



April 1, 2022

Lisa Emerson
Senior Health Insurance Programs Analyst
Department of Consumer and Business Services, Division of Financial Regulation
PO Box 14480
Salem, OR 97309

SENT VIA EMAIL

RE: Comments on Draft AHP Rules

Dear Mrs. Emerson:

Thank you for the opportunity to comment on the February 23, 2022 revised draft AHP Rule. We acknowledge the DFR's goal is to also find a pathway for AHPs who may not otherwise qualify as an AHP, and we appreciate the DFR reconvening the Rule Advisory Committee (RAC) to continue the work to formalize the Rules.

We provide the following comments on the current draft rules:

1. **Provision:** Subsection (3) - There is reference that carriers must submit information "in the form prescribed by the Director."

Comment: Is the "form" the existing Transmittal (Form 440-2441A (6/2017/INS) or is it a separate form in addition to the Transmittal? Please clarify.

2. **Provision:** Subsection (3)(a) - "A signed copy of the employer association's current constitution, bylaws or comparable controlling documents."

Comment: It is unclear what is meant by "comparable controlling documents." Will the DFR provide examples of "comparable controlling documents"? We are not requesting that the examples be included in the rules, but perhaps listed in the Transmittal.

3. **Provision:** Subsection (3)(e) - "Evidence demonstrating that the employer association may sponsor the group health plan under section 3(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(5)) and U.S. Department of Labor guidance. The filing must demonstrate that:"

Comment: Carriers currently provide this information via a letter from the AHP's ERISA counsel ("ERISA Opinion Letter"), which is a requirement under Section V of the Transmittal (Form 440-2441A (6/2017/INS)). The draft rule does not reference the ERISA Opinion Letter. Determining whether an AHP qualifies as a bona fide group or

association within the meaning of ERISA requires complex legal analysis. The AHP's ERISA counsel has the legal training and understanding of the AHP's structure to perform that analysis. We request that the DFR add clarity to Subsection(3)(e) by indicating that a carrier must require the AHP to provide an ERISA Opinion Letter to demonstrate that the AHP qualifies as a bona fide group or association within the meaning of ERISA.

4. **Provision:** Subsection (3)(f) – “Copies of the employer association most recent Form 5500 and M-1 filings submitted to the U.S. Department of Labor or, if these materials are not available, an explanation of why they are not available.”

Comment: We request that this requirement be removed or if maintained, that it be filed every other year. Gathering and filing the Form 5500 and M-1 filings each year is unduly burdensome for carriers.

5. **Provision:** Subsection (3)(g) – “If the employer association will offer coverage to small employer-members, evidence demonstrating that the group health benefit coverage available to employees of small employers will provide coverage that is substantially equal to the essential health benefits adopted under ORS 731.097 at a minimum actuarial value of at least 60 percent.”

Comment: As written, this draft proposed rule is inconsistent with the federal rules for AHPs and creates a disincentive for small employers to join an Association Health Plan. Under the federal rules, an AHP is considered a single large employer and is therefore not required to offer essential health benefits to small employer members. We request this subsection should be stricken from the rules and revert to the federal guidance. If an AHP cannot offer a small employer the benefit of participating in a larger group, then there is little benefit for that employer. We urge the DFR to give small employers the flexibility to find the best health care options for their employees instead of restricting choice.

6. **Provision:** Subsection (5): “At least annually, a health insurance carrier offering group health benefit coverage to an employer association must inform the division of changes to the information required under subsection (3) of this rule.”

Comment: Oftentimes, the information required under subsection (3) changes without the carrier's knowledge. While we do our best to remind AHPs to report any changes to us, we should not be held accountable if the AHP does not let us know. We should only be required to inform the Division when we are aware of the change(s) and request that the rule provide that clarification.

7. **Provision:** Subsection (6): “If an employer association cannot achieve compliance with the requirements of this rule by that date, the carrier offering coverage to the employer association may file a transition plan demonstrating how and when compliance will be met. The division may allow a carrier to continue offering coverage pursuant to the terms of the transition plan for up to three years.”

Comment: We would like to reiterate our comments in our May 21, 2021, comment letter. As currently written, the Division can give an association up to 3 years after the Rule takes effect to achieve compliance. There is not a default transition timeline and, therefore, associations likely will be on different compliance timelines with no

consistency. This would create an environment where some associations are meeting more stringent requirements in offering coverage than others for several years. That hurts competition and is unfair. Achieving compliance with the Rule should take no more than 18 months. The Division would ensure a level playing field if it put all associations on the same timeline for achieving compliance with the Rule.

We propose replacing Subsection 6 with the following:

(6) In the case of an employer association that was approved to offer group health benefit coverage prior to the effective date of this rule, the requirements of this rule become on the first date of annual renewal following the effective date of this rule. If an employer association cannot achieve compliance with this rule by that date, the carrier offering coverage to the association may file a transition plan demonstrating how the association will come into compliance with any requirements that are not met within 18 months of the effective date of this rule. The division may allow an employer association to continue offering coverage pursuant to the terms of the transition plan for up to three years if the employer associations provide sufficient evidence that it cannot achieve compliance within 18 months of the effective date of this rule.

8. Lastly, Subsection (3) requires carriers to submit certain information provided by AHPs to the Division. We feel that because we would not know if the information is authentic, we request that a field be added to the Form prescribed by the DFR or in the Transmittal requiring the AHP to attest to the information submitted to the carrier.

Sincerely,
Antoinette Awuakye
Senior Regulatory Affairs Specialist

Cc: Renee Balsiger, Vince Porter, Guy Thompson, Jim Walton