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September 16, 2022

Interstate Insurance Product Regulation Commission
Management Committee c/o Karen Schutter
444 North Capitol Street, NW
Suite 700 Hall of States
Washington, DC 20001-1509

Re: Draft Recommendation for Framework and Operating Procedure to Accommodate Use of Compact Approved Products for Non-Employer Groups

Members of the Management Committee:

Vermont appreciates this opportunity to comment on the above referenced Framework and Procedure. We are concerned with the proposal due to its significant deviation from Vermont law and its likely effect on insurer compliance. We also believe that while certain aspects of the proposal may be acceptable under Vermont law, they should be strengthened to ensure compliance more effectively with individual state law as is intended.

As background, Vermont generally requires individual Product Filings for each Non-Employer group including detailed information and documentation about the specific group and the Vermont statute upon which the group intends to rely for approval. Approval of all Non-Employer Groups is required prior to product use. As discussed in more detail below, certain groups now included in the definition of "Employer Group" [see Operating Procedure §102(2)] are either partially prohibited or are considered Non-Employer groups in Vermont.

A. Inclusion of Professional Employment Organizations in the definition of Employer Group

Vermont opposes the inclusion of Professional Employment Organizations (PEOs) as an Employer Group in §102(2)(d) of the Operating Procedure. PEOs are currently not considered Employer Groups under Vermont law. PEOs are complex and vary widely in purpose and operation, often exhibiting characteristics of both employers and non-employers dependent upon the specific relationship with their customers. There are several sections of Vermont law under which a PEO might seek approval as a Non-Employer Group, each with distinct criteria and requirements. Although the Drafting Note to §102(2) and §103 attempt to address the issue of the continued applicability of state law, we are concerned with their effectiveness. Historical experience with Non-



Employer groups failing to seek approval under Vermont law combined with the appearance that these groups might qualify under the Employer Group definition, leads us to believe that the proposal will increase the risk of violations. If the Compact approved an insurance contract sold to a PEO in Vermont, the organization would not only be considered an unapproved Non-Employer Group but would also result in the sale of a group product to individuals in violation of several additional Vermont laws. To resolve this concern, we suggest removing PEOs from the definitions of Employer Groups in §102(2) so that they will be treated as Non-Employer Groups as defined in §103.

B. Inclusion of Portability Trusts in the definition of Employer Group

Vermont opposes the inclusion of portability trusts as an Employer Group in §102(2)(b) due to a partial conflict with state law. Currently, Vermont only authorizes portability trusts for group life insurance products. When portability trusts for health products such as disability were proposed, they were not approved by the Vermont Legislature. As such, portability trusts for group disability products remain prohibited. We do not believe that either the Drafting Note to §102(2) nor §103, which are intended to address state law variations in the definitions of Employer versus Non-Employer Groups, are sufficient to address a restriction on product type. We believe that including portability trusts in the definition of Employer Group would give the illusion that portability trusts were allowed for all Compact approved products when they are limited to life products only under Vermont law.

To effectively resolve this concern, we believe two steps are necessary. First, we suggest removing portability trusts from the definitions of Employer Groups in §102(2) so that they will be treated as Non-Employer Groups as defined in §103. Second, we suggest removing group disability products entirely as a product eligible for filing using the Operating Procedure for at least two years. This will allow time for the Operating Procedure to be tested and refined prior to reconsidering whether it is appropriate to apply it to group disability products.

C. Enhancement of the Product Filing Requirements in §104 of the Operating Procedure

To strengthen the Operating Procedure, Vermont believes the following additions/changes should be made:

1. A certification from Insurers issuing to Employer Groups that the group meets the definitions and requirements in each applicable Compacting State.
2. A requirement that an Insurer issuing to a Non-Employer Group, not only provide evidence that approval has been sought for the group in all applicable Compacting States but also that the group has been approved in at least one Compacting State.
3. A requirement that the Insurer update their Non-Employer Group Product Filing with supporting documentation including a chart listing state approval information such as approval dates and SERFF tracking numbers, as well, a copy of the entire SERFF filing containing each applicable state's approval of the Non-Employer Group. Should a state not require such approval, it may be noted as such in the documentation.
4. An expansion of §104(3) requiring a 30-day waiting period after the Commission's notice to the Compacting State representative(s) before any approval of a Non-Employer Group Product Filing is finalized to allow for objections by the applicable Compacting States.



D. Corrections

Vermont has noted the following sections of the Operating Procedure which require technical corrections:

1. Drafting Note to §102(2)
 - a. In the first sentence, “applies” should be “apply” and “operating” should be “operate”.
 - b. In the second sentence, “existing” should be “exist”.
2. §103(3)
 - a. The reference to Section 102(1) should be changed to 102(2)
3. Drafting Note to §103(4)
 - a. In the first sentence, “applies” should be “apply” and “operating” should be “operate”
 - b. In the second sentence, “existing” should be “exist”.

E. Briefing Sheet Inconsistencies

Vermont is concerned with inconsistencies between the proposed Operating Procedure and the Briefing Sheet accompanying the proposal. Although we understand that the Briefing Sheet is not controlling, we believe that its use as interpretive material may result in confusion and/or may mislead industry participants. The following statements within the Briefing Sheet are of concern:

1. Bullet 6, Sentence 2 reads:

If a group meets the state law definition of employer, portability trust, labor union or professional employer organization, the insurer can issue a Compact-approved group product without further authorization from the Compacting State.

Both the first sentence of the same bullet and the Drafting Note to §102(2) of the Operating Procedure, indicate that the Operating Procedure is not intended to supersede state law with respect to what is considered an “Employer Group”. The sentence above contradicts that intention. Simply meeting the definition of portability trust, labor union or professional employer organization under state law does not mean that these organizations are considered “Employer Groups” under state law and the above sentence should be corrected to make that clear.

2. Bullet 7 reads:

The proposed Group Operating Procedure provides if a group is other than the four categories listed above, the insurer must obtain any required authorizations from the Compacting State for the specific group before it can issue a Compact-approved group product.

As in item E.1. above, this statement is inconsistent with the Drafting Note to §102(2) and the intention to preserve individual state law requirements with respect to the definition of an “Employer Group”. For example, in Vermont, the insurer would also need to seek approval as a



non-employer group for professional employer organizations, in addition to any groups other than the three remaining categories. This statement should be corrected to clarify this point.

We appreciate the opportunity to comment on this matter and would be happy to participate in efforts to further refine the Framework and Operating Procedure in the future.

Sincerely,

A handwritten signature in black ink that reads "Emily Brown". The signature is written in a cursive, flowing style.

Emily Brown
Deputy Commissioner of Insurance
Vermont Department of Financial Regulation

