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Employee Benefit Compliance Support

DOL Issues New Rules for Association Health Plans

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The Department of Labor (DOL) has released 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 final rule follows closely the earlier Notice of Proposed Rulemaking (NPRM) released by the DOL, with a couple of significant changes. 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. We have updated our earlier alert published after the release of the NPRM to reflect changes in, and new information obtained from, the final rules.

Who Can Form an AHP?

Commonality of Interest

Under existing association plan rules, employers must meet a narrow “commonality of interest” test to form an AHP that can be treated as a large group health plan. Very few groups meet this strict test, so each employer that offers benefits through most existing association plans is subject to the rules applicable to that particular employer (i.e., small group or large group health insurance rules).

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.

Organizational Requirements

Existing rules require that an association exist for other business purposes before it can sponsor a health plan for member employers. The final AHP rules create a new, less stringent requirement. Under the new rules, 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, even if the primary purpose of the group or association is to offer such coverage to its members.”* 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.

Interaction with State Laws

The final rule preserves states’ ability to regulate self-insured AHPs. Because of fraudulent MEWA-related practices in the 1980s, ERISA was amended to give states more authority to regulate self-insured MEWAs. Many states impose significant financial and reporting requirements and other restrictions on these plans, making it very difficult to offer a self-insured MEWA in some jurisdictions. By retaining state regulation of self-insured AHPs, the new rules leave the current structure largely in place so that there may be very few self-insured AHPs offered in some states.

Nondiscrimination Rules

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.

Effective Dates

AHP rules go into effect on three separate effective dates:

- September 1, 2018, for new fully-insured arrangements;
- January 1, 2019, for existing self-insured plan AHP/MEWAs that meet existing DOL rules and want to make changes allowed by the new rules; and
- April 1, 2019, for new self-insured AHPs.

Summary

Employers in some markets 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 groups 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.

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