

INFOBRIEF



TOPIC: ASSOCIATION HEALTH PLAN FINAL RULE - FREQUENTLY ASKED QUESTIONS (FAQS)

ISSUED 07/05/18

There are both opportunities and challenges for groups or associations that wish to move forward under the new Association Health Plan rule. We are receiving numerous questions from employers and associations who are trying to understand if this is a viable option for them. Listed below is an FAQ highlighting some of the finer points and considerations:

1. Are the new AHPs considered MEWAs?

- a. All AHPs will be considered MEWAs (Multiple Employer Welfare Arrangements) under the final rule
- b. All MEWAs must file Form M-1, regardless of plan size or funding type
- c. All AHPs under the final rule will be required to file Form 5500, regardless of plan size or funding type

2. How does being a MEWA effect the AHP?

- a. MEWAs are regulated by their state
- b. While large group health plans are governed by federal law, namely the Employee Retirement Income Security Act (ERISA), and not subject to most state laws, the fact that an AHP is a MEWA makes them subject to state law, regardless of size
- c. State coverage mandates and certain consumer protections, like the establishment of funding reserves and other risk management mechanisms, apply to MEWAs
- d. Some states may be more favorable than others

3. Do states have any other authority over the new AHPs?

- a. State insurance departments will have regulatory authority
- b. There is nothing prohibiting states from enforcing existing regulations or creating new regulations that limit or prohibit these types of plans or establish additional requirements to run AHPs in their state



4. If a new AHP forms under the new rule, meets all the criteria and uses the state as their commonality of interest, can the AHP charge different premiums to different member groups?

- a. All similarly situated groups must be treated the same
- b. AHPs may not use a health factor to define a similarly situated group
- c. AHPs may use non-health-related factors to define groups of similarly situated groups, e.g. occupation, SIC code/industry classification, zip code or county, etc.

5. Can an AHP charge different premiums to different classes within a given employer member?

- a. Different premiums may be charged to different employees of a given employer member as long as they are not based on a health factor
- b. Premiums based on an employment classification that exists within the business for purposes other than the health plan and that are not based on a health factor are permissible, e.g. different rates for full-time employees vs part-time employees

6. What are the responsibilities of the group or association offering an AHP under the new rule?

- a. Compliance with all of the responsibilities and provisions of ERISA that apply to group health plans
 - i. Fiduciary responsibility
 - ii. Required disclosures, e.g. SPD, Summary of Material Modifications (SMM), Summary of Material Reductions in Covered Services or Benefits (SMRs)
 - iii. Compliance with rules regarding the operation and administration of the AHP
- b. Fulfillment of ACA requirements
 - i. Summary of Benefits and Coverage (SBC) must be furnished to participants along with the Uniform Glossary
 - ii. Employer reporting
 - iii. Plan requirements, e.g. preventive care with no cost sharing, no lifetime maximums, no annual limits, guaranteed issue, etc.
 - iv. Medical loss ratio requirements
- c. Adherence to federal and applicable state laws and regulations regarding MEWAs (including reporting as described in question 1 of this section)

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- d. Additional laws applying to group health plans, including:
 - i. Network adequacy
 - ii. Pregnancy Discrimination Act of 1978
 - iii. Federal nondiscrimination laws
 - iv. Mental Health Parity
 - v. COBRA
 - vi. Medicare secondary payer rules

7. Are individuals eligible to participate in the AHP plan?

- a. Employees and beneficiaries of a participating employer are eligible for coverage in the AHP plan
- b. Working owners may be considered an employee and eligible for participation if they satisfy the requirements for "working owners" under the rule
- c. Independent contractors may be eligible if they satisfy the definition of a working owner and are otherwise considered part of the eligible class