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Sent via electronic mail

Commissioner Laura Cali  
Oregon Insurance Division  
Department of Consumer & Business Services  
350 Winter Street NE Suite 440  
Salem OR 97301

Re: Small Group Market Expansion Options – 2016 Benefit Year

Dear Commissioner Cali:

Thank you for providing UnitedHealthcare<sup>1</sup> with the opportunity to comment on the Oregon Insurance Division's (OID) Health Reform Workgroup's advice to the Commissioner regarding the small group expansion from 2-50 to 1-100, effective January 1, 2016. The OID's Workgroup session on October 8, 2015 highlighted multiple issues for the Commissioner's consideration. UnitedHealthcare respectfully urges the Commissioner to retain the current definition of small group as 1-50, and delay implementation of the definition change found in HB 2466 (Oregon -2015) in order to prevent unnecessary market disruption, and provide sufficient time so that an evidence based assessment of which market definition of small group best serves Oregonians can be performed.

**HB 2466 Legislative History is Not Dispositive** The PACE Act authorizes states to adopt a 1-100 definition of the small group market, and amends the Affordable Care Act and the PHSA to define small group, in the absence of state action, as 1-50. This is a new option for states that did not exist when Oregon's legislature adopted HB 2466 earlier this year. As you know, HB 2466 amended the definition of small employer effective January 2, 2016 to be employers of 1-100.

At the time HB 2466 (OR-2015) was adopted, the legislature only knew that federal law would preempt the state definition of small group market, and therefore, based on Oregon's legal framework, the Commissioner required explicit authority to address the new market definition. As a result, the Commissioner does not know the legislative intent regarding the option presented by the PACE Act. A delay of the 1-100 expansion provides the opportunity for the legislature to consider the new option the PACE Act has provided, and for the Commissioner and stakeholders to provide the legislature with an evidence-based assessment of the right small group definition for Oregon.

Issuers submitted information with their 2016 rate filings as to the effect on their risk pool if the market definition were 1-100 or 1-50. The Commissioner has the information it needs to determine whether the change in market definition makes sense for Oregon consumers, and the PACE ACT

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<sup>11</sup> These comments are submitted on behalf of UnitedHealthcare Insurance Company and UnitedHealthcare of Oregon, Inc.

provides authority for Oregon to define the market for itself. If we move forward with the market definition change but learn through review of the rate filing information and other data that the small group should have remained defined at 1-50 for Oregon, then even with transitional relief through October 1, 2016, the market disruption and change would be in effect for much of the market by the 2017 legislative session, imposing unnecessary economic harm on those small employers. There is no reason to take that risk.

UnitedHealthcare strongly urges the Commissioner to use the authority granted her to defer the small group expansion in full, so that the issue can be properly assessed, and a reasoned, evidence based recommendation made to the Legislature in 2017.

**Consumer Benefit** Insistence on moving forward with the 1-100 small group expansion poses greater risk than performing a reasoned assessment. Underlying the PACE Act is Congress' understanding that healthcare is local. Each state's small group market will experience being defined at 1-50 or 1-100 differently, and therefore, each state should adopt the right definition for their citizens. In Oregon, where 95% of all Oregonians are covered by some form of health benefit plan, the change in market definition does not offer coverage options to small businesses that previously didn't exist, nor does the broadening of the small group risk pool result in materially lower rates for small groups.

United's small group rate differential based on the market definition is 2%, for example, yet groups in the 51-99 market segment will experience much greater changes in their premium rate when they are forced to the community rated market. The resulting rate shift can be addressed in ways that do not benefit consumers:

- Employees are offered coverage options affordable for employers that are leaner in terms of coverage,
- Employers decide to self-insure if their employees are healthy, or
- Employers decide to withdraw coverage, leaving employees to purchase individual coverage.

The net result is the same – more risk or higher out of pocket cost for consumers and employers.

The producer testimony at the October 8, 2015 Health Reform Workgroup meeting disputed any concern that 51-99 group employers offered mini-med plans that didn't adequately cover employees today; in Oregon, this market segment does not need the small group market protections. Rather, the Commissioner heard undisputed testimony that 51-99 segment employers are able to negotiate richer benefits with lower out of pocket maximums than their employees would enjoy in the small group market. Additionally, the minimum essential coverage requirements that will be enforced beginning in 2016 will drive employers away from mini-med plan options, and guarantee that employees receive meaningful coverage in that market. If those same employees are situated in the small group market, their employer has the discretion to discontinue health benefit coverage, which may not be to their employee's advantage.

Absent specific analysis demonstrating consumer harm, the compelling public policy position is to defer the small group expansion so that the Legislature can act, and concurrently suspend transitional relief as being unnecessary. It is not too late to adopt this position for January 1, 2016 renewals and sales, although the decision does need to be made. Currently the market is in stasis

due to the uncertainty caused by this discussion, and we urge swift resolution to restore stability and momentum to the 2016 benefit year marketplace.

Thank you for considering our comments.

Sincerely,

UnitedHealthcare

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cc: Tandy Kooch-Cleaver, Chief Executive Officer, Northwest Region, UnitedHealthcare