

Note: Exclusively for purposes of this draft, OIC has included citations to DOL pre-rule guidance or case law indicating the source of the criteria for bona fide status in the section addressing Pathway 1 form filings. The citations are provided for informational purposes only.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-0310 Association health plan compliance with statutory or regulatory changes. (1) Issuers must file a group health plan, other than a small group health plan, rate and form filing as provided in RCW 48.43.733. An issuer offering plans through an association or member-governed group must implement all new federal or state health plan market requirements when they become effective. Replacement requirements for this section apply based on whether the purchaser is classified as an individual, small group, or large group purchaser. These requirements also apply to ~~((member))~~ employer member groups of less than two or to individual member purchasers.

(2) An issuer providing plans of the type referenced in subsection (1) of this section must discontinue a noncompliant plan, and offer replacement plans effective on the renewal date of the master group contract for large groups, and on the group's anniversary renewal date for nongrandfathered small group and individual plans.

(3) If the association is a large group as defined in WAC 284-43-0330(1), the same renewal date must apply to all ~~((participating))~~ employer~~((s))~~ members and individual~~((s))~~ employer members, and the replacement coverage must take effect on the same date for each participant. The purchaser's anniversary date must not be used in lieu of this uniform renewal date for purposes of discontinuation and replacement of noncompliant coverage.

(4) If the association is not a large group as defined in WAC 284-43-0330(1), and the master group contract and ~~((the member group))~~ an employer member's contract do not have the same renewal date, an issuer must provide notice of the discontinuation and replacement of the plan to the affected ~~((association))~~ employer member ~~((group))~~ or plan sponsor, and each enrollee in the affected employer member ~~((group))~~ plan, not fewer than ninety days prior to the employer member's anniversary renewal date.

(5) If an issuer does not have a replacement plan approved by the commissioner to offer in place of a discontinued plan, the issuer must assist each enrollee in identifying a replacement option offered by another issuer.

(6) For purposes of this section, "purchaser" means the group or individual whose eligibility for the plan is based in whole or in part on membership in the association or member-governed group.

(7) For purposes of this section, the "anniversary renewal date" means the initial or first date on which a purchasing group's health benefit plan coverage became effective with the issuer, regardless of whether the issuer is subject to other agreements, contracts or trust documents that establish requirements related to the purchaser's coverage in addition to the health benefit plan.

(8) An issuer must not adjust the master contract renewal or anniversary date to delay or prevent application of any federal or state health plan market requirement.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-0330 Transition of plans purchased by association members.

(1) An issuer must not offer or issue a health plan to (~~individuals or~~) small groups through an association or member-governed group as a large group plan unless the (~~association or member-governed group to whom the plan is issued~~) constitutes an employer under 29 U.S.C. § 1002(5) of the Employee Retirement Income Security Act of 1974 (~~29 U.S.C. Section 1001 et. seq.~~), as amended, and the number of eligible employees is more than fifty(~~.~~

~~(2) An issuer must make a good faith effort to ensure that any association or member-governed group to whom it issues a large group plan meets the requirements of subsection (1) of this section prior to submitting its form and rate filings to the commissioner, and prior to issuing such coverage. An issuer must maintain the documentation supporting the determination and provide it to the commissioner upon request. An issuer may reasonably rely upon an opinion from the U.S. Department of Labor as reasonable proof that the requirements of 29 U.S.C. 1002(5) are met by the association or member-governed group.~~

~~(3))~~, and the member-governed group or association health plan meets the requirements of WAC 284-43-XXXX for a Pathway 1 Association Health Plan, or WAC 284-43-XXXX for a governmental plan.

(2) For plans offered to association or member-governed groups that do not meet the requirements of subsection (1) of this section, the following specific requirements apply:

(a) An issuer must treat grandfathered plans issued under those purchasing arrangements as a closed pool, and file a single case closed pool rate filing. For purposes of this section, a single case closed pool rate filing means a rate filing which includes the rates and the rate filing information only for the issuer's closed pool enrollees.

(b) For each single case closed pool rate filing, an issuer must file a certification from an officer of the issuer attesting that:

(i) The employer (~~groups~~) members covered by the filing joined the association prior to or on March 23, 2010;

(ii) The issuer can establish with documentation in its files that none of the conditions triggering termination of grandfathered status set forth in WAC 284-43-0250 or in 45 C.F.R. 2590.715-1251(g) have occurred for any plan members.

~~((4))~~ (3) For each grandfathered plan issued to an association or member governed group under subsection ~~((3))~~ (2) of this section, the issuer must include the following items in its rate filing:

(a) Plan number;

(b) Identification number assigned to each employer (~~group~~) member, including employer (~~groups~~) members of less than two;

(c) Initial contract or certificate date;

(d) Number of employees for each employer (~~group~~) member, pursuant to RCW 48.43.005(11);

- (e) Number of enrolled employees for each employer (~~(group)~~) member for the prior calendar year;
 - (f) Current and proposed rate schedule for each employer (~~(group)~~) member; and
 - (g) Description of the rating methodology and rate change for each employer (~~(group)~~) member.
- ((5)) (4) WAC 284-43-6540 applies for a single case rate closed pool under this section.

NEW SECTION

WAC 284-43-9000 Definitions. (1) "Department" means the United States (U.S.) Department of Labor.

(2) "Employer member" means an employer that participates in the health plan.

(3) "Pathway 1 Association Health Plan" means a bona fide group or association of employers to whom a health plan is issued that constitutes an employer under section 3(5) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. Sec. 1002(5)), and U.S. Department of Labor guidance related to Pathway 1 Association Health Plans.

(4) "Member-governed group" means a multi-employer group organized as an entity other than an association, that constitutes an employer under section 3(5) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. Sec. 1002(5)), and U.S. Department of Labor guidance.

NEW SECTION

WAC 284-43-9010 Requirements for Pathway 1 Association Health Plan form filings related to the bona fide status of Pathway 1 Associations.

(1) Carriers must file a group health plan, other than a small group health plan, rate and form filing as provided in RCW 48.43.733. The form filing for an association health plan submitted by a carrier must include documents related to "Evidence as an Employer." The documents must include, at a minimum:

- (a) The member-governed group or association's bylaws;
- (b) A trust agreement or other organizational document that shows the purpose of the member-governed group or association and who governs the member-governed group or association;
- (c) A statement of the member-governed group or association's history;
- (d) An advisory opinion from the Department, if available, demonstrating that the member-governed group or association is qualified to purchase association health plan coverage; and
- (e) If a Department advisory opinion is not available, an opinion from an attorney attesting to the fact that the member-governed group or association qualifies as an employer under 29 U.S.C. Sec. 1002(5). The attorney attestation must explain how and why the member-governed group or association meets each of the criteria below, based upon the facts and circumstances of the member-governed group's or associa-

tion's governance and operations during the twelve months immediately preceding submission of the form filing, with explicit references to relevant language drawn from the member-governed group or association's bylaws, trust agreement, or other organizational document:

(i) The member-governed group or association has been formed for some purpose other than the provision of health coverage or other employee benefits;¹

(ii) The employer members of the member-governed group or association are in the same trade, industry, line of business or profession. A list of the occupational categories/industrial classifications of the employers eligible to participate in the member-governed group or association must be submitted with the attestation, along with a description of the following:²

(A) How employer members are solicited;

(B) Eligibility criteria to participate in the member-governed group or association;

(C) Employer members who are currently participating in the member-governed group or association;

(D) The process by which the member-governed group or association was formed;

(E) The purpose for the formation of the member-governed group or association;

(F) Preexisting relationships of any of the employer members of the member-governed group or association;

(G) The powers, rights, and privileges of employer members that exist by reason of their status as employers;

(H) The functions and activities of the member-governed group or association are controlled by its employer members, and the member-governed group's or association's employer members that participate in the group health plan control the plan. Control must be present both in form and substance.

(f) Each employer member of the member-governed group or association participating in the group health plan is a person acting directly as an employer of at least one employee who is a participant covered under the health plan.

(2) Disability insurers issuing a health plan to a member-governed group or association domiciled outside of Washington state that indicates on their most recently submitted Department Form M-1 that they are operating in the state of Washington must file their "Evidence as Employer," as provided in subsection (1) of this section, within thirty working days after the earlier of:

(a) The date group contract negotiations are completed; or

(b) The date renewal premiums are implemented.

(3) The carrier's form filing also must include its most recently submitted Form M-1, as filed with and published by the Department.

¹ *Wis. Educ. Asso. Ins. Tr. v. Iowa State Bd. of Pub. Instruction*, 804 F.2d 1059, 1063 (8th Cir. 1986)

² DOL Advisory Opinion 2005-24A: Wisconsin Association of Independent Colleges and Universities; 2001-04A (Wisconsin Automobile and Truck Dealers Association Inc. Insurance Trust).

NEW SECTION

WAC 284-43-9020 Requirements for governmental plans. Carriers must file a group health plan, other than a small group health plan, rate and form filing as provided in RCW 48.43.733. Carriers issuing a

governmental plan under section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. Sec. 1002(32)) must submit with their form filing either an opinion letter from the Department demonstrating that the plan is a governmental plan under section 3(32), or an opinion from an attorney attesting to the fact that the entity establishing or maintaining the plan is a governmental entity as provided in section 3(32), citing the applicable law authorizing establishment of the entity.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
284-43-0310	284-43-9030
284-43-0330	284-43-9040