



625 State Street  
Schenectady, NY 12305  
mvphealthcare.com

October 12, 2018

**Via Email and First Class Mail**

Michael Pieciak, Commissioner  
Vermont Department of Financial Regulation  
89 Main Street  
Montpelier, VT 05620

**Re: Association Health Plans**

Dear Commissioner Pieciak:

Thank you again for visiting MVP Health Care's headquarters in Schenectady earlier this week. We value our relationships with you and the Vermont Department of Financial Regulation as we continue our mission to provide quality health insurance options to Vermont's citizens and businesses. This letter is intended to serve not only as a follow-up to our conversation, but also as additional MVP comments in response to Proposed Rule I-2018-01. (MVP previously supplied comments in a letter to you dated September 27, 2018.)

**Look-through Rating**

One of the subjects we discussed during your visit was whether existing Vermont statutes and/or regulations give the VT DFR the authority to impose rating requirements on Vermont association health plans (AHPs) similar to New York's "look-through" rating rules. These rules require each employer insured through an association to be rated according to the employer's size, thereby prohibiting the aggregation of all an association's member employer into one large group for rating purposes.

Vermont's existing community rating regulation (CVR 21-040-014) applies to small group carriers providing small group health plans to small groups, and it explicitly states that "Multiple Employer Welfare Associations and other associations that are made up of a collection of small groups are included." Although some aspects of the regulation are arguably unclear, the specific inclusion of associations and the lack of any wording that would directly prohibit the DFR from applying look-through rating rules to small groups that purchase coverage through an association suggest that the DFR can do just that. In addition, 8 V.S.A. § 4079a directs the Commissioner to adopt rules regulating AHPs "in order to protect Vermont consumers and promote the stability of Vermont's health insurance markets." This statute, which was enacted earlier this year and predates the issuance of the federal AHP regulations, also may provide the DFR the authority to go beyond the rating requirements included in Vermont's proposed rule and require look-through rating of association employer members.

By permitting insurers to use large group rating methodologies and underwriting discretion that could be manipulated to produce artificially lower rates for association health plans than the rates currently applicable to individual and small group policies sold through Vermont Health Connect (VHC), the DFR's current proposed AHP regulation has the real potential to cause an exodus of VHC enrollees and increased premiums for those purchasing through VHC going forward. Therefore, because of the likelihood that the DFR's proposed AHP regulation will not only destabilize Vermont's individual and small group markets but also harm Vermont consumers, MVP encourages the DFR to exercise its authority to amend the proposed regulations by including look-through rating.

### **Insurer Exclusivity and Broker Concerns**

The DFR's proposed AHP regulations are structured in a way that contemplate an association partnering with an insurer (and to some extent, a broker) for purposes of the association's license application to the DFR. Although DFR staff have articulated that this is intended in part to provide the DFR with a full and transparent view of the association health plans offered in Vermont, it has become clear that this structure will have unintended consequences. For example, it is MVP's understanding that there is some arrangement between the two associations that have applied to offer AHPs in 2019, their broker and BlueCross BlueShield of Vermont (BCBSVT) to exclusively offer BCBSVT coverage to the associations' employer members. Because only associations already in existence for at least one year are eligible to offer AHPs in 2019, MVP is concerned that these exclusivity arrangements effectively have created a monopoly for BCBSVT and MVP has been excluded from the market in 2019.

When combined with a broker's ability to be paid commission on association health plan sales and inability to be paid commission on VHC sales, the regulation's requirement of a joint insurer/association license application creates an incentive for brokers to negotiate such exclusive arrangements that benefit the broker and insurer but that may not be in the best interest of the employers and employees insured through an association. Proposed bonus payments for brokers that bring new business to BCBSVT are further evidence of this incentive. The notices that the regulations require to be included in AHP policies may be seen too late to alert employers and employees of other options they might have. Similarly, the broker disclosures required by Section 16 of the regulations may not prevent improper steering of association business.

Considering the relatively small number of associations that can be expected to offer AHPs, the proposed regulations can be amended in ways that still would give the DFR the transparency into the AHP market it wants while not attaching an association to a particular insurer in the licensing process. Specifically, insurers could be permitted to file an association health plan for DFR approval with enough flexibility to accommodate various potential association health insurance offerings instead of a plan for one particular association, and the regulation's current reporting requirements would still serve to identify the insurers that each AHP is working with.

Page 3

Michael Pieciak, Commissioner

October 12, 2018

If the DFR is not willing or able to separate insurers from associations in terms of an association's licensure, however, there are a number of provisions already in the proposed regulations that the DFR can use to ensure that association employer members have their choice of coverage that is best for their employees. Section 4.A.9 requires an association to identify any broker with whom the association has partnered and Section 4.A.11 calls for copies of current contracts between an association and an insurer to provide coverage. Section 4.A.12 requires the filing of an association's advertising materials with DFR. Section 14 allows the DFR to examine the business affairs of an association. Together with DFR's broad discretion, these provisions should give DFR enough information to conclude whether Vermont's consumers are being protected sufficiently when purchasing through an association and to ensure that improper incentives are not influencing AHP offerings.

### **Conclusion**

With the benefit of more time, the DFR can craft AHP regulations that better protect Vermont's employers and employees and prevent improper broker influence while still tightly regulating AHP coverage. Therefore, MVP encourages the DFR to consider the information above and to delay the approval of any 2019 AHP approvals until the proposed regulations are amended and finalized.

Thank you for your consideration. MVP is available to discuss further and assist, so please contact Susan Gretkowski to arrange as needed.

Sincerely,



Monice Barbero

Executive Vice President

General Counsel

Government Affairs & Compliance