



OFFICE OF  
INSURANCE COMMISSIONER

August 29, 2018

To Health Insurance Issuers in Washington State:

Re: Association Health Plans – Review and Regulation

As you are aware, the Employee Benefits Security Administration of the U.S. Department of Labor (DOL) recently enacted a final rule establishing additional criteria for determining when employers may join together in an association that will be treated as the “employer” sponsor of a group health plan, also known as an Association Health Plan (AHP). (see ERISA 3(5), 83 FR 28912).

Washington state law prohibits the creation of new self-funded AHPs. As a result, this letter will address only those aspects of the new regulation applying to fully-funded AHPs. Effective September 1, 2018, the new rule will permit two types of AHPs in Washington state, described by DOL as “Pathway 1” and “Pathway 2.”

Pathway 1, requiring eligible associations to be “bona fide” under federal law, has existed in our market for some time. The new rules emphasize that the right to legally discriminate in the rates is reserved for those associations that meet the “rare” federal exception. It is also important to note that in subsequent guidance, DOL clarified that “working owners” cannot purchase plans through this type of AHP. My office will continue to review filings of this type based on federal law and sub-regulatory guidance, and on state law. Issuers will continue to be responsible for documenting in the filing process that associations meet the legal requirements, and they should continue to use the established process for filing AHPs.

Pathway 2 provides new criteria for eligibility as described in the federal rule. The rule establishes a more flexible “commonality of interest test” for this type of AHP, and permits them to enroll “working owners.” Pathway 2 AHPs are not permitted to discriminate in rates based on health factors. We are working closely with DOL and other states to understand the new requirements, and anticipate additional DOL guidance over the next several months. Health plans sold under the new pathway will be subject to review under the new rules.

As with Pathway 1, I will hold issuers responsible for ensuring that the federal requirements are met. I recognize the challenge of complying with new requirements, and we share the goal of a smooth filing process. If you are considering selling these new plan types, I strongly encourage you to contact Molly Nollette, deputy commissioner for Rates and Forms, for a consultation prior to filing.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Kreidler".

Mike Kreidler  
Insurance Commissioner