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Department of Banking, Insurance, Securities and Health Care Administration

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HCA Bulletin 123: Obligations of exempt associations and small group carriers in connection with association health benefit plans

Introduction and Purpose:

The Department finds that the association health insurance market is subject to unusual uncertainty at this time as a result of association members' efforts to secure affordable health insurance before January 1, 2007, and as a result of health insurance carriers competing for the business of association members. This competitive environment is not in itself harmful to the association market, provided that carriers and associations comply with their legal obligations.

The Department further finds that the association and small group markets may be adversely affected if small employers enroll in health benefit plans offered by associations with which the member small employer has little in common other than the purchase of insurance. The association and small group markets may also be adversely affected if carriers develop premium rates for products offered through associations without adequate adherence to appropriate rate development and actuarial standards.

Authority:

The Department is charged with the responsibility of supervising health insurance companies and health insurance offered to exempt associations in order to maintain the stability and affordability of the association market and the small group market. 8 V.S.A. § 10 and 18 V.S.A. § 9401. The Commissioner is authorized to issue this Bulletin pursuant to 8 V.S.A. § 15, and 8 V.S.A. §§ 4079, and 4080a(h)(3) and (4).

Obligations of Exempt Associations:

The legal obligations of an exempt associations include, but are not limited to, the following:

1. An exempt association must be "organized and maintained in good faith for purposes other than that of obtaining insurance" (8 V.S.A. § 4079(2)(B)). This means that an exempt association must have a principle purpose other than the offer and sale of insurance. This means further that an exempt association must act with restraint in marketing its insurance products to small employers who are not members of the association to ensure that the association continues to be "maintained in good faith for purposes other than that of obtaining insurance."

2. An exempt association must be accountable to association members by holding regular meetings and affording members voting privileges and representation on the governing board and committees (8 V.S.A. §§ 4079(2)(D)(i) and (iii)).
3. An exempt association must offer a small group plan, to all member small employers, which is community rated and which guarantees acceptance of all persons within the association and their dependents (8 V.S.A. § 4080a(h)(3)). This means that an association must offer and market its plan to all of its members, not just some of its members.
4. In letters to certain associations approving their exemptions under 8 V.S.A. § 4080a(h)(3), the Department has imposed additional obligations; for example, the Department has required the exempt association receiving such letters to notify the Department of any changes to its constitutive documents, or to notify the Department of any changes that affect member voting privileges, member representation on the governing board and committees or membership criteria.

Obligations of Small Group Carriers with respect to Exempt Associations:

The legal obligations of a small group carrier with respect to an exempt association include, but are not limited to, the following:

1. A small group carrier must offer small group products to exempt associations only after rate development that results in premium rates and rules for the classification of risk that are neither unjust, unfair, inequitable, excessive, inadequate, unfairly discriminatory, nor contrary to the laws of this state. 8 V.S.A. § 4062 (all carriers), 8 V.S.A. §§ 4513 and 4584 (nonprofit hospital and medical service corporations), and 8 V.S.A. § 5104(a) (health maintenance organizations).
2. A small group carrier must not assist an exempt association in any practice prohibited by Title 8 if the carrier knows or has reason to know of the association's violation. 8 V.S.A. § 4724(18)

Enforcement:

Failure to comply with applicable legal obligations may be enforced as to associations pursuant to revocation of the association exemption upon proper determinations by the Commissioner. 8 V.S.A. § 4080a(h). Failure to comply with applicable legal obligations may be enforced as to carriers pursuant to Title 8.

Dated at Montpelier, Vermont this _14th_ day of December, 2006.

s/JPC
John P. Crowley, Commissioner