

# Association Health Plans

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# AHP Overview

- What is an association health plan (AHP)?
- Old AHPs vs New AHPs
- Timeline of federal rules and implementation

# AHP Overview: What is an AHP?

AHPs are group health plans that employer groups and associations offer to provide health coverage for employees.

- Allows small employers to band together to form a large pool
- Gains access to large group benefits and exemptions, otherwise unavailable to small groups
- Allows more employer groups and associations to form AHPs, based on common geography or industry



# Old AHPs vs. New AHPs

	Association Health Plans (Existing Law)	Association Health Plans (2018 Final Rule)
Definition	<ul style="list-style-type: none"> <li>A single-plan Multiple Employer Welfare Arrangement (MEWA) that offers group health insurance coverage. These plans are treated as MEWAs because it is maintained by a group or association that is considered an employer under the ERISA definition.</li> </ul>	<ul style="list-style-type: none"> <li>A single-plan Multiple Employer Welfare Arrangement (MEWA) that offers group health insurance coverage. These plans are treated as MEWAs because it is maintained by a group or association that is considered an employer under the ERISA definition, now subject to new regulation 29 CFR 2510.3-5</li> </ul>
Bona Fide Association?	<ul style="list-style-type: none"> <li>Several factors are taken into account in pre-2018 Department of Labor guidance to determine whether a group can be considered a bona fide association:               <ul style="list-style-type: none"> <li>Who is entitled to participate and who actually participates in the association?</li> <li>Purpose of Association and the preexisting relationship between members</li> <li>Who controls the benefit program's operations?</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>The 2018 final rule offers more flexibility in its bona fide criteria for association health plans:               <ul style="list-style-type: none"> <li>Purpose of AHP</li> <li>Control of plans</li> <li>Commonality of interest</li> <li>Participation</li> <li>Nondiscrimination</li> </ul> </li> </ul>
Commonality of Interest	<ul style="list-style-type: none"> <li>Requires the association's members and entity that maintains plan to share an economic or other common interest beyond enrolling in health insurance.</li> <li>Employers that belong to group must control the benefit plan.</li> <li>Geographic location not sufficient to start AHP.</li> <li>Business owners without common law employees may join or participate in the association, but may not obtain group coverage.</li> </ul>	<ul style="list-style-type: none"> <li>Association health plan members must have at least one other substantial business purpose unrelated to the provision of health care (industry, line of business, trade, or profession), even if the primary purpose of the association is to offer such coverage to its members.</li> <li>Common geographic location is also sufficient to form an AHP; same state or metropolitan area.</li> <li>Business owners without common law employees may join or participate in the association, but are not eligible to obtain group coverage in the AHP.</li> </ul>
Definition of Employer	<ul style="list-style-type: none"> <li>In existing pre-2018 DOL guidance, employers must have at least one common law employee.</li> </ul>	<ul style="list-style-type: none"> <li>The final rule redefines "employer" to include "working owners"; those who work 80 hours a month for sole proprietorship or earn at least enough to pay the cost of self-only health coverage.</li> </ul>
Regulated Under State Law?	<ul style="list-style-type: none"> <li>Yes. Applies to both insured and self-insured.</li> </ul>	<ul style="list-style-type: none"> <li>Yes. Applies to both insured and self-insured.</li> </ul>
Non-Discrimination Requirements	<ul style="list-style-type: none"> <li>HIPAA non-discrimination requirements for group health plans generally apply at the MEWA level.</li> <li>No unique nondiscrimination rules.</li> </ul>	<ul style="list-style-type: none"> <li>New final rule includes expanded non-discrimination rules.</li> <li>Association membership must not be conditioned on any health factor of any employee.</li> <li>AHP may rate on other factors such as geography, industry or occupation.</li> </ul>

# AHP Overview: Timeline of Federal rules and Implementation

- Executive Order 13813 issued October 2017
  - Directed the Secretary of Labor to expand access to health coverage by permitting more employers to form AHPs
  
- US Department of Labor posted draft rules March 2018
  - 900 comments received
  
- US Department of Labor finalizes AHP rules June 2018

# AHP Overview: Timeline of Federal rules and Implementation

- The final rule has staggered dates for implementation:
  - Fully insured AHPs: September 1, 2018
  - Existing AHPs transitioning to self-funded: January 1, 2019
  - Self-funded AHPs: April 1, 2019

# Requirements of AHPs

- Who can establish an AHP?
- Who is eligible to join an AHP?
- Disclosure rules
- COBRA
- Control of AHP

# Requirements of AHPs: Who can establish an AHP?

- ***A bona fide group or association of employers*** that meets the following requirements:
  - The primary purpose of the group or association may be to offer health coverage to its employer members and their employees.
    - However, the group or association also 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.
  - Each employer member of the group or association participating in the group health plan is a person acting directly as an employer of at least one employee who is a participant covered under the plan.
  - The group or association has a formal organizational structure with a governing body and has by-laws or other similar indications of formality.
  - The functions and activities of the group or association are controlled by its employer members, and the group's or association's employer members that participate in the group health plan control the plan.
  - The employer members have a commonality of interest.
  - The group or association does not make health coverage through the group's or association's group health plan available other than to:
    - An employee of a current employer member of the group or association;
    - A former employee of a current employer member of the group or association who became eligible for coverage under the group health plan when the former employee was an employee of the employer; and
    - A beneficiary of an individual described in paragraph (b)(6)(i)(A) or (b)(6)(i)(B) of this section (e.g., spouses and dependent children).
- ***Commonality of interest:***
  - The employers are in the same trade, industry, line of business or profession; or
  - Each employer has a principal place of business in the same region that does not exceed the boundaries of a single State or a metropolitan area (even if the metropolitan area includes more than one State).

# Requirements of AHPs: Who is eligible to join an AHP?

- An employee of a bona fide association and the employee's dependents
- Not limited to a specific employer size/max
- NEW: Self-employed individuals with no other employees can join an AHP, along with their families.

# Requirements of AHPs: Disclosure Rules

Sponsors of the AHP are required to provide the following disclosure to their participants:

- Summary Plan Description is a plain language summary of the plan and explanation of the plan's rules. It must inform participants of their rights and responsibilities under the AHP.
- Summary of Material Modifications to inform participants of any material change to the AHP or the Summary Plan Description.
- Summary of Benefits and Coverage gives AHP participants a clear, plain-language summary of the key features of a plan, such as covered benefits, cost-sharing provisions, and coverage limitations.

# Requirements of AHPs: COBRA

- Does COBRA apply to employers enrolled in an AHP who have fewer than 20 employees?
- An AHP must provide COBRA continuation coverage and certain other post-employment coverage to persons in the bona fide association and the AHP.

# Requirements of AHPs: Control of the AHP

- Operated and administered by the AHP sponsor
- Member employers of the AHP must control the functions and activities in order for it to qualify as a bona fide association.
- Health insurance carriers and providers cannot sponsor or control an AHP
- The control test is intended to adequately protect against fraudulent AHPs and entities that may not act in the best interest of the employer members.

# AHPs offered across the country

Map coming soon



# Association Health Plans

Are you a business looking for an AHP that operates within your industry and/or geographic area?

Small businesses, working owners and companies can search for AHPs operating within their industry and/or geographic area using the Chamber's directory.

*Results marked with an asterisk (\*) indicate that the health coverage was established pursuant to previous regulations and operates outside the new regulation. Therefore, these offerings are not considered a "DOL AHP" as categorized by this directory.*

Industry

- Any -

State

- Any -

Available Nationally

APPLY

## Southern Arizona Chamber of Commerce Association

Tucson, AZ  
(520) 879-0041

## \*National Restaurant Association

Washington, DC  
(202) 331-5900

# AHP Benefits and Plan Options

- Benefit options and plan designs are determined by AHP member employers
- AHPs can offer multiple plan options that differ according to costs, benefits, and network
- AHPs are not exempt from all Affordable Care Act (ACA) requirements
- AHPs must comply with health care continuation coverage provisions under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), and the health care protections provided in the Health Insurance Portability and Accountability Act (HIPAA), the Affordable Care Act, the Mental Health Parity and Addiction Equity Act, and other group health plan laws.

# Rating

- AHPs will not be able to charge different premiums to employees based on their health status.
- Additionally, AHPs under this rule will not be able to charge employers different rates based on the health status of their employees.
- AHPs cannot discriminate based on health status
  - Other factors are permitted such as industry-type and geography. Age and gender may also be permissible rating factors.
- Rating flexibility may be constrained by state law.

# Nondiscrimination Protections

- Consumer protections and healthcare anti-discrimination protections apply to large businesses and will also apply to AHPs organized under this rule.
- AHPs may not charge higher premiums or deny coverage to people because of pre-existing conditions, or cancel coverage because an employee becomes ill.

# Regulatory Oversight

- States will share enforcement authority with the federal government
- Federal regulator: US Department of Labor (US DOL)
  - AHPs, whether fully insured or self-insured, must file both a Form 5500 and a Form M-1 with US DOL.
- State regulator: Oklahoma Insurance Department (OID)
  - The AHP final rule does not limit OID from regulating AHPs, health insurance issuers offering coverage through AHPs, and insurance producers marketing that coverage to employees.
  - AHPs are subject to state insurance mandates that are applicable in the large group market.

# State Legislative Update

- HB 1053 and SB 943 STATUS ON 4/11
- Authors: Rep. Marcus McEntire, Speaker Charles McCall and Pro Tem Greg Treat
- Both bills would update Oklahoma state law to reflect the federal AHP rules applicable to fully insured AHPs.

**Questions?**