

# VERMONT LEGAL AID, INC.

## OFFICE OF THE HEALTH CARE ADVOCATE

264 NORTH WINOOSKI AVE.  
BURLINGTON, VERMONT 05401  
(800) 917-7787 (TOLL FREE HOTLINE)  
(802) 863-7152 (FAX)

OFFICES:

BURLINGTON  
RUTLAND  
ST. JOHNSBURY

OFFICES:

MONTPELIER  
SPRINGFIELD

October 25, 2018

Re: Association Health Plans

To: Health Reform Oversight Committee

The Office of the Health Care Advocate opposes allowing small employers who purchase an association health plan (AHP) to be rated outside of the individual and small group risk pool. As we stated in our recent public comments to the Department of Financial Regulations (DFR) and our VT Digger Op Ed (attached), this change will destabilize the small group and individual health insurance market and decrease affordability of health insurance for Vermonters. DFR can and should keep all small businesses in Vermont's individual and small group risk pool.

- The Vermont Legislature's 2018 directive to the Department of Financial Regulations is clear:  
The Commissioner shall adopt rules...regulating association health plans in order to protect Vermont consumers and promote the stability of Vermont's health insurance markets.<sup>1</sup>
- The Federal government has not preempted state authority to regulate these products.  
(From the final federal rule's policy memorandum):  
The impact of the final rule on State individual and small group risk pools is highly dependent on State regulatory practices. States under this final rule retain broad authority to pursue steps to optimize AHPs' role in their local markets.<sup>2</sup>
- Our neighbors are protecting their insurance markets by continuing to require association health plans sold to small employers to be rated with small groups: Massachusetts, New York, New Hampshire, Maryland, and Connecticut.

Please feel free to contact me at [mfisher@vtlegalaid.org](mailto:mfisher@vtlegalaid.org) or (802) 989-9806 with any questions. Thank you.

Sincerely,  
Mike Fisher, Chief Advocate  
Office of the Health Care Advocate

---

<sup>1</sup> 8 V.S.A §4079a (b) Association Health Plans.

<sup>2</sup> Definition of "Employer" Under Section 3(5) of ERISA Association Health Plans, 83 Fed. Reg. 289212 (proposed June 21, 2018) (codified at 24 C.F.R § 2510), <https://www.federalregister.gov/documents/2018/06/21/2018-12992/definition-of-employer-under-section-35-of-erisa-association-health-plans>.

# VERMONT LEGAL AID, INC.

## OFFICE OF THE HEALTH CARE ADVOCATE

OFFICES:

BURLINGTON  
RUTLAND  
ST. JOHNSBURY

264 NORTH WINOOSKI AVE.  
BURLINGTON, VERMONT 05401  
(800) 917-7787 (TOLL FREE HOTLINE)  
(802) 863-7152 (FAX)

OFFICES:

MONTPELIER  
SPRINGFIELD

Submitted electronically on October 15, 2018

**To:** Vermont Department of Financial Regulation  
89 Main Street, Montpelier VT 05602 – 301  
Attention: Phil Keller, Insurance Regulations Director (phil.keller@vermont.gov)

**RE: Comments on Proposed Final Rule on Fully-Insured Multiple Employer Welfare Arrangements and Association Health Plans (I-2018-01)**

Thank you for the opportunity to comment on the Department of Financial Regulation's (DFR) proposed Fully-Insured Multiple Employer Welfare Arrangements and Association Health Plans final rule.

In spring 2018, in anticipation of impending federal rule changes, the Vermont legislature directed DFR to adopt rules "regulating association health plans in order to protect Vermont consumers and promote the stability of Vermont's health insurance markets, to the extent permitted under federal law."<sup>1</sup> We do not believe that DFR's proposed rule adequately conforms to this order.

The Office of the Health Care Advocate recognizes that DFR's proposed rule contains a number of protections to ensure that those who purchase association health plans (AHPs) will receive basic levels of coverage. We fully support those aspects of the final rule. We object, however, to the fact that the proposed rule will allow AHPs to be rated separately from the individual and small group merged risk pool. If AHPs are permitted to entice the healthiest groups to leave the merged risk pool, it will destabilize Vermont's health insurance markets and exacerbate the premium price affordability crisis experienced by Vermonters who remain in the merged risk pool.

The policy memorandum on the final federal rule provides that states can choose to protect their individual and small group risk pools: "The impact of the final rule on State individual and small group risk pools is highly dependent on State regulatory practices. States under this final rule retain broad authority to pursue steps to optimize AHPs' role in their local markets."<sup>2</sup> The policy memorandum highlights Massachusetts's AHP regulations as an example of the permissible types of regulations limiting AHP flexibility by mandating a merged risk pool that includes AHP plans.<sup>3</sup> Indeed, Massachusetts, and multiple other states too, continue to require all plans sold to

---

<sup>1</sup> 8 V.S.A. § 4079a(b)

<sup>2</sup> Definition of "Employer" Under Section 3(5) of ERISA Association Health Plans, 83 Fed. Reg. 289212 (proposed June 21, 2018) (codified at 24 C.F.R. § 2510), <https://www.federalregister.gov/documents/2018/06/21/2018-12992/definition-of-employer-under-section-35-of-erisa-association-health-plans>.

<sup>3</sup> Id.

small employers, including AHPs, to be pooled together. <sup>4</sup> Like Massachusetts and several other states, Vermont should require all plans sold to small employers, including AHPs, to be pooled together to protect our consumers and the stability of the Vermont marketplace.

The Office of the Health Care Advocate will propose legislation this session to continue the practice of rating small groups in the individual and small group merged risk pool even if they have joined together in a fully insured association. **We urge DFR to lead the way in protecting Vermonters and promoting the stability of Vermont's health insurance marketplace by requiring AHPs sold to small employers to be pooled with the individual and small group merged risk pool.** If DFR believes it does not currently have the authority to do this, we ask DFR to join the Office of the Health Care Advocate in requesting a legislative change to ensure that the federal association health plan rule change does not destabilize Vermont's health insurance market.

Thank you for considering these comments.

Sincerely,

/s/ Michael Fisher

Michael Fisher  
Chief Advocate, Office of the Health Care Advocate.

---

<sup>4</sup> The cautionary warning in the policy memorandum regarding AHP regulation relates only to *self-insured* AHPs. The policy memorandum is clear that states possess broad powers to regulate *fully-insured* AHPs to achieve local market optimization. Definition of "Employer" Under Section 3(5) of ERISA Association Health Plans, 83 Fed. Reg. 289212 (proposed June 21, 2018) (codified at 24 C.F.R § 2510), <https://www.federalregister.gov/documents/2018/06/21/2018-12992/definition-of-employer-under-section-35-of-erisa-association-health-plans>.

# VERMONT LEGAL AID, INC.

## OFFICE OF THE HEALTH CARE ADVOCATE

264 NORTH WINOOSKI AVE.  
BURLINGTON, VERMONT 05401  
(800) 917-7787 (TOLL FREE HOTLINE)  
(802) 863-7152 (FAX)

OFFICES:

BURLINGTON  
RUTLAND  
ST. JOHNSBURY

OFFICES:

MONTPELIER  
SPRINGFIELD

October 18, 2018,

VT Digger Op Ed

### **Mike Fisher: New Plans Threaten Vermont's Marketplace and Health Insurance Affordability**

Vermont needs to act now to protect Vermonters from a harmful Trump administration policy that will destabilize the health insurance market and increase health insurance prices for many. This month, Vermont's Department of Financial Regulation began approving new association health plans to be sold in the state in 2019. These plans stem from the Trump administration's efforts to undermine the Affordable Care Act.

The new association health plans will undermine the stability of the marketplace by luring healthier populations out of the shared individual and small group risk pool. A larger pool is more stable and affordable for ratepayers. As healthier populations leave the marketplace, premium prices will increase for those remaining in the individual and small group risk pool. When Vermont reorganized its insurance pool in 2012, it closed the existing association marketplace and combined the small group and individual markets to create a larger and more stable risk pool.

In June, the Trump administration released rule changes for association health plans. Under the new rule, states have the option to allow small employers to purchase association health plans outside of the ACA marketplace. Vermont's Department of Financial Regulation has responded by implementing an emergency association health plan rule (now proposed as a final rule) that fragments the marketplace by allowing healthier small groups to leave the individual and small group risk pool for lower premium prices.

In reaction to DFR's new association health plans rule, members of the business community and Blue Cross Blue Shield of Vermont have been scrambling to get their associations up and running for 2019. They are doing their best to start this line of business before the Legislature has an opportunity to consider the impacts of their actions on the Vermont marketplace. This is an obvious tactic to make it harder for Vermont policymakers to take necessary actions in the public interest.

Other states are protecting their marketplaces by continuing to require association health plans to be rated with the ACA risk pool. If Vermont does not take similar action

to stop implementation of this destructive Trump administration policy, premium prices will climb faster than ever and many more Vermonters will be priced out of the health insurance market.

The Office of the Health Care Advocate will push for legislation this session to continue the practice of rating small groups in the individual and small group merged risk pool, even if they have joined together in a fully insured association. We expect significant opposition to this proposal from insurers and businesses who are prioritizing their own potential revenue and cost savings over the greater good. We urge policymakers to take action to promote a stable risk pool and affordable health insurance market.