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Technical Assistance Advisory 2016-01¹

TO: All Student Health Plan Issuers

FROM: Insurance Commissioner Mike Kreidler *MBK*

DATE: March 28, 2016

SUBJECT: Submission of Higher Education Student Health Insurance Plans

The purpose of this advisory is to summarize current law and to provide guidance to student health plan issuers related to the submission of higher education student health plan rate, form and network filings for 2016/17 and beyond.

Higher Education Student Plans are Individual Health Plans

Student health insurance coverage is a type of individual health insurance coverage that is provided pursuant to a written agreement between an institution of higher education and a health insurance issuer, and provided to students enrolled in that institution of higher education and their dependents. *Id.*; 45 CFR § 144.103. The Affordable Care Act defines higher education student health plans as individual health plans. 45 CFR §147.145.

This federal definition has pre-empted Washington State's exemption of "student-only plans" from the definition of "health plan or health benefit plan". See RCW 48.21.040(1)(e), and RCW 48.43.005 (26)(l). Under federal law, higher education student health plans are now considered "individual coverage" that must comply with the individual health plan requirements including essential health benefit (EHB) requirements, and actuarial value or "metal level" requirements. 45 CFR §§ 147.145(a), 147.150(a), and 156.140; 42 U.S.C. § 18022(a) and (d).

Filing Timeline:

Following Center for Consumer Information and Insurance Oversight (CCIIO) guidance, the deadline for filing individual health plans, small group health plans, and stand-alone dental plans that provide pediatric dental benefits as one of the essential health benefits, is set each year by the

¹ This advisory is an interpretive policy statement released to advise the public of the OIC's current opinions, approaches, and likely courses of action. It is advisory only. RCW 34.05.230(1).

Commissioner. WAC 284-43-0200. Because they are individual health plans, this deadline also applies to higher education student health plans. *See* 45 CFR §§ 144.103, 147.145. The deadline for the 2017 plan year (2016-17 policy year) is May 6, 2016.

Form Filing:

No higher education student health plans may be issued, delivered, or used unless the forms have been filed with and approved by the commissioner. RCW 48.18.100.

Issuers filing higher education student health plan forms must comply with the form filing instructions applicable to the individual health plan as required in Washington State SERFF Health and Disability Form Filing General Instructions. WAC 284.58.025. Student health plans must be filed using the Type of Insurance (TOI) of H22 in SERFF filings. *See* Washington State SERFF Health and Disability Form Filing General Instructions (2016), p. 3; NAIC Uniform Life, Accident & Health, Annuity and Credit Product Coding Matrix (2015), p. 23. As part of the Form Filing General Instructions, issuers are also required to properly complete the current analyst checklist “2017 Disability Individual Analyst Checklist” and include the checklist in the initial form filing. Washington State SERFF Health and Disability Form Filing General Instructions (2016), p. 19. For a copy of the current Filing Instructions, coding matrix and checklist, see <http://www.insurance.wa.gov/for-insurers/filing-instructions/file-health-care-disability/>.

Rate Filing:

Issuers must submit the student health plan rate filing concurrently with the corresponding form filing. WAC 284-58-033.

Higher education student health plans are individual plans subject to the essential health benefit and actuarial value requirements. 42 U.S.C. § 18022 (a) and (d); 45 CFR §147.145(b)(2). As a result, the plan must provide at least 60 percent actuarial value. 45 CFR §147.145(b)(2).

Higher education student health insurance is subject to the Fair Health Insurance Premium rating requirements. *See* 42 U.S.C. § 300gg; *and see* 45 CFR §147.102. Issuers are required to submit an explanation and justification to demonstrate how they comply with the provisions relating to the rating of higher education student health insurance coverage. WAC 284-58-033; *see* RCW 48.18.100, RCW 48.18.110(2). Specifically, rates for each student health plan must be based on per-member-rating, and structured to comply with “school-specific group community rating” as outlined in the comments to 45 CFR §147.145. 78 FR 13406-01, 13424 (February 27, 2013).²

²Although HHS Notice of Benefit and Payment Parameters for 2017 states that a health insurance issuer that offers student health insurance coverage may establish one or more separate risk pools for an institution of higher education, if the distinction between or among groups of students (or dependents of students) who form the risk pool is based on a bona fide school-related classification and not based on a health factor (as described in 45 CFR §146.121), it does not change the 2013 final market rule. Furthermore, comments to the HHS Notice of Benefit and Payment Parameters for 2017 final rule state: “We note that nothing prevents a State from requiring broader risk pooling with respect to student health insurance coverage than provided for in this final rule (for example, requiring each student health insurance issuer to establish one risk pool comprised of its entire student health insurance book of business).” Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017, 81 FR 12204-01, 12215 (March 8, 2016).

Health Insurance Oversight System (HIOS) Filing:

Issuers should review the “Rate Review Justification Instructions for Transitional and Student Health Plans” guidance issued by CMS/CCIIO on April 1, 2015. The guidance may be accessed at the following link: <http://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/RRJ-Instructions-Manual-20150401-Final.pdf>. This federal guidance provides the technical instructions for issuers to submit the Preliminary Justification in the federal Rate Review Justification (RRJ) module of HIOS for student health plans.

For all proposed rate increases that are 10% or greater, issuers must submit the Preliminary Justification to CMS on the same day that the issuer submits the rate filing to the state. Rate Review Justification Instructions for Transitional Policies and Student Health Plans, pp. 7-9 (April 1, 2015). Issuers that submit proposed rate increases that are less than 10% are not required to submit the Preliminary Justification in the federal Rate Review Justification module of HIOS. *Id.*

Network Filing:

Issuers must file all provider contracts and provider compensation agreements with the commissioner thirty calendar days before use. RCW 48.43.730. This requirement applies to all lines of business.

Issuers participating in the individual market, including higher education student plans, must submit their network access reports demonstrating compliance with 284-43 WAC Subchapter B when they submit rate and form filings. WAC 284-43-9976.

No SERFF Plan Binder Filing:

Higher education student health insurance coverage is exempted from the single risk pool requirements of 42 U.S.C. § 18032; 45 CFR § 147.145(3). As a result, student health plans are not required to be pooled with the other ACA individual market plans or included in the individual plan binder filing. Therefore, higher education student health plans are not subject to HHS Parts I (URRT), II, and III requirements.

Transparency Tool

Washington law requires each carrier offering or renewing a health benefit plan on or after January 1, 2016 to offer member transparency tools with certain price and quality information to enable the member to make treatment decisions based on cost, quality, and patient experience. RCW 48.43.007.

Prior to the Affordable Care Act, student blanket plans could be exempted from this requirement under the exception to the definition of “health plan” or “health benefit plan”. As noted above, this exception has been pre-empted by the federal definition of higher education student health plans as individual plans.

Higher education student health plans are subject to the state requirements related to Transparency tools. RCW 48.43.007.