



Insurance Services, Inc.

Association Health Plans— What You Need to Know

About TIS Insurance Services, Inc.

- Headquartered in Knoxville, Tennessee since 1945
- Tennessee's largest independent insurance agency and consistently ranked in the Top 100 nationally
- 140+ employees specializing in Employee Benefits, Commercial and Personal Property & Casualty and Personal Life & Health Coverage
- The Employee Benefits Division of TIS assists employers from 2 – 10,000 + employees





Final Regulation on Association Health Plans

Final Regulations on AHPs

DOL's New Definition of Employer

- Historically: Association had to be formed for something other than obtaining health insurance coverage— **no longer a requirement**
- Under final “Commonality of Interest” rules, AHP may be formed
 - Along same Geographic Area (In-State or In-Metropolitan Area)
 - Along same Trade, Industry, Line of Business, or Profession
- Must be formally established and run by employers
- Effective dates:
 - 9/1/18 - All associations may establish a fully insured AHP
 - 1/1/19 - Existing associations that sponsor an AHP may self-insure
 - 4/1/19 - All other associations (new or existing) may self-insure an AHP

Final Regulations on AHPs— Highlights of the Final Rule

Existing bona fide associations may continue to rely on prior DOL guidance

- Final rule provides an *additional* mechanism for an association to sponsor a single ERISA-covered group health plan
- Important because many bona fide associations experience-rate on an employer-by-employer basis, which is prohibited under the new rules
 - Bona fide associations may continue to rate on an employer-by-employer basis
- AHPs may self-insure under the final rule; however, the DOL anticipates that many AHPs will be subject to state benefit mandates
 - States retain the authority to adopt minimum benefit standards, including standards similar to those applicable to individual and small group insurance policies under the ACA, for all AHPs

Final Regulations on AHPs— Highlights of the Final Rule

AHPs must limit enrollment to current employees (and their beneficiaries, such as spouses and children), or former employees of a current employer member who became eligible for coverage when the former employee was an employee of the employer

- Working owners may participate but must work an average of 20 hours per week or 80 hours per month
 - Proposed rule: 30 hours per week or 120 hours per month
 - Proposed rule: Working owners would be excluded if they are eligible for other employer-subsidized coverage
 - Final regulations do not include this rule

Final Regulations on AHPs— Highlights of the Final Rule

The primary purpose of the association may be to offer health coverage to its members; however, it also must have at least one substantial business purpose unrelated to providing health coverage or other employee benefits

- A “substantial business purpose” is considered to exist if the group would be a viable entity in the absence of sponsoring an employee benefit plan
- Preamble contains several examples:
 - Offering services to member employers, such as convening conferences or offering classes or educational materials on business issues of interest to the association members
 - Being a standard-setting organization that establishes business standards or practices
 - Public relations activities such as advertising, education, and publishing on business issues of interest to association members unrelated to sponsorship of an AHP
 - Advancing the well-being of the members’ industry through substantial activity

Final Regulations on AHPs— Highlights of the Final Rule

Employer members of an association must control its functions and activities, and the employer members that participate in the group health plan must control the plan, both in form and in substance:

- Do employer members regularly nominate and elect the governing body of the association and the plan?
- Do employer members have authority to remove a member of the governing body with or without cause?
- Can employer members approve or veto decisions relating to the plan?

Final Regulations on AHPs— Highlights of the Final Rule

AHP Nondiscrimination Requirements

- AHP cannot condition employer membership on any health factor
 - Eligibility and premiums must comply with HIPAA/ACA nondiscrimination rules
 - AHP may not treat different employer members as distinct groups of similarly-situated individuals
 - Intent is to prohibit AHPs from “employer-by-employer risk-rating”
 - While AHPs cannot deny eligibility or charge higher premiums based on health factors, they can vary premiums based on other factors, such as gender, age, industry or occupation, or business size
 - Final rule adds examples to clarify that employees of participating employers may be charged different premiums based on their industry subsector or occupation (e.g., cashier, stockers, and sales associates) or full-time vs. parttime status

Final Regulations on AHPs

Potential Limits Based on State Regulation

- All AHPs are MEWAs and will need to ensure compliance with existing federal regulatory standards governing MEWAs (such as 1M filings)
 - DOL intends to reexamine existing reporting requirements for AHPs/MEWAs, including the Form M1 and possibly the Form 5500
- Final rule does not preempt state insurance law, nor does it create an exemption from existing state regulation for self-insured MEWAs
 - Many states regulate self-insured MEWAs as commercial insurance companies and others prohibit them altogether
 - States regulation of fully insured MEWAs is limited to setting contribution and reserve levels, licensing, registration, and financial reporting to ensure solvency; however, states may regulate the underlying insurance contracts or policies

Final Regulations on AHPs

In the past, states have opposed AHPs due to consumer protection concerns

- *Adverse selection* AHPs will be subject to large group rating rules (no EHB requirement)– they could be marketed toward healthier/younger individuals, which could undermine the individual and small group marketplaces
- Other concerns relate to fraud protection from unscrupulous promoters
- States may impose standards to protect consumers and guard against adverse selection, which may cause AHPs to be less attractive to employers
- Some states already prohibit small group members of an association from being rated as large group

What's Next?

The new regulations may not significantly increase the number of self insured AHPs because of existing state MEWA rules

- Future of AHPs is in the hands of the states
- Massachusetts and New York AG's intend to file a lawsuit challenging the legality of the new regulations
 - 15 other state AGs had signed onto a comment letter opposing the rule; not clear at this time whether they'll join any lawsuit challenging the new AHP rules
- New Jersey recently enacted an individual mandate (eff. 2019), which provides that coverage under an AHP will not qualify as minimum essential coverage for purposes of the law unless it complies with state standards

Questions?



**Ben Kelly – President
Employee Benefits Division**

bkelly@tisins.com

865.824.6919

TIS INSURANCE SERVICES, INC.

