

ASSOCIATION HEALTH PLANS

- Coverage offered to collections of individuals and/or employers through entities that may be called associations, trusts, multiple employer welfare arrangements (“MEWAs”), purchasing alliances, or purchasing cooperatives.

ASSOCIATION HEALTH PLANS (AHP)

- Policy can be held by the association (fully-insured) or the association self-insures for members' medical claims.
- “...the group health plan exists at the individual employer level and not at the association-of-employers level...the size of each individual employer participating in the association determines whether that employer's coverage is subject to the small group market or the large group market rules.”
- CMS Insurance Standards Bulletin, Application of Individual and Group Market Requirements Under Title XXVII of the Public Health Service Act when Insurance Coverage is Sold to, or through, Associations (September 1, 2011)
- https://www.cms.gov/CCIIO/Resources/Files/Downloads/association_coverage_9_1_2011.pdf

PROPOSED RULE – DEPARTMENT OF LABOR / 01-05-2018

- Proposed regulation would expand the conditions where a group of employers could satisfy the definition of “employer” under ERISA section 3(5)
- Treat Associations as an “Employer” Sponsor of an Employee Welfare Benefit Plan

DEFINITION: EMPLOYER WELFARE BENEFIT PLAN

- “any plan, fund, or program . . . established or maintained by an **employer** or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing . . . medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment. . . .”
- ERISA Preempted

DEFINITION: EMPLOYER

- “... any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.”
- Current Elements of Employer Commonality Test:
- (1) whether the group or association is a bona fide organization with business/organizational purposes and functions unrelated to the provision of benefits;
- (2) whether the employers share some commonality and genuine organizational relationship unrelated to the provision of benefits; and
- (3) whether the employers that participate in a benefit program, either directly or indirectly, exercise control over the program, both in form and substance

PROPOSED RULE

- **Employers Could Band Together for the Single Purpose of Obtaining Health Coverage**
- In the same trade, industry, line of business, or profession (business purpose)
- Have principal place of business within a region that does not exceed the boundaries of the Same state or the same metropolitan area (metro area can include more than one state) (geographic)
- Does not have to exist for purpose other than providing insurance
- Do not have to be a pre-existing organization

PROPOSED RULE

- **The Group or Association Must Have An Organizational Structure and Be Functionally Controlled by its Employer Members.**
- Formal organizational structure with governing body and by-laws
- “Act in the interest” of participating employers
- Employer members control AHP
- Mirrors current sub-regulatory guidance

PROPOSED RULE

- **Group or Association Plan Coverage Must Be Limited to Employees of Employer Members and Treatment of Working Owners**
- Ensure that the groups or associations sponsoring the covered AHPs are bona fide employment-based
- Working owners may be participants in AHP regardless of the legal form in which the business is operated (e.g., sole proprietors or other working owners of businesses, whether incorporated or unincorporated)

PROPOSED RULE

- **Health Nondiscrimination Protections**
- Cannot restrict membership in the association based on any health factor, as defined in the HIPAA/ACA health discrimination rules

VERMONT LAW

- 8 V.S.A. §3368 prohibits any insurer from marketing a plan in Vermont unless it is licensed to do business in the state;
- 8 V.S.A. § 4079(2) permits group policies to be issued to Associations and MEWAS that:
 - Have a minimum of 100 persons at the time of incorporation if formed outside this State, and a minimum of 25 persons at the time of incorporation if formed in this State;
 - Organized and maintained in good faith for purposes other than that of obtaining insurance;
 - Existence for at least one year; and
 - Shall have a constitution and bylaws

MULTIPLE EMPLOYER WELFARE ARRANGEMENT

- For purpose of proposed rule, AHPs would be considered a type of MEWA
 - ERISA plan that covers the employees of two or more unrelated employers
- 1983 ERISA amendment gave State insurance regulators joint authority over MEWAs
- AHPs would be subject to State Insurance Laws and Regulations
 - Solvency and reserve contributions to ensure payment of promised benefits
- Fully Insured vs Self Insured
- “Because AHPs are MEWAs under ERISA, States also may have flexibility under ERISA’s MEWA provisions to extend benefit standards to self-insured AHPs. ERISA generally precludes States from applying such standards to self-insured ERISA plans that are not MEWAs.” p.53, Footnote 30

ADDITIONAL RESOURCES

- Proposed Rule: <https://www.gpo.gov/fdsys/pkg/FR-2018-01-05/pdf/2017-28103.pdf>
- MEWA Regulatory Guidance: <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/mewa-under-erisa-a-guide-to-federal-and-state-regulation.pdf>
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