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MINISTRIES

Comments by Samaritan Ministries (SMI) on

OIC Health Care Sharing Ministries Rulemaking R 2021-17.

August 17, 2021

Thank you for the opportunity to comment on R 2021-17. Samaritan Ministries is one of the largest sharing ministries among the one hundred plus ministries that serve over one and a half million Americans using health care sharing, and a founding member of the Alliance of Health Care Sharing Ministries. For over 26 years Samaritan Ministries has been serving its members, as Christians bear one another's burdens through health care sharing, and that includes over 9,300 individuals here in Washington.

We appreciate that the state of Washington, like 30 other states, has for years explicitly recognized in the state insurance code that health care sharing ministries are not in the business of insurance.

Comment Summary: As proposed, portions of the rulemaking are vague, and an overreach/crabbed interpretation of the statute, RCW 48.43.009. In addition, SMI adopts in full the comments of the Alliance of Health Care Sharing Ministries.

Proposed WAC: 284-43-8230

Continuously Sharing Medical Expenses

In order for there to be continuous sharing without interruption of medical expenses between members of a predecessor organization and its successor health care sharing ministry, members of the predecessor organization must share medical expenses with all new members.

Vague and Confusing

"sharing . . . between members of a predecessor and its successor," Literally this refers to members of one entity sharing with another entity (rather than its members), which is nonsensical. An additional problem is this conditional is not found anywhere in 26 U.S.C. §5000A(d)(2)(B) which RCW 48.43.009 adopts by reference.

". . . members of the predecessor . . . must share . . . with all new members [of the successor]" (emphasis added)

Presumably, the language in the [ ] completes the intended thought, otherwise its meanings is unintelligible. As was explained in the verbal comments at the 8/14/21 stakeholder meeting, for a member to ever literally share with "all" other members is impossible for an organization of any significant size, as well as some members never have a need to share.

And what is meant by "new"? New to what? How does that apply to difference fact patterns? What if the successor has no "new" members? If a successor already had member when it took over predecessor sharing activities, are all of the successor members at the time of the takeover considered "new"? Or only "new" members coming in after the takeover?

What if some members of the predecessor stay with the predecessor? Literally the rule would require them to be sharing with the successors "new" members, whoever that might be? The proposal leaves ministries in a quandary as to where they stand with OIC.

Overreach – In the above latter scenario, the predecessor's remaining members being required to share with the successor adds a component nowhere found in the ACA. Nothing in the statutory language suggests there must be sharing between members of legal entities to meet the predecessor requirement.

The proposal's apparent intent to narrow the definition of predecessor is unwarranted. First, the purpose of RCW 48.43.009 is a "safe harbor" to alleviate conflict between HCSM and the OIC, and should thus be broadly construed.

Second, OIC staff indicated that the rulemaking was based on an understanding of congressional intent through a misinterpretation of reasoning in Liberty v. Lew 733 F.3d 72. OIC suggested that Liberty held it was Congress intent with the 1999 date to preclude new health care sharing

ministries, period. However, the court's opinion actually said the date was to establish "reliability" and "accommodate[s] religious health care without opening the floodgates for any grant to establish a ministry to circumvent the Act." 733F.3d at ___ (emphasis added)

However, consider if a pre-1999 established ACA qualified ministry has two grouping of members, that for various reasons might not share with one another [e.g. one uses a digital platform, and one does not, and members move back and forth] This distinction does not disqualify the ministry under the ACA. If a new entity, then took over one of the two member groups, i.e. become a successor to the pre 1999 predecessor, this would not circumvent the ACA since the exact same sharing would continue to go on after the takeover as the ACA allowed before the takeover.

Finally, RCW 48.43.009 should be liberally construed to avoid a First Amendment Free Exercise of religion violation. The United States Supreme Court's unanimous ruling in Fulton et al v. City of Philadelphia et al, No. 19-123 (June 17, 2021), held that no government policy can burden or prohibit religious conduct if it grants exemptions permitting similar secular conduct. RCW 48.36A.370, titled "Exemptions," completely exempts fourteen (14) categories of entities from the Insurance Code. Those exempted are largely fraternal societies which assist members with Medical expenses. There is no compelling interest for excluding the ministries from a similar exemption.

Therefore, the OIC cannot lawfully put valid CMS-recognized HCSMs under its jurisdiction by declaring them to be insurance and effectively keeping them from operating and at the same time permit these 14 categories for secular entities to act as insurers, yet still be exempt from the insurance laws.

For all these reasons WAC 284-43-8230 should either be withdrawn or revised to clarify its meaning and to liberally construe RCW 48.43.009.

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