



COMPLIANCE BULLETIN

HIGHLIGHTS

- The proposed rule would make it easier for small employers to join together to purchase health insurance.
- According to the DOL, the changes would expand access to affordable, high-quality coverage.
- Critics are concerned about potential risks to consumers and market stability.

IMPORTANT DATES

October 12, 2017

President Trump signed an executive order directing the DOL to consider issuing guidance that would allow more employers to form AHPs.

January 5, 2018

The DOL publishes proposed rule on expanding access to AHPs.

DOL Proposes to Expand Health Plan Options for Small Employers

On Jan. 5, 2018, the Department of Labor (DOL) published a [proposed rule](#) that would give small businesses and sole proprietors more freedom to join together as a single group to purchase health insurance in the large group market or to self-insure. These benefit arrangements are called association health plans (AHPs).

The proposed rule would broaden the criteria for determining which employers may band together to form AHPs. Under the proposal, employers could form an AHP if they are in the **same industry** or have a principal place of business in the **same state or metropolitan area**. The proposed rule would also allow working owners, such as sole proprietors, to join AHPs.

The proposed rule includes requirements for AHPs that are intended to distinguish them from commercial insurance-type arrangements and prevent adverse selection.

ACTION STEPS

The DOL's changes for AHPs are only proposed at this point. It is possible that the DOL will change the proposal before it is finalized, based on comments it receives on the proposed rule. Small employers and sole proprietors who are interested in AHPs should monitor the proposed rule for developments.

Provided By:
Employer Flexible

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Background

On Oct. 12, 2017, President Donald Trump signed an [executive order](#) that directed the DOL to consider issuing regulations that would permit more employers to form AHPs as a way to expand access to more affordable health coverage. The DOL was specifically instructed to consider expanding the conditions that must be satisfied to form an AHP that is treated as a single plan under the Employee Retirement Income Security Act (ERISA).

Currently, the criteria that must be satisfied for a group of employers to sponsor a single ERISA plan are very narrow. As a result, most multiple employer health plans are treated as a collection of plans that are separately sponsored by each of the participating employers.

Under these current rules, the size of each participating employer determines whether the coverage is subject to the small group or large group market rules. Thus, to the extent the participating employers are small employers, the coverage is subject to the Affordable Care Act's (ACA) requirements for the small group market, including the essential health benefits coverage requirement and rating restrictions.

Under the proposed rule, AHPs would be expanded to allow more small employers to join together to purchase health coverage as single group. According to the DOL, this approach will give small employers (as well sole proprietors) access to more affordable, high-quality health coverage.

MEWA Fraud: AHPs are a type of multiple employer welfare arrangement (MEWA). Historically, some operators of MEWAs have taken advantage of gaps in the law and defrauded customers. The ACA includes provisions to target MEWA abuses, including improved reporting and stronger enforcement tools. However, critics of expanding AHPs have raised concerns about the potential for consumer fraud in connection with these arrangements.

Proposed Rule

The proposed rule would redefine current guidance to allow more employers to join together and sponsor AHPs that are treated as single plans under ERISA. When an AHP is treated as a single ERISA plan, all employees covered by the plan are considered when determining the insurance market rules (that is, small group or large group) that apply to the plan.

According to the DOL, expanding access to AHPs in this way will give small employers more opportunities to purchase insurance in the large group market and enhance their ability to self-insure. Some consumer groups, however, have expressed concern that AHPs will attract small employers with healthier workers, which could increase premiums in the small group and individual markets.

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Eligible Employers

The proposed rule would allow employers to join together to form an AHP that is a single ERISA plan if either of the following requirements is satisfied:

- ✓ The employers are in the **same trade, industry, line of business or profession**; or
- ✓ The employers have a **principal place of business** within a region that does not exceed boundaries of the same state or the same metropolitan area (even if the metropolitan area includes more than one state).

In addition, the proposed rule would allow working owners, such as sole proprietors and other self-employed individuals, to join AHPs.

Additional Requirements

To distinguish single plan AHPs from commercial insurance-type arrangements, the proposed rule would require AHPs to satisfy the following conditions:

- ✓ The group or association exists for the purpose, in whole or in part, for sponsoring a group health plan that it offers to its employer members;
- ✓ The group or association has a formal organizational structure with a governing body and has bylaws or other similar indications of formality;
- ✓ The group or association's member employers control its functions and activities, including the establishment and maintenance of the group health plan, either directly or through the regular election of directors, officers or similar representatives; and
- ✓ Only employees and former employees of the employer members (and family members of those employees and former employees) may participate in the group health plan sponsored by the association.

In addition, the proposed rule would require AHPs to comply with certain nondiscrimination requirements. These requirements would prohibit AHPs from restricting membership based on a health factor, as defined under HIPAA and the ACA. AHPs would also be subject to nondiscrimination rules regarding eligibility for benefits and premiums for group health plan coverage.