

DOL PROPOSES REGULATIONS BROADENING THE AVAILABILITY OF ASSOCIATION HEALTH PLANS

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In response to President Trump's October 12, 2017 Executive Order, the Department of Labor has issued proposed regulations expanding opportunities for small employers to band together to form association health plans ("AHPs").

In past Advisory Opinions, the DOL limited AHPs to employers sharing a significant commonality of interest, requiring that the group have a purpose unrelated to the provision of benefits and that the members exercise control over any benefit program sponsored by the association. These rules restricted the availability of single-employer treatment for most AHPs, resulting in such plans being treated as a set of plans separately sponsored by each member employer.

The proposed regulations would remove some existing restrictions on AHPs, allowing employers to join together for the express purpose of offering health coverage, provided that the employers are: (1) in the same trade, industry, line of business, or profession; or (2) have a principal place of business within a region that does not exceed the boundaries of the same State or the same metropolitan area (even if the metropolitan area includes more than one State). The proposed regulations make clear that an AHP need not be a pre-existing organization, but may be newly formed for the sole purpose of providing group health coverage to members.

Previous DOL guidance further restricted AHPs by limiting membership to employers of common law employees, thus excluding owner-employees from membership. The proposed AHP regulations broaden the scope of AHPs by allowing sole proprietors to seek coverage for themselves - simultaneously occupying the status of employer-sponsor and employee. Thus, a working owner without common law employees, and without access to other group health plan coverage through another employer or a spouse's employer, may obtain coverage by joining an AHP.

The DOL proposal imposes nondiscrimination rules preventing member employers from being treated as distinct groups for underwriting purposes. In addition, the proposed regulations retain the requirements that an AHP be formally organized with bylaws or similar formal organizational structure, and that the members control its activities, either directly or through the regular election of directors, officers or association representatives.

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The proposed regulations do not change the existing framework governing Multiple Employer Welfare Arrangements (“MEWAs”), or the authority of states to regulate MEWAs and health insurance issuers who offer policies to AHPs. The DOL has asked for public comment regarding the possible impact of the proposed regulations on the ability of AHPs to fund group health coverage through a Code Section 501(c)(9) voluntary employees’ beneficiary association (“VEBA”). Federal Register, Vol. 83, No. 4, Friday, January 5, 2018, Proposed Rules: 29 CFR Part 2510, “Definition of “Employer” Under Section 3(5) of ERISA—Association Health Plans”.