



62 Merchants Row
Williston, VT 05495-4476
P. 1-802-264-6500
1-800-380-3530
F. 1-802-264-6555
mvphealthcare.com

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

Re: Association Health Plans

Dear Commissioner Pieciak:

As a preliminary comment to the Department of Financial Regulation's (DFR) proposed rule on fully insured association health plans (Emergency Regulation I-2018-01-E), MVP Health Care ("MVP") asks DFR to adopt the New York State so-called "look through" provisions, NY Ins. Law 4317(d) <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>. See also New York Insurance Circulator Letter No. 10 (2018) Regulation of Association Health Plans https://www.dfs.ny.gov/insurance/circltr/2018/cl2018_10.htm.

As DFR is well aware, on June 19, 2018, the United States Department of Labor (DOL) issued a regulation that is intended to make it easier for unrelated employers and business owners to band together as if they were a single employer, and purchase health insurance through an association health plan (AHP). Like DFR, MVP is concerned that this could have a harmful effect on the community rated Exchange market in Vermont, similar to what occurred prior to 2014. In that spirit, we fully supported Act 131 of the 2018 legislative session.

The New York look through provisions require that coverage issued to a fully insured AHP must be rated based on the size of each underlying member employers, and not based on the entire association group size. Large employer members must be issued large group coverage for rating purposes, small employer members must be issued small group coverage for rating purposes, and individual members/sole proprietors must be issued individual coverage for rating purposes.

New York requires pure community rating of individual and small group market products, but permits experience rating of fully insured large groups. As a result, the look-through requirements prevent adverse selection that would otherwise occur if individuals and small groups joined an AHP to obtain experience-rated large group coverage, and opted out of the state's community rated markets. And, similar to DFR's emergency regulation provision, coverage issued to an association that includes one or more small groups or individuals must provide coverage for essential health benefits for all of the association members.

Like DFR, the New York Superintendent of Financial Services has determined that federal law and interpretation does not pre-empt, in whole or in part, New York law or its regulation of health insurance. Notably, this assertion is supported on p. 94 of the new federal rules, where the DOL declines to respond to requests for a federal opinion or determination that state group size and/or rating rules are preempted, noting that courts have generally upheld such state laws under ERISA. Therefore, New York has clarified that these state "look through" provisions are in full force and effect.

For additional background, New York updated its insurance market laws before 2014 to comply with the Affordable Care Act (ACA), and to establish a state-based health exchange. Before these changes took effect, New York allowed sole proprietors to opt out of the individual market, and to purchase small group coverage through associations and chambers of commerce. At the time, small group premiums were significantly cheaper than those available on the individual "direct pay" market.

As a result, sole proprietors opted out of the individual market, helping to reduce statewide individual market enrollment to roughly 20,000 people by 2013, and increase premiums to well over \$1,000 per month for individuals. For comparison, New York's individual market currently includes more than 250,000 enrollees in Qualified Health Plans (QHPs), and several hundred thousand more enrollees in the state's Basic Health Program (enrollees between 138 and 200% of the Federal Poverty Level). QHP premiums today are, on average, 55 percent lower after adjusting for inflation and before application of federal premium tax credits than they were in 2013.

In closing, we've seen firsthand how adverse selection drives consumer behavior to the detriment of fully insured health insurance markets. New York's look-through rule has helped to revitalize the state's community rated markets, and is helping to preserve the integrity of those markets for all enrollees. We urge DFR to adopt a similar look-through rule to help protect the Vermont Exchange market.

Thank you for your consideration of this request, and we are available if you would like to discuss this or have any questions. Please contact Susan Gretkowski to arrange any follow up (sgretkowski@mvphealthcare.com).

Sincerely,



Karla Austen
Executive Vice President and Chief Financial Officer

Cc: Emily Brown, DFR
Susan Gretkowski, MVP
Steve Imbriaco, MVP
Kelly Smith, MVP