

NEWS & VIEWS

September 2018

ARE ASSOCIATION HEALTH PLANS A VIABLE OPTION FOR SMALL EMPLOYERS?

As small employers struggle with the costs of health care insurance, they often seek out alternatives for lower cost coverage. The options are sparse: employers with fewer than 150 employees often must settle for high deductibles and out-of-pocket maximums, or outrageously high premiums. Regardless of their claims experience, premium rate increases are often in the double digits. Since self-insurance is risky for small groups, small employers are subject to the insurance industry's small group market. Even if they take measures to reduce their organization's health care costs, small employers don't see a difference in their premium rates they pay. What options are out there?

On October 12, 2017, President Trump issued an executive order directing the U.S. Department of Labor (DOL) to expand access to Association Health Plans (AHPs) as part of a goal to reduce health care costs. The DOL published the [Final Rule](#) on June 21, 2018, which modifies the definition of "employer" under ERISA so that a group or association of employers may come together to sponsor group health coverage. The Final Rule modified the existing AHP guidelines on who can form an AHP, when underwriting can and cannot apply, and what Health Plans Rules the AHP must follow.

WHO CAN FORM AN AHP

The employers in the association must have a "commonality of interest." This is defined as being in the same trade, industry, line of business or profession; or being within a geographic region within the same state or metropolitan area (e.g., Washington, DC metropolitan area includes portions of Maryland; Washington, DC; and Virginia).

In addition to the commonality of interest, the association must have at least one **substantial business purpose** unrelated to providing health coverage. Substantial business purposes might include:

- Providing conferences, classes, or education materials for association members;
- Setting standards for the association; or
- Engaging in public relations activities, such as advertising, education or publishing on business issues of interest to association members.

The association may be formed in order to provide an AHP as long as the substantial business purpose also exists. The purpose is not required to be a for-profit activity. The association must also have a formal organizational structure and be controlled by its employer members.

UNDERWRITING RULES

The AHP may not exclude pre-existing conditions, set premiums based on health status, or cancel coverage due to a person's health status. The association cannot set different rates for separate employers, but it may set premiums based on individuals' location, type of business or industry, or full-time vs. part-time status.

HEALTH PLAN RULES

The association is treated as a single employer for ERISA purposes and must offer coverage to all qualifying employees of the AHP's member employers. AHPs are subject to the ACA, but they do not have to offer coverage for all 10 essential health benefits if they create a self-insured plan. Just like other self-insured plans, AHPs cannot impose dollar limits on essential health benefits. They may also include wellness incentives subject to the same rules as other health plans.

EFFECTIVE DATES

Existing associations may form a fully insured AHP as soon as September 2018. Associations wishing to form a self-funded AHP must wait until April 1, 2019.

MORE INFORMATION

The DOL continues to update regulations that apply to AHPs. There are a lot of overlapping regulations concerning employer responsibilities with regard to health care coverage, so it is important to stay informed and seek guidance before proceeding.

The DOL recently published a guide to compliance assistance at:

<https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/compliance-assistance-publication-ahp.pdf>

You can read more about AHPs by the Society for Human Resource Management here:

<https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/dols-final-rule-association-health-plans.aspx>

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