

WAC 284-43-8110 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, or other comparable controlling documents if no bylaws exist;

(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 or if changes have been made to the documents related to "Evidence as an Employer" such that the Department advisory opinion no longer accurately reflects the composition, organization or structure of the member-governed group or association with respect to the factors included in (e)(ii) of this subsection, 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 association'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;

(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:

(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 an 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.

(4) If required under subsection (1)(e) of this section, the attorney attestation identified in subsection (1)(e) of this section shall be filed as a supporting document with the carrier's form filing, in accordance with the following:

(a) Attorney attestations in compliance with subsection (1)(e) of this section must be filed for Plan Year 2020 and every five years thereafter, regardless of whether any changes have been made to the association or member-governed group's composition, organization, or structure that would change the conclusion in the attorney attestation;

(b) For the interceding four filing years, the attestation may be prepared by an officer of the carrier in lieu of an attorney, so long as:

(i) No changes have been made to the documents previously submitted as "Evidence as an Employer" that would impact the analysis in subsection (1)(e) of this section; and

(ii) Such attestation represents a good faith effort by the carrier to ensure that the association or member-governed group meets the requirements of subsection (1) of this section.

(c) Attorney attestations in compliance with subsection (1)(e) of this section must be filed each plan year that a member-governed group or association changes issuers and a benefit plan is issued by a new issuer.

If an attorney attestation in compliance with subsection (1)(e) of this section was filed within the last five years, the issuer may refile the same attorney attestation, provided there has been no change to the association or member-governed group's composition, organization, or structure that would change the conclusion in the attorney attestation.

(5) An attorney attestation under this section must be specific to the member-governed group or association and need not be specific to the issuer offering the health plan to the member-governed group or association.

(6) This section applies to plans issued or renewed on or after January 1, 2020.

[Statutory Authority: RCW 48.02.060 and 48.43.733. WSR 19-22-032, § 284-43-8110, filed 10/30/19, effective 11/30/19.]