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### Technical Assistance Advisory 2021-03<sup>1</sup>

**TO: All Higher Education Student Health Plan Insurers**

**FROM: Insurance Commissioner Mike Kreidler**

**DATE: Updated March 3, 2021**

**SUBJECT: Submission of Higher Education Student Health Insurance Plans**

The purpose of this technical assistance advisory (TAA) is to summarize current law and to provide guidance to student health plan issuers related to the submission of higher education student health insurance rates, forms, and network filings.

#### **Higher Education Student Plans are Individual Health Plans**

Student health insurance coverage is defined as a type of *individual health insurance coverage* that is provided pursuant to a written agreement between an institution of higher education and a health insurance issuer, and provided to students enrolled in that institution of higher education and their dependents.<sup>2</sup> Student health insurance coverage does not make health insurance coverage available other than in connection with enrollment as a student (or as a dependent of a student) in the institution of higher education; does not condition eligibility for the health insurance coverage on any health status-related factor (as defined in § 146.121(a) of subchapter B); and meets any additional requirements that may be imposed under state law.<sup>3</sup>

The Affordable Care Act (“ACA”) defines higher education student health plans as individual health plans.<sup>4</sup> This federal definition pre-empts Washington State's exemption of "student-only plans" from the definition of "health plan or health benefit plan".<sup>5</sup> Under federal law, higher education student health plans are considered "individual coverage" that must comply with individual health plan requirements, including essential health benefit (EHB) requirements and actuarial value or "metal level" requirements.<sup>6</sup> Student health plans must also comply with federal and state mental health parity requirements.

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<sup>1</sup> This advisory is an interpretive policy statement released to advise the public of the OIC's current opinions, approaches, and likely courses of action. It is advisory only. RCW 34.05.230(1).

<sup>2</sup> 45 CFR § 147.145.

<sup>3</sup> *Id.*

<sup>4</sup> 45 CFR § 147.145.

<sup>5</sup> See RCW 48.21.040(1)(e); RCW 48.43.005(29)(1).

<sup>6</sup> 45 CFR § 147.145(a); 45 CFR § 147.150(a); 45 CFR § 156.140; 42 U.S.C. § 18022(a), (d).

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**Filing Timeline:**

Following Center for Consumer Information and Insurance Oversight (CCIIO) guidance, the deadline for filing individual health plans, small group health plans, and stand-alone dental plans that provide pediatric dental benefits as one of the essential health benefits, is set each year by the Insurance Commissioner.<sup>7</sup> Because higher education student health plans are individual health plans, this deadline also applies to higher education student health plans.<sup>8</sup>

**Form Filing:**

No higher education student health plans may be issued, delivered, or used unless the forms have been filed with and approved by the Insurance Commissioner.<sup>9</sup>

Issuers filing higher education student health plan forms must comply with the form filing instructions applicable to the individual health plan as required by the *Washington State SERFF Health and Disability Form Filing General Instructions*.<sup>10</sup> Student health plans must be filed using the Type of Insurance (TOI) of H22.<sup>11</sup>

The OIC strongly encourages the use of available speed-to-market tools and asks issuers to complete and submit the *School Year Higher Education Student Health Plan Analyst Checklist* with their student health plan filing(s) in SERFF.

The OIC updates the *Washington State SERFF Health and Disability Form Filing General Instructions*, *Form Filings Speed-to-Market Guide*, and *School Year Higher Education Student Health Plan Analyst Checklist* on an annual basis and all documents are available online by following the links at <https://www.insurance.wa.gov/filing-instructions>.

**Rate Filing:**

Issuers must submit the student health plan rate filing concurrently with the corresponding form filing.<sup>12</sup>

Higher education student health plans are individual plans subject to the essential health benefit and actuarial value requirements.<sup>13</sup> As a result, the plan must provide at least 60 percent actuarial value.<sup>14</sup>

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<sup>7</sup> WAC 284-43-0200.

<sup>8</sup> See 45 CFR § 144.103; 45 CFR § 147.145.

<sup>9</sup> RCW 48.18.100.

<sup>10</sup> WAC 284-58-025(2)(c).

<sup>11</sup> NAIC *Uniform Life, Accident & Health, Annuity and Credit Product Coding Matrix*.

<sup>12</sup> WAC 284-58-033.

<sup>13</sup> 42 U.S.C. § 18022 (a), (d); 45 CFR § 147.145(b)(2).

<sup>14</sup> 45 CFR § 147.145(b)(2).

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Higher education student health insurance is subject to the Fair Health Insurance Premium rating requirements.<sup>15</sup> Issuers are required to submit an explanation and justification to demonstrate how they comply with the provisions relating to the rating of higher education student health insurance coverage.<sup>16</sup> Specifically, rates for each student health plan must be based on per-member-rating, and structured to comply with "school-specific group community rating" as outlined in the comments to 45 CFR § 147.145.<sup>1718</sup>

### **Network Filing:**

Issuers must file all provider contracts and provider compensation agreements with the Insurance Commissioner thirty calendar days before use.<sup>19</sup> This requirement applies to all lines of business.

Issuers participating in the individual market, including higher education student plans, must submit their network access reports demonstrating compliance with 284-170 WAC Subchapter B when they submit rate and form filings.<sup>20</sup>

### **No SERFF Plan Binder Filing:**

Higher education student health insurance coverage is exempted from the single risk pool requirements of 42 U.S.C. § 18032; 45 CFR § 147.145(3). As a result, student health plans are not required to be pooled with other ACA individual market plans or included in the individual plan binder filing. Therefore, higher education student health plans are not subject to HHS Parts I (URR), II, and III requirements.

### **Transparency Tool**

Washington law requires each carrier offering or renewing a health benefit plan on or after January 1, 2016 to offer member transparency tools with certain price and quality information to enable the member to make treatment decisions based on cost, quality, and patient experience.<sup>21</sup>

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<sup>15</sup> See 42 U.S.C. § 300gg; see 45 CFR § 147.102.

<sup>16</sup> WAC 284-58-033; see RCW 48.18.100, RCW 48.18.110(2).

<sup>17</sup> 78 FR 13406, 13424 (February 27, 2013).

<sup>18</sup> Although HHS Notice of Benefit and Payment Parameters for 2017 states that a health insurance issuer that offers student health insurance coverage may establish one or more separate risk pools for an institution of higher education, if the distinction between or among groups of students (or dependents of students) who form the risk pool is based on a bona fide school-related classification and not based on a health factor (as described in 45 CFR § 146.121), it does not change the 2013 final market rule. Furthermore, comments to the HHS Notice of Benefit and Payment Parameters for 2017 final rule state; "We note that nothing prevents a State from requiring broader risk pooling with respect to student health insurance coverage than provided for in this final rule (for example, requiring each student health insurance issuer to establish one risk pool comprised of its entire student health insurance book of business)." Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017, 81 FR 12204, 12215 (March 8, 2016).

<sup>19</sup> RCW 48.43.730.

<sup>20</sup> WAC 284-43-0200.

<sup>21</sup> RCW 48.43.007.

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Prior to the Affordable Care Act, student blanket plans could be exempted from this requirement under the exception to the definition of "health plan" or "health benefit plan". As noted above, this exception has been pre-empted by the federal definition of higher education student health plans as individual plans.

Higher education student health plans are subject to the state requirements related to member transparency tools.<sup>22</sup>

Please direct any questions about this advisory to the RFPN Helpdesk, which may be contacted at [RFHelpDesk@OIC.WA.GOV](mailto:RFHelpDesk@OIC.WA.GOV) and phone number 360-725-7111.

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<sup>22</sup> RCW 48.43.007.