



Association Health Plans: Things to Consider

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The Department of Labor (DOL) has recently released the much anticipated Final Association Health Plan (AHP) rules. The rules are designed to make it easier for small employers and individuals to join together to offer, or purchase, health insurance as a large group. The new rules would treat health plans offered by qualified AHPs as a single plan for purposes of determining whether large group health plan rules apply, making most AHPs exempt from current individual and small group health insurance rules such as coverage for essential health benefits, and modified community rating.

The new rules expand the types of groups that can form a large group AHP. An AHP could be formed by businesses in the same trade, industry, or profession, or by businesses located in the same state or in a common metropolitan area. Most sole proprietors and independent contractors would also be allowed to join an AHP, even if they do not have any other employees.

An AHP must “have at least one substantial business purpose unrelated to offering and providing health coverage or other employee benefits to its employer members and their employees.” Although the final rule does not define the term “substantial business purpose,” the rule contains a safe harbor under which a substantial business purpose is considered to exist if the group or association would be a viable entity even in the absence of sponsoring an employee benefit plan.

Most current HIPAA and ACA health nondiscrimination rules would apply to AHPs. An AHP could not condition association membership on a health factor, and the AHP would need to comply with nondiscrimination rules related to eligibility,

special enrollments, premiums, and other factors. The rules would also prohibit associations from treating separate employers differently. However, it is likely that some associations will be set up to specifically take advantage of groups of employers with better-than-average risks in an attempt to offer lower rates.

The new AHP rules go into effect on September 1, 2018 for new fully insured arrangements, and April 1, 2019 for new self-insured AHPs. However, many questions remain. At this time, it is uncertain which carriers will have the appetite for this risk due to possible underwriting concerns. States may also weigh in as to the potentially negative impact on their existing small group pool. Which products will they offer? Will the products cross state lines? This is particularly an issue in the relatively small states of New England. Will they eliminate certain benefits, no longer mandated by ACA rules, to improve pricing?

As employers are exploring the possibility of creating an AHP, there are many business considerations. If you are forming an association by industry, for example: Is it a high risk industry from a health insurance underwriting perspective? Is it a group of nursing homes with predominantly older, female employees, or a group of young, single, male construction workers?

How strong is the actual Association community? Are employers willing to be locked in contractually to stay within the Association? For the insurance concept to work effectively, the better risk will have to support the less favorable risk within the Association pool. If the better risk can leave, it will negatively impact the remaining members. And if they are able to leave, can they return when it suits them?

Will the employers within the Association be willing to all contribute the same percentage towards their employees' medical coverage? The more the employer contributes to coverage, the more likely it is that the healthier risks will join the health plan to help support the poorer risk. Some employers may be paying less than others. Will they change those contribution levels, even if it will cost them more short term?

In closing, more details need to be understood to determine if the Association will be a viable option for many employers. In some markets, employers may see a large number of new AHP offerings over the next couple of years. While many of them may provide viable alternatives to current individual and small group plans, there is also the risk that some AHPs will be riskier for the employer or will provide significantly reduced benefits to participants. Employers will need to analyze these new options carefully as they become available. If you are confused about whether this is potentially beneficial for your organization, we are available to discuss in further detail.