

FILED

March 23, 2015

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**VIA EMAIL AND FIRST-CLASS MAIL**

Hearings Unit  
Office of the Insurance Commissioner  
P.O. Box 40255  
Olympia, WA 98504-0255  
Email: [hearings@oic.wa.gov](mailto:hearings@oic.wa.gov)

**Re: Demand for Hearing**

To Whom It May Concern:

We represent the Building Industry Association of Washington Health Insurance Trust ("BIAW Trust"). We write to formally demand a hearing before an administrative law judge ("ALJ"), pursuant to RCW 48.04.010 and WAC 284-02-070, to challenge the disapproval by the Office of Insurance Commissioner ("OIC") of Regence BlueShield's ("Regence's") 2014 rate and form filings ("the Filings") for the BIAW Trust. A copy of the OIC's decision subject to this Demand for Hearing is attached. *See Attachment 1.*

BIAW Trust facilitates the purchase of health benefits for over 600 companies in the building and construction industry. Modeled after the Master Builders Association of King and Snohomish Counties Trust, BIAW Trust provides members and their employees with high quality, affordable health insurance. BIAW currently serves over 15,000 enrollees, all of whom stand to be unfairly prejudiced by the OIC's disapproval. Given that participating employers range in size from 2 to approximately 600 employees, employers rely on the flexibility inherent in association health plan memberships to make the best insurance coverage choices for their employees. Flexibility in plan choice, contribution levels, wellness programs, and rating allows this to occur.

BIAW Trust offers benefit plans through Regence that the participating employers ("Participating Employers")<sup>1</sup> offer for purchase by their employees and the employees' eligible dependents (collectively, the "Members"). The OIC's rejection of the Filings directly, adversely, and unfairly affects BIAW Trust, its Participating Employers, and their approximately 15,000

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<sup>1</sup> To become a Participating Employer, the employer must (i) be a member of the Building Industry Association of Washington, (ii) be a Builder or Associate (as defined in BIAW bylaws), (iii) have a principal business purpose of engaging in the building and construction industry, and (iv) be included among certain occupational categories that OIC and BIAW jointly agreed constitute a single industry.

Members (who may be forced to move to or purchase plans with substantially reduced benefits and/or higher premiums and who may be subject to retroactively-adjusted premiums), warranting a hearing pursuant to RCW 48.04.010(1)(b).

The OIC takes issue with the fact that the Regence plans for BIAW Trust include multiple Rate Categories for each plan design, established at the Participating Employer level with potentially different monthly premiums for different Participating Employers. In rejecting the Filings, the OIC erroneously treats BIAW Trust as a single employer, asserting that it must file a single rate at the association level. In its disapproval, the OIC stated:

[Y]our rates, filed for various employers, are unreasonable in relation to the amount charged for the contract for one single employer . . . . Therefore, your rate and form filings are disapproved and closed under the authority of RCW 48.44.020(3).<sup>[2]</sup>

BIAW Trust challenges the OIC's decision on the following grounds:

- OIC lacks legal authority to disapprove the Filings.
  - First, RCW 48.44.020(3) does not provide a legal basis for the OIC's disapproval. That statute permits disapproval of a health benefits contract only "if the benefits provided therein are unreasonable in relation to the amount charged for the contract." The OIC's own regulations, however, provide that benefits "will be found not to be unreasonable" for purposes of RCW 48.44.020(3) if the projected earned premium for the rate renewal period meets certain requirements. WAC 284-43-915(2) (emphasis added). The Filings in fact satisfy the requirements of WAC 284-43-915(2) and OIC's disapproval does not contend otherwise. Indeed, none of the attached disapproval notices even address benefits provided under the plans. Therefore, by OIC's own regulations, RCW 48.44.020(3) provides no authority for OIC's disapproval of the Filings.
  - Second, no other Washington law or regulation gives the OIC authority to reject the Filings based upon the rates. The OIC's disapproval cites no such authority, and we are aware of none.<sup>3</sup>

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<sup>2</sup> See Attachment 1.

<sup>3</sup> As OIC's consultant observed, "For AHPs [Association Health Plans], the OIC can require prior approval of both rates and forms only for disability carriers. For all other carriers that write AHP business, the OIC has authority to require filing of rates and forms, but can review only

- Even if the OIC had authority to disapprove the Filings (including the rates), there is no basis under state or federal law for the OIC's position that a Bona Fide Association ("BFA") like BIAW Trust must be treated as a single employer for purposes of rating.<sup>4</sup>
  - No state statute or regulation prohibits separately rating Participating Employers based on non-discriminatory criteria, or requires that all Participating Employers be rated in one pool when coverage is offered through a BFA. To the contrary, Washington law explicitly and unambiguously exempts employers purchasing health plans through associations from community rating: "Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care are not small employers and the plans are not subject to RCW 48.44.023(3) [community rating]." RCW 48.44.024(2).
  - Nor is there any basis under federal law for the OIC's position that a BFA must be treated as a single employer for purposes of rating. All rating factors utilized by Regence were consistent with federal regulations and guidance, including under the Health Insurance Accountability and Portability Act, also known as HIPAA. Indeed, the OIC's disapproval does not cite any federal law or rule that is implicated by the Filings or that provides a basis for its disapproval of the Filings.
  - Rating at the Participating Employer level is a long-standing and sanctioned practice for BFAs in Washington to which the OIC has never previously objected. There has been no recent change in federal or state law that would compel a different response from OIC.
- The OIC's unlawful disapproval of the Filings will unfairly prejudice BIAW Trust, its Participating Employers, and their thousands of Members. If the OIC's proposed

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forms, and cannot disapprove either rates or forms." [Emphasis supplied.] See Mathematica Policy Research, *Association Health Plans and Community-Rates Small Group Health Insurance in Washington State, Final Report* (Sept. 30, 2011) at Appx. A, available on OIC's website at: <http://www.insurance.wa.gov/about-oic/commissioner-reports/documents/association-health-plans.pdf>.

<sup>4</sup> BIAW Trust's BFA status was acknowledged by the OIC in its March 26, 2013 letter from Carol Sureau, Deputy Commissioner of Legal Affairs for the OIC. See Attachment 2.

Office of the Insurance Commissioner

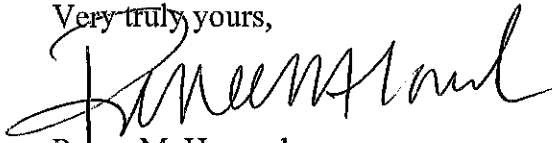
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remedy is implemented, the approximately 15,000 Members may be forced to move to or purchase plans with substantially reduced benefits and/or higher premiums, potentially with adverse federal tax consequences, and BIAW Trust and Participating Employers may be forced to retroactively adjust Member premiums.

The OIC's rejection of the Filings lacks foundation in state or federal law; is contrary to the long-established AHP rating practices condoned by the OIC and sanctioned by state law; and unfairly prejudices BIAW Trust and its tens of thousands of Washington citizen Members in direct contravention of the primary purpose of the Affordable Care Act: to provide individuals with access to affordable health care. For the above reasons, BIAW Trust formally demands a hearing before an ALJ.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Renee M. Howard".

Renee M. Howard

Enclosures

91004-7111.0031/LEGAL125373977.1



# SERFF - System for Electronic Rate and Form Filing

Monday, March 23, 2015  
1:10 PM

Disposition for B861-129515810  
Close

**SERFF** B861-129515810 **State:** Washington  
**Tracking**  
**Number:**

**Filing** Regence BlueShield **State** 269906  
**Company:** **Tracking**  
**Number:**

**Company** 100000030CMR, 100000030CDR, 100000030CVR  
**Tracking**  
**Number:**

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

**Product** Association or member-governed true employer group  
**Name:** under 29 U.S.C Section 1002(5) of ERISA - Building  
Industry Association of Washington Health and Welfare  
Benefits Trust - Proprietary

**Project**  
**Name:**

Disposition Date: 01/15/2015  
Implementation Date:

Status:

Disapproved

HHS Status:

HHS Denied

State Review:

Reviewed by Actuary

Comments: Your rate and form filings for Building Industry Association of Washington Health and Welfare Benefits Trust are disapproved and closed under the authority of RCW 48.44.020(3).

The rating methodology and rates filed on behalf of Building Industry Association of Washington and the Building Industry Association of Washington Employee Benefit Group Insurance Trust formerly known as the Building Industry Association of Washington Health and Welfare Benefits Trust are inconsistent with the fact that you filed one single large employer group.

In the rate schedule, there are 5 Rate Categories for each plan design. For example, for the E30 Plan, an employee age between 35 to 49 can be charged a monthly rate ranging from \$404.64 to \$679.55. In our rate objections, we asked you to explain in detail how you define a Rate Category and the factors used to assign an employee to a Rate Category. We also asked you to provide detailed calculations of the rates assigned to each Rate Category. Your response to the first objection letter indicated that you have separately rated various "member groups" within Building Industry Association of Washington. You also stated at the Association renewal, each "custom rated group" is assigned a unique rate increase that is added to their current rates. This means that your rates filed are for various "employers" - contrary to your form filing for one employer only.

We also asked you to identify the bona fide employment-based classifications upon which the 5 Rate Categories are based (per 26 CFR § 54.9802-1(d).) (Examples for bona fide employment-based classifications include current versus former employees, and employees located in different geographic areas.) You stated that "each subgroup" may be treated separately as each subgroup is an independent ongoing business. You further stated that each subgroup is managed separately from other subgroups and "employment" criteria, "employment" needs, benefit mix, may be unique to each subgroup. Your response reiterated that you have separately rated various "member groups." Your response also failed to identify how each Risk Level is related to bona fide employment-based classifications.

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

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

Item Type	Item Name	Item Status	Public Access
Supporting Document	Disability Associations		No
Supporting Document	PPACA Exemption Request		No
Supporting Document	Proprietary Summary Coversheet		No
Rate	Pooled Rate Filing Full Negotiated Association or member-governed true employer group under 29 U.S.C Section 1002(5) of ERISA - Building Industry Association of Washington - Proprietary		No

Schedule Items

[Close](#)

Inserted from <<https://login.serff.com/serff/viewDisposition.do?filingId=129515810&reportId=129150187&viewOnly=false>>





MIKE KREIDLER  
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

Phone: (360) 725-7000  
www.insurance.wa.gov



OFFICE OF  
INSURANCE COMMISSIONER

March 26, 2013

Art Castle  
Executive Vice President  
Building Industry Association of Washington  
P O Box 1909  
Olympia, WA 98507

In Re: Building Industry Assn of WA Occupational Categories

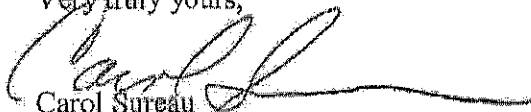
Dear Mr. Castle:

First, I'd like to thank you for your assistance in the effort we've made to analyze your association membership in the context of your insurance benefits vehicle to determine whether the membership constitutes an "employer" under 29 USCS 1002 (5).

Attached is a copy of the list of occupational categories we have agreed constitute a single industry. Also attached is a copy of the Trust Agreement governing the insurance vehicle which we have agreed provides for the employer members included in the occupational categories list to control the insurance vehicle. These documents should be provided to your carrier, as they will be needed for your plan filings.

If you have any questions, please let me know. Thank you again for your cooperation in this effort.

Very truly yours,

  
Carol Sureau  
Deputy Commissioner, Legal Affairs

Enclosures

cc: Beth Berendt, Deputy Commissioner, Rates & Forms  
Charles Brown, Senior Staff Attorney  
Marta DeLeon, Assistant Attorney General  
Brendan Williams, Deputy Commissioner, Policy