



## Association Health Plans: Another tool for small employers to manage health care costs and increase employee access to affordable plans

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Following last fall's [Executive Order 13813](#), which directs regulatory agencies to improve access to affordable employer coverage, the Department of Labor (DOL) recently released the final regulations on small business association health plans (AHPs). The DOL amended the definition of "employer" under Section 3(5) of Title I of the Employee Retirement Income Security Act (ERISA). It allows certain employers (with fewer than 50 employees) to "join together in a group or association of employers...[to sponsor] a single multiple-employer 'employee welfare benefit plan' [or] 'group health plan[s].'" ERISA already allows employers to jointly sponsor welfare plans, but the DOL and federal courts have limited them to employers with close economic or representational interest. The DOL is now expanding the test for an association of employers while continuing to distinguish the association from a "mere commercial health insurance issuer."

The new regulation allows employers to associate to sponsor coverage based on a broader commonality of location (town, county, state) or industry, even across state lines, beginning with a phased rollout on September 1, 2018. The policy expands in the hope of forming larger purchasing pools to increase bargaining power, lower administrative costs and provide access to less "regulatory complexity." AHPs are anticipated to offer more affordable coverage to employees and worker owners (particularly those businesses with no other employees and their families), as they do not have to meet certain requirements under the Patient Protection and Affordable Care Act (ACA).

AHPs will be allowed to set rates based on gender, age and industry of its participants; however, health status/pre-existing

conditions are still off the table for denial of coverage and premium-setting. To the extent states regulate these insurance products, such regulation is maintained. Existing AHPs may continue to operate as is, expand geographically or begin to cover the self-employed within the industry.

This guidance also follows the IRS' [Notice 2017-67](#) from earlier this year that allowed "qualified small employer health reimbursement arrangements" to reimburse employees for medical premiums and expenses from employer-funded Health Reimbursement Arrangements (HRAs). As an exception under the ACA, a qualified small employer HRA is not required to coordinate with a group medical plan to meet minimum ACA coverage requirements.

You are undoubtedly still wondering about the final rules on the Executive Order's other priority items: short-term limited-duration insurance (STLDI) and health reimbursement arrangements (HRAs). We expect more to come on both topics with great interest as regulators attempt to thread the ACA needle with a loosened regulatory environment.

Contact the author if you want to explore AHPs or qualified small employer HRAs for your small business or association.

# Authors

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