



# ASSOCIATION HEALTH PLANS: A DEEP DIVE

**Presented by  
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# TODAY'S PRESENTERS

## Annette Bechtold

- SVP, Regulatory Affairs and Reform Initiatives, OneDigital
- 33 years in benefits insurance industry
- Ran AHP for 11 years
- NAHU roles
  - Immediate past chair, Legislative Council
  - Immediate past chair, GAHU
  - Compliance Corner
  - Futures Task Force

## Carol Taylor

- Account Executive & Compliance Officer, Kirby Employee Benefits
- 28 years in insurance industry
- Chief Accountant for 2 AHPs
- NAHU roles
  - Former Legislative Council member
  - FAHU Legislative Chair
  - Compliance Corner
  - Professional Development Instructor

# AGENDA

- How Deep is the Water? – *Background*
  - Brief review of the final rule
  - Interaction with other employer laws and regulations
- How Turbulent Is It? – *Latest Developments*
  - Legal actions and activity
  - State activity
- What to Know Before Taking the Plunge– *Compliance Perspective*
  - What happens when...
  - Best practices

A large, faint, light blue watermark of the NAHU logo is visible in the background, spanning across the slide. The logo consists of the letters 'NAHU' in a bold, sans-serif font, with a stylized arch or wave graphic underneath the letters.

# HOW DEEP IS THE POOL?

## ***BACKGROUND***



# Review of Final AHP Rule



## Employer Definition

- Includes any person acting directly as an employer or indirectly in the interest of an employer in relation
- Multiple employers can be considered one single employer



## Bona Fide Association

- May form solely for group health plan but must have one substantial business purpose
- Group has at least one participating employee
- Formal by-laws and structure and controlled by members
- Commonality of interest
- Nondiscrimination rules
- Available to current and former members
- Not a health insurance issuer



## Commonality of Interest

- Employers being in the same trade, industry, line of business or profession; or
- Employers having a principal place of business in a region that does not exceed the boundaries of the same State or the same metropolitan area (even if the metropolitan area includes more than one State).



## Nondiscrimination

- Cannot discriminate based on a health factor:
  - As condition of employer membership
  - Eligibility, premiums or contributions
  - May not treat different employer members of as distinct groups of similarly-situated individuals
- HIPAA rules apply to non-health factors



## Working Owner

- Has ownership right;
- Earns wages or income for providing personal services;
- Works at least 20 hrs/ week (80 hrs/month) providing personal services OR has earned income greater than or equal to cost of coverage; and
- Satisfies criteria when first eligible for coverage and periodically after that

# AHP Final Rule Clarifications

Are the new AHPs considered MEWAs?

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

How does being a MEWA effect the AHP?

- MEWAs are regulated by their state
- 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
- State coverage mandates and certain consumer protections, like the establishment of funding reserves and other risk management mechanisms, apply to MEWAs
- Some states may be more favorable than others

Do states have any other authority over the new AHPs?

- State insurance departments will have regulatory authority
- 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

# AHP Final Rule Clarifications

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?

- All similarly situated groups must be treated the same
- AHPs may not use a health factor to define a similarly situated group
- 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.

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

- Different premiums may be charged to different employees of a given employer member as long as they are not based on a health factor
- 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

Are individuals eligible to participate in the AHP plan?

- Employees and beneficiaries of a participating employer are eligible for coverage
- Working owners may be considered an employee and eligible for participation if they satisfy the requirements for “working owners” under the rule
- Independent contractors may be eligible if they satisfy the definition of a working owner and are otherwise considered part of the eligible class

# Association Responsibilities



Compliance with responsibilities and provisions of ERISA that apply to group health plans

Fiduciary responsibility

Required disclosures, e.g. SPD, Summary of Material Modifications (SMM), Summary of Material Reductions in Covered Services or Benefits (SMRs)

Compliance with rules regarding the operation and administration of the AHP



Fulfillment of ACA requirements

Summary of Benefits and Coverage (SBC) must be furnished to participants along with the Uniform Glossary

Employer reporting

Plan requirements, e.g. preventive care with no cost sharing, no lifetime maximums, no annual limits, guaranteed issue, etc.

Medical loss ratio requirements



Adherence to federal and applicable state laws and regulations regarding MEWAs

M-1 filing  
Form 5500

Reserve requirements  
Certificates of Authority



Additional laws applying to group health plans, including:

Network adequacy

Pregnancy Discrimination Act of 1978

Federal nondiscrimination laws

Mental Health Parity

COBRA

Medicare secondary payer rules

# Interaction with Other Employer Laws

Do the employer shared responsibility provisions apply if an employer that is not otherwise an ALE offers coverage through an Association Health Plan (AHP)?

- No. Only those employers with common ownership under IRC §414 (b), (c), (m), or (o)
- Participation in an AHP does not make an employer an ALE
- ALE determination depends on the number of full-time employees (and full-time equivalent employees) the member employer employed in the prior calendar year and is unrelated to whether the employer offers coverage through an AHP

Do COBRA rules apply at the association level or the individual employer level?

- Unknown
- The DOL indicates that future guidance is anticipated on applicability of COBRA to small employers participating in AHPs

Are AHPs subject to Medicare Secondary Payer rules?

- No specific clarification has been issued
- Based on the current MSP regulations, it appears that small employers are still exempt even if they are part of an association

# Applicability Dates

- New or existing fully-insured plans – September 1, 2018
- Self-funded plans in existence as of June 21, 2018 who meet the criteria and are choosing to become an association health plan sponsored by a bona fide association under these new rules - January 1, 2019
- Any other welfare plan established to be and operated as an association health plan sponsored by a bona fide group or association of employers – April 1, 2019





# **HOW TURBULENT IS IT?**

## ***LATEST DEVELOPMENTS***



# Legal Challenge

Suit filed 8/19/18 arguing that the new rule:

- Reduces consumer protections under the ACA
- Allows associations to offer substandard coverage
- Defines “employer” in a way that conflicts with the ACA definition
- Redefines association to now include a mix of employers
- Issued solely to circumvent the ACA
- Violates ERISA
- Is outside of the scope of the DOL

## STATES

CA

DC

DE

KY

MA

MD

NJ

NY

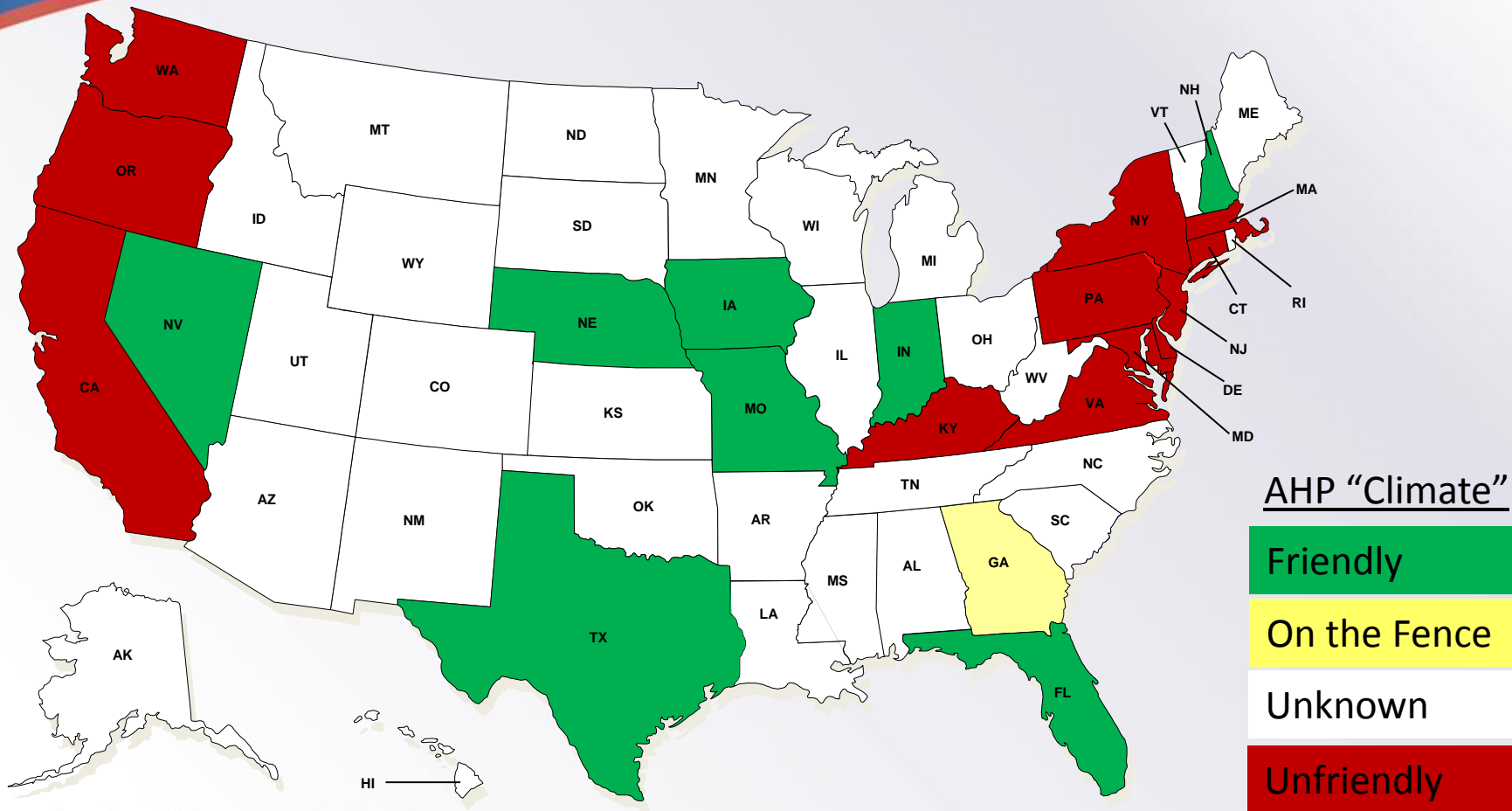
OR

PA

VA

WA





# WHAT TO KNOW BEFORE TAKING THE PLUNGE

## ***COMPLIANCE PERSPECTIVE***



Slides and recording are available  
[www.nahu.org](http://www.nahu.org)

# What Happens When...

Carrier rules and state laws don't gel?

An employer enrolls in an AHP and has existing individuals on COBRA?

AHP is not compliant with federal filings?

An employer has 1099s as part or whole workforce?

The stop loss contract wants to laser out individuals?

AHP structure interferes with other nondiscrimination rules, e.g. §125?

A group no longer meets participation?

If the AHP is unable to fulfill its claim payment obligations?

It is time for ACA annual employer reporting? Who does that?

The AHP is not following the rules?

When a group unknowingly sets up an AHP and is not compliant?

The renewal comes around? What should employers expect?

# Best Practices For...



## Employers

- Determine cost/benefit for aggregation
- Determine employee interest
- Assess employee locations and determine feasibility
- Understand interaction with other employer laws



## Associations

- Determine size of population
- Determine appetite for aggregation
- Understand geographic footprint
- Explore carrier appetite
- Know the laws of applicable states



## States

- Understand the AHP rules and inherent ACA safeguards
- Determine potential effects on revenue, small group markets, Exchange
- Speak with carriers to design new cost-effective plans



## Brokers

- Do your homework – research the AHP
- Understand carrier appetite - what types of AHPs
- Work with NAHU staff and state leg chairs to stay current on laws and regulations



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- Ask a question to [legislative@nahu.org](mailto:legislative@nahu.org)