

STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD

In re: MVP Health Insurance Company )  
2015 Agriservices Rate Filing ) GMCB-19-14-rr  
)  
SERFF No. MVPH-129640114 )

RESPONSE TO REQUEST FOR INFORMATION

As explained below, it appears that the group categorization for the above captioned filing is incorrect. This incorrect categorization may negatively impact the members' access to premium subsidies on the state insurance exchange, to the extent that the policyholders include sole proprietors.

An individual who is eligible for "minimum essential" health insurance coverage, as defined by the Patient Protection and Affordable Care Act (ACA), is eligible for premium subsidies on the state insurance exchange if the minimum essential coverage is sold through the individual market. Under the ACA, an "applicable taxpayer"<sup>1</sup> can receive premium tax credit subsidies for all of the taxpayer's "coverage months" within the taxable year.<sup>2</sup> "Coverage months" do not include months under which an individual is eligible for minimum essential coverage, including grandfathered plans.<sup>3</sup> However, plans offered in the individual market are exempt from this rule.<sup>4</sup> As a result, an individual can be eligible for a health insurance plan in the individual market outside of the insurance exchange and still purchase health insurance on the health insurance exchange and qualify for premium subsidies.<sup>5</sup>

The categorization of a health insurance plan as individual, small group, or large group is generally defined without regard to whether it is part of an association. Neither the ACA nor the Public Health Service Act specifically defines "association plans." Title XXVII of the Public Health Service Act implemented the provisions of the ACA "that apply to both group health plans and health insurance issuers in the Group and Individual Markets."<sup>6</sup> As Centers for Medicare and Medicaid Services (CMS) explained in its September 1, 2011 Bulletin, "the test for determining whether association coverage is considered individual or group market coverage for the purposes of Title XXVII of the PHS Act is the same test as that applied to health insurance

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<sup>1</sup>To qualify as an "Applicable Taxpayer," an individual must meet certain household income and tax filing status requirements. 26 U.S.C. §36B (c)(1).

<sup>2</sup> 26 U.S.C. §36B (a) and (b)(1).

<sup>3</sup> 26 U.S.C. §36B(c)(2)(B).

<sup>4</sup> 26 U.S.C. §36B(c)(2)(B).

<sup>5</sup> 26 U.S.C. §36B(c)(2)(B).

<sup>6</sup> 45 C.F.R. 144.101 (b).

offered directly to individuals or employers. Association coverage does not exist as a distinct category of health insurance coverage under Title XXVII of the PHS Act.”<sup>7</sup>

A sole proprietor in an association plan should be eligible for premium subsidies as a member of the individual market. Title XXVII of the PHS Act defines individual market as “the market for health insurance coverage offered to individuals other than in connection with a group health plan.”<sup>8</sup> PHS defines a group health plan as “an employee welfare benefit plan to the extent that the plan provides medical care...to employees...or their dependents...directly or through insurance, reimbursement, or otherwise.”<sup>9</sup> As explained by CMS, “Consequently, coverage issued through an association, but not in connection with a group health plan, is not group health insurance coverage for purposes of the PHS Act. The fact that the same coverage may be categorized as group market for State law purposes has no bearing on its categorization under the PHS Act.”<sup>10</sup> Therefore, any individual who purchases health insurance coverage not provided by an employer is purchasing insurance on the individual market, regardless of whether the individual purchases an association plan.

Agri Services is likely a “mixed association” that includes both individual and group market plans. CMS has explained that a “mixed” association can exist “where different members have coverage that is subject to the individual market, small group market, and/or large group market rules under the PHS Act, as determined by each member’s circumstances. In this situation, the members of the association cannot be treated as if all of them belong to the same market. For example, it is not permissible under the PHS Act for mixed association coverage to comply only with the large group market rules, even with respect to its individual and small employer members. Accordingly, each association member must receive coverage that complies with the requirements arising out of its status as an individual, small employer, or large employer.”<sup>11</sup>

Finally, the rate review rules’ definitions of individual and small group markets conform with the general PHS Act definitions. As I have previously stated, the Department of Health and Human Service (HHS)’s September 6, 2011 final rule explained that for the purposes of rate review, coverage sold to individuals and/or small groups will be treated as if they are a part of the

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<sup>7</sup> Insurance Standards Bulletin Series, Application of Individual and Group Market Requirements under Title XXVII of the Public Health Service Act when Insurance Coverage is Sold to, or through, Associations. Gary Cohen, Acting Director, Office of Oversight. September 1, 2011, p. 2.

[https://www.cms.gov/CCIIO/Resources/Files/Downloads/association\\_coverage\\_9\\_1\\_2011.pdf](https://www.cms.gov/CCIIO/Resources/Files/Downloads/association_coverage_9_1_2011.pdf)

<sup>8</sup> 45 C.F.R. §144.103; Insurance Standards Bulletin Series, Application of Individual and Group Market Requirements under Title XXVII of the Public Health Service Act when Insurance Coverage is Sold to, or through, Associations. Gary Cohen, Acting Director, Office of Oversight. September 1, 2011, p. 2.

<sup>9</sup> 45 C.F.R. §144.145(a).

<sup>10</sup> 45 C.F.R. §144.102(c) and Insurance Standards Bulletin Series, Application of Individual and Group Market Requirements under Title XXVII of the Public Health Service Act when Insurance Coverage is Sold to, or through, Associations. Gary Cohen, Acting Director, Office of Oversight. September 1, 2011, p. 2.

<sup>10</sup> 45 C.F.R. §144.145(a).

<sup>11</sup> 45 C.F.R. §144.102(c) and Insurance Standards Bulletin Series, Application of Individual and Group Market Requirements under Title XXVII of the Public Health Service Act when Insurance Coverage is Sold to, or through, Associations. Gary Cohen, Acting Director, Office of Oversight. September 1, 2011, p. 2.

individual and small group markets regardless of whether they are a part of an association plan.<sup>12</sup>  
This rule controls regardless of state law to the contrary.<sup>13</sup>

For the reasons stated above, the Office of the Health Care Advocate believes the above captioned filing is incorrectly categorized. However, this cannot be determined without more information on the employee groups and/or individual proprietors making up the plan. If the plan contains sole proprietors it appears likely that their plans should be categorized as individual market plans, which would allow them to drop their current plans and be eligible for subsidies on the health insurance exchange.

Dated at Montpelier, Vermont this 20th day of October, 2014.

s/ Kaili Kuiper  
Kaili Kuiper  
Staff Attorney  
Office of the Health Care Advocate  
7 Court Street  
P.O. Box 606  
Montpelier, Vt. 05601  
Voice (802) 223-6377 ext. 329

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<sup>12</sup> Federal Register, Vol. 76, No 172, September 6, 2011, 54970. <http://www.gpo.gov/fdsys/pkg/FR-2011-09-06/pdf/2011-22663.pdf>

<sup>13</sup> 45 C.F.R. 154.102.