify the type of agreement being filed by following the Product Name field requirements set forth in the SERFF Submission Requirements.
3. You must clearly state whether the filing is "for public" or "not for public" in both the Filing Description and the Product Name fields.
4. "For public" Filings:
 - a. The filing must include the provider specific agreement documents that will include but may not be limited to: core agreement, exhibits, and regulatory appendix (if applicable) filed on the Form Schedule. An issuer may not request to use a Variability Statement.
 - b. A contract addendum or amendment to the core agreement must be filed for approval and include a copy of the core agreement and subsequent addendum or amendments [minus compensation exhibits] filed on the Form Schedule tab.
5. "Not for public" Filings:
 - a. A properly identified "not for public" filing [See VI.B.3] will be updated by the SERFF Intake desk to assure it is not available on-line for public review. The filing "Set the Public Access" function will be updated to "does NOT allow public access."
 - b. You do not need to refile the "for public" submission concurrently if there are no changes to the core agreement. The Filing Description field must clearly state no "for public" filing is required.
 - c. The provider specific compensation schedule(s) must be filed on the Form Schedule tab. An issuer may not request to use a Variability Statement.
 - d. Global Outcome-based compensation schedules may be filed minus population of the variable annual percentage amount [upon request of the OIC, a carrier must produce the actual percentages per WAC 284-43-300(4)].
6. If the provider and issuer negotiate revised language during the contract term, a strike out and/or underline version showing the negotiated language [WAC 284-43-330(2)] must be filed on the Supporting Documentation tab. You may not file a strikeout/underline version when the parties negotiate a new agreement.

C. Intermediary Network Arrangement (leased administrative service arrangements):

1. You must make a separate submission for each provider and facility agreement type. You may not file multiple agreements [i.e. provider, facility, ancillary, etc] in one SERFF submission.
2. You must properly identify the type of agreement being filed by following the Product Name field requirements set forth in the SERFF Submission Requirements.
3. You must clearly state whether the filing is "for public" or "not for public" in both the Filing Description and the Product Name fields.
4. "For public" Filings:
 - a. A Washington State specific template must include all forms, exhibits, and appendices [minus the rate compensation schedule] filed on the Form Schedule tab.
 - b. A National Template with a Washington State Regulatory Appendix must include all forms, exhibits, regulatory appendix [minus the rate compensation schedule], etc., filed on the Form Schedule tab.
 - c. Negotiated contract filings must include the provider specific agreement that will include, but may not be limited to: core agreement, exhibits, and regulatory appendix (if applicable), filed on the Form Schedule tab.
 - d. You must file a copy of the intermediary (leasing) agreement between the parties on the Supporting Documentation tab for review.
 - a. An intermediary ("leasing") agreement means all contracts between the Issuer and other parties that, together, form the contract between the Issuer and the intermediary. For example, Issuer X delegates to an Interagency Arrangement Y to contract with ACME Network. The filing must include: (1) Issuer X's agreement with Interagency Y, and (2) Interagency Y's agreement with ACME Network.
 - e. If you are filing a "for public" document only, you must clearly identify in the General Information tab that a "not for public" filing is not required and a detailed explanation. For example, an issuer need not file a concurrent "not for public" filing when they are filing an amendment to only change contract provisions. Please note: new and revised contract templates must be filed with a concurrent "not for public" filing.
 - f. A contract addendum or amendment filing must include all forms, exhibits, and appendices [minus the rate compensation schedules] that comprise a complete contract template being used in the marketplace.
5. "Not for public" Filings:
 - a. A properly identified "not for public" filing [See VI.C.3] will be updated by the SERFF Intake desk to assure it is not available on-line for public review. The filing "Set the Public Access" function will be updated to "does NOT allow public access."
 - b. You do not need to refile the "for public" submission concurrently if there are no changes to the contract template agreement or negotiated agreements. The Filing Description field must clearly state no "for public" filing is required. You must provide a list of the agreement(s) with which the new compensation exhibit will be used on the Supporting Documentation tab.
 - c. The provider or facility compensation schedule(s) must be filed on the Form Schedule tab.

- d. The compensation associated with the intermediary agreement must be filed as Supporting Documentation.
 - e. If you are requesting to use brackets in the contract template compensation schedule, a Variability Statement must be filed on the Supporting Documentation tab. The Variability Statement may only identify the following three types of bracketing on the compensation exhibit: dollars, percentages, and conversion factor. No other bracketing will be accepted; and
 - i. A matrix identifying all combinations of rate(s), percentage(s) and/or conversion factor(s) that will be used for each provider and facility type.
 - ii. A list identifying the agreement(s) with which the compensation exhibit(s) will be used.
 - f. A negotiated contract compensation exhibit may not be filed using a Variability Statement.
6. Revised templates, negotiated contracts and leasing agreements must include a strike out and/or underline version showing the changes to the documents [WAC 284-43-330(2)]. These documents must be filed on the Supporting Documentation tab.

D. Provider Agreement "Implementation Date" field in SERFF

Issuers have requested clarification about population of the "implementation date" field and how the OIC determines what date to use for "approval".

- a. Issuers must populate the "Implementation Date" field with either the option "Upon Approval" or a specific date.
 - a. A filing that requests "Upon Approval" will be approved on the date the OIC takes final action.
 - b. A filing that requests a specific prospective date will be approved using that date.
 - c. A filing that requests a specific date that is now retrospective on the date the OIC takes final action will be approved as an "Upon Approval" action (see VI.D.1.a).
 - d. Changes to a previously filed and approved compensation exhibit that modify only the compensation amount or related terms that determine compensation is deemed approved upon filing. The "filing date" is the date the OIC Intake Desk accepts an issuer's submission and the filing is downloaded into the back office system. This type of filing is deemed approved per that date.
2. No provider agreement filing may be approved with a retrospective effective date.

VII. Your Filing Will Be Rejected If:

A. Your filing does not comply with Chapter 284-44A, 284-46A, or 284-58 WAC.

B. It is not timely filed.

- 1. Per WAC 284-170-870, all 2016 individual health plans, small group health plans, and stand-alone dental plans that provide pediatric dental benefits as one of the essential health benefits must be filed by April 24, 2015.
- 2. Issuers will be permitted to amend filings only at the direction of the commissioner.
- 3. Filings not timely submitted will be rejected without review.

C. Your Short Form filing does not include the correct form, submitted correctly.

1. Forms are filed using the Short Form Filing Summary, "SHORTFORM ED2". Rates are filed using a different form – the Short Form Rate Schedule Item, "RATESCHEDULEITEM ED.2".
2. Your filing will be rejected if the SHORTFORM ED2 is attached on a tab other than the Form Schedule tab.
3. Your filing will be rejected if A SHORTFORM ED2 is filed for an Association or Trust group.

D. You have attempted to endorse a short form filing

1. A short form filing may not be endorsed. See section III.B.7.a, above.

E. Missing certification

1. Your filing will be rejected if it contains customized applications and/or enrollment forms for review, but does not include a signed and properly completed "Custom Enrollment/Application Certification".

F. Incorrect product name

1. Your filing will be rejected if it does not use the correct Product Name format defined in the SERFF Submission Requirements.

G. We cannot download your filing into our back office system.

1. There are a number of reasons why we cannot download filings into our back office system. The most common reasons include:
 - a. Attachments are not formatted using a Distiller in PDF format.
 - b. An incorrect CoCode number is entered in the Filing Company Information, under the Companies and Contact tab. This CoCode number is the same number as your company's 5-digit NAIC number.
 - c. Health Care Service Contractors and Health Maintenance Organizations do not populate the Company Tracking Number field.
 - d. You attach more than one form to a row in the Form Schedule tab.
 - e. You include an incorrect Type of Insurance (TOI) or Sub-TOI as listed on the NAIC Uniform Life, Accident & Health, Annuity and Credit Product Coding Matrix.
 - f. You filed multiple policies in one submission.
 - g. You filed multiple provider agreements in one submission.

H. Rejected filings will not be re-opened

1. If the OIC Technical Support Unit rejects your filing, you must submit a new filing following the procedures in our Rejection Notice and General Instructions.

VIII. SERFF Objection Letter Response Requirements for Form Filings

A. All attachments to responses must be in PDF format.

B. When responding to an objection letter, you must:

1. Amend your filing to respond to an objection. You must answer each objection individually with the appropriate revised form.
2. Revise a Schedule Item to make changes to a form already submitted.
3. Add a Schedule Item to add additional forms not previously submitted.
4. Respond to each objection using the SERFF response letter process.
 - a. Objection letter responses attached on the Supporting Documentation tab will not be reviewed.
 - b. If you have not responded to an objection letter using the response letter process, you have not responded to the objection letter, whether or not you have attached a response to the Supporting Documentation tab.
5. We must be able to determine which forms are "Approved" or "Disapproved" when creating a Final Disposition Report.

C. Strike out / Underline versions required:

1. For any form which is amended in response to an objection, you must attach a strike out / underline version on the Supporting Documentation tab, showing all changes.
2. Please ensure that the copy of the form attached on the Form Schedule tab is the final, clean form.
3. Please ensure that the copy attached on the Supporting Documentation tab is the strike out / underline version and shows all changes.
4. The review process can involve more than one set of objections and responses, so that a form may undergo more than one set of changes. This can result in difficulty showing, and viewing, strike out / underline changes. If you are unsure how best to strike out / underline the changes to your form, contact your analyst. The goal is to create a clear record of the changes made from the original version of your form to the final version. Together you can determine how best to achieve this.

IX. After a final disposition by OIC analyst

After final disposition by an OIC analyst you may not change or correct the filing. You must make a new filing in SERFF.

X. For questions related to SERFF filing procedures, contact:

Rates & Forms Help Desk
(360) 725-7111
rfhelpdesk@oic.wa.gov