Association Health Plan Rate and Form Filing Guidance

(Applicable to H16 – Health – Major Medical)

Pursuant to Title XXVII of the Public Health Service Act, ACA changes and CMS guidance an association that meets the ERISA definition of an employer under 29 USC 1002(5) of the Employee Retirement Income Security Act of 1974 (29 USC Section 2001) may be treated as a single employer plan.

If an association does not meet the ERISA definition of an employer, as that term as been interpreted and applied by the U.S. Department of Labor (DOL), the insurer must treat each individual, small employer and large employer member of the association under the laws applicable to individual, small employer and large employers, respectively regardless of Alaska law. For example, if an association does not meet the ERISA definition of an employer, insurers must offer individual coverage to individual members of the association and include the individuals in the insurer's individual single risk pool; and must offer small employer coverage to small employer members of an association and include the small employers in the insurer's small employer single risk pool.

Associations, association members and insurers are responsible for complying with applicable state and federal laws. Prior to submitting a rate or form filing to the Division **and** prior to providing a quote to an association, an insurer must determine that the association meets the ERISA definition of an employer. In assessing compliance with state and federal rate and form filing laws and regulations the Division will not make an independent determination as to whether an association meets the ERISA definition of an employer and will rely on an insurer's certification that in the insurer's opinion, based on its review of all relevant facts and law including DOL advisories, the association meets the ERISA definition of an employer.

In making a determination of whether a particular association meets the ERISA employer and in the absence of U.S. Department of Labor advisory opinion of the association, an insurer should consider the U.S. Department of Labor advisory opinion of the Chamber of Commerce in Bend, Oregon arrangement, which states in part:

> *"A determination whether there is a bona fide employer group or association for this ERISA purpose must be made on the basis of all the facts and circumstances involved. Among the factors considered are the following: how members are solicited; who is entitled to participate and who actually participates in the association; the process by which the association was formed, the purposes for which it was formed, and what, if any, were the preexisting relationships of its members; the powers, rights, and privileges of employer members that exist by reason of their status as employers; and who actually controls and directs the activities and operations of the benefit program. The employers that participate in a benefit program must, either directly or indirectly, exercise control over the program, both in form and in substance, in order to act as a bona fide employer group or association with respect to the program.*
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> *The definition of "employee welfare benefit plan" in ERISA is grounded on the premise that the person or group that maintains the plan is tied to the employers and employees that participate in the plan by some common economic or representation interest or genuine organizational relationship unrelated to the provision of benefits."*

Note that if an association meets the ERISA definition of an employer, then the association is considered a single small or large employer and pursuant to AS 21.54.100 association members may not be charged premiums based on health status or claims experience.

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