

DOL ISSUES GUIDANCE FOR ASSOCIATION HEALTH PLANS AFFECTED BY THE FEDERAL DISTRICT COURT DECISION STRIKING DOWN ASSOCIATION HEALTH PLAN REGULATIONS

Hodgson Russ Employee Benefits Newsletter
May 31, 2019

On March 28, 2019, a District of Columbia federal district court struck down significant portions of the U.S. Department of Labor final regulations allowing unrelated small employers and working owners to band together to form association health plans (“AHPs”). See our April 2019 newsletter article. In response, the DOL has issued a statement and two FAQs explaining the impact of the decision on existing AHP coverage and declaring a non-enforcement policy.

Immediately after the district court ruling, the DOL issued a brief set of FAQs to assure participants receiving coverage through AHPs that valid health claims would continue to be paid in accordance with the policies.

On April 29, 2019, the DOL issued a statement assuring businesses and employees that coverage obtained through an AHP can continue without disruption through the end of the plan year, or if later, the contract term. In addition, the Department of Health and Human Services confirmed that the guaranteed-renewability rules give members of an AHP an independent right to maintain existing AHP coverage. After the current plan year or contract term ends, however, small employers must comply with applicable requirements for group health plans based on the employer’s size, including the obligation to provide essential health benefits and comply with community rating rules. Meanwhile, both the DOL and HHS have issued non-enforcement policies for employers who continue coverage through AHPs in good faith reliance upon the vacated final regulations.

On May 13, 2019, the DOL issued a second set of FAQs explaining the impact of the district court decision by distinguishing between AHPs formed under pre-rule guidance (“Pathway 1 AHPs”), and AHPs formed pursuant to the now-vacated final regulations (“Pathway 2 AHPs”). Pathway 1 AHPs are unaffected by the district court decision and may continue to be maintained under previous sub-regulatory guidance. Such guidance prohibited participation in Pathway 1 AHPs by owners without employees, required AHP members to have close economic or representational ties, and did not allow AHPs to extend coverage to members based on geography. The DOL clarified that Pathway 2 AHPs may not be marketed to or

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enroll new members, but may offer coverage to new employees of existing members based upon the occurrence of special enrollment events, such as marriage, birth, adoption, or loss of eligibility for other coverage. AHPs intended to satisfy the Pathway 1 standards and seeking to verify their status are encouraged to review available DOL online guidance and/or have informal discussions with the DOL before commencing the time consuming process of obtaining an advisory opinion.

On April 26, 2019, the DOL filed an appeal of the ruling in the D.C. Circuit Court of Appeals. The government has not yet obtained a stay of the district court order, and therefore, no new AHPs may be established under the vacated final regulations. We will continue to monitor this issue for future guidance. *Department of Labor Statement Relating to the U.S. District Court Ruling in State of New York v. United States Department of Labor (April 29, 2019)*; *Federal District Court Ruling in State of New York v. United States Department of Labor Concerning Department of Labor's Final Rule on Association Health Plan, Questions and Answers*; and *Federal District Court Ruling in State of New York v. United States Department of Labor Concerning Department of Labor's Final Rule on Association Health Plan, Questions and Answers- Part Two (May 13, 2019)*.

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