



Are Association Health Plans the Cure?

**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

- Association Health Plans (AHPs) in Review
 - Historical perspective
 - Challenges and successes
- DOL's Final Rule on Association Health Plans (AHPs)
 - Detail of the final rule
 - FAQs and clarifications
 - Applicability
- State Laws & Applicability
- Best Practices and Next Steps

ASSOCIATION HEALTH PLANS IN REVIEW



Slides and recording are available
www.nahu.org

Historical AHPs and Employer Definition

ERISA defines the term “employer” to include the “direct” (or common law) employer of the covered employees or “any other person acting indirectly in the interest of” the common law employer

Bona Fide Associations

Historically, the DOL recognized a group or association of employers ability to sponsor a single multiple employer plan if they met certain criteria.

Group or association is a bona fide organization with business/organizational purposes and functions unrelated to the provision of benefits;

Employers share some commonality and genuine organizational relationship unrelated to the provision of benefits;

Must not condition membership on health status-related factors relating to an individual or employer member; and

Participating employers, either directly or indirectly, exercise control over the program, both in form and substance

Historical Perspective

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INSURANCE

Trade Group Gets Insurance Warning
State Agency Files Lawsuit To Stop
Policy Sales

August 13, 1990 | By Nancy Feigenbaum of The Sentinel Staff

It's been almost a year since William McMahon's employer switched to a new health-insurance company, but some of the claims from his old policy are still unpaid.

The amount isn't great, said Dianna McMahon, William's wife. "It's just the idea."

Their insurer was the Alarm Association of Florida Inc., a trade group for security and fire-alarm dealers. The McMahons work for Sentry Alarm Systems in Melbourne, which in September switched to Blue Cross and Blue Shield of Florida, a private insurer.

Like many trade groups, the Alarm Association had formed a self-financed health plan - Health and Welfare Benefit Plan - for its members to save money. Such plans are called multiple-employer welfare arrangements, or MEWAs.

And like many MEWAs, it had trouble staying solvent. High medical bills and low premiums burdened the plan with a \$400,000 deficit, which administrators blame for its slow response to claims.

Now, the plan is having trouble with regulators. The Florida Department of Insurance has sued the Alarm Association to stop it from selling new policies, saying the plan is operating without a state certificate.

The state first tried to shut the program's doors in 1987, but challenges kept it open. A hearing is scheduled for Aug. 30 in Orange County Circuit Court to enforce the department's order.

Dealers Association Plan, which administers the plan, also has had regulatory problems. Dealers had its license suspended for a year, because the Alarm Association's plan was unlicensed, but it continued to operate, a tactic that did not please the Insurance Department.


"After we do Alarm Association, we are considering the possibility of disciplinary action against Dealers," said Dennis Silverman, a senior lawyer with the Insurance Department in Tallahassee.


Officials of both Dealers and the Alarm Association said they will not follow the state licensing regulations because they don't have to. MEWAs are governed by federal - not state - law, said Dealers lawyer Jeff Dobson of St. Augustine.

"Why should we comply with something they've got no authority over?" Dobson asked.

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- http://articles.orlandosentinel.com/1988-04-04/business/0030130012_1_gunter-mewas-department-of-insurance
- http://articles.orlandosentinel.com/1988-06-23/business/0050080062_1_retail-federation-health-insurance-plan-department-of-insurance
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DOL'S FINAL RULE ON ASSOCIATION HEALTH PLANS

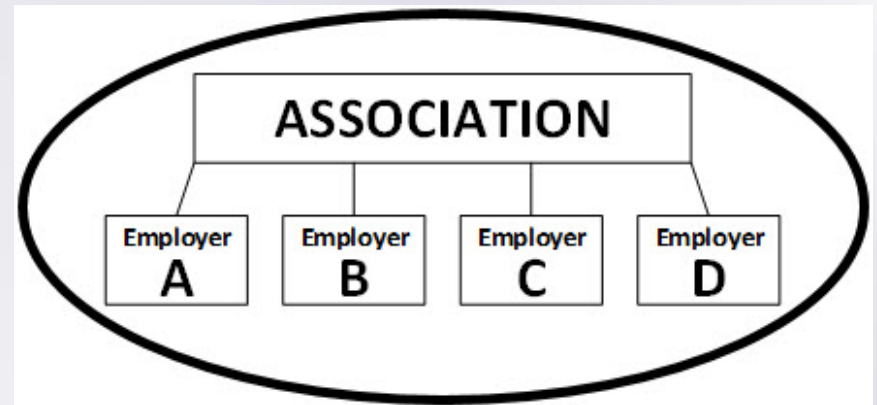


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DOL's Final Rule on Association Health Plans (AHPs)

Expands existing ERISA and AHP rules in the following areas:

1. Purpose of an AHP
2. Bona fide associations
3. Commonality of interest
4. Nondiscrimination
5. Dual treatment of working owners as employers and employees



- Creates a new method to form an AHP
- Does not replace the current AHP rules
- Employers may choose to use the existing AHP rules or form under this new rule

Qualification Criteria for Bona Fide Associations

1. May exist, in whole or in part, for the purpose of sponsoring a group health however, it must also have at least **one substantial business purpose** unrelated to the offering and providing of health insurance or another employee benefit;
2. Each participating employer member is a person acting directly as an **employer of at least one employee** who is a participant covered under the plan;
3. The group or association has a **formal organizational structure with a governing body and has by-laws** or other similar indications of formality;
4. Functions and activities are **controlled by its employer members** and participating health plan members control the plan;
5. The employer members have a **commonality of interest**;
6. It **limits participation to only** of member's current and former employees and their beneficiaries;
7. Health coverage offered **complies with the nondiscrimination provisions**; and
8. The group or association is **not a health insurance issuer** or owned or controlled by such a health insurance issuer.

Commonality of Interest Definition

1. Employers being in the same trade, industry, line of business or profession;

or

2. 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).



AHP – Nondiscrimination Definition

1. The group or association must not condition employer membership in the group or association on any health factor of any individual who is or may become eligible to participate in the group health plan sponsored by the group or association.
2. The group health plan sponsored by the group or association must discriminate with respect to eligibility for benefits, subject to paragraph (d)(4) of this section.
3. The group health plan sponsored by the group or association must not discriminate with regard to premiums or contributions, subject to paragraph (d)(4) of this section.
4. In applying the nondiscrimination provisions of paragraphs (d)(2) and (3) of this section, the group or association may not treat the employees of different employer members of the group or association as distinct groups of similarly-situated individuals based on a health factor of one or more individuals



Nondiscrimination Examples

Example 1

- Association A offers group health coverage to all members.
- According to the bylaws of Association A, membership is subject to the following criteria: all members must be restaurants located in a specified area.
- Restaurant B, which is located within the specified area, has several employees with large health claims. **Fail**
- Restaurant B applies for membership in Association A, and is denied membership based on the claims experience of its employees

Example 2

- Association C offers group health coverage to all members.
- According to the bylaws of Association C, membership is subject to the following criteria: all members must have a principal place of business in a specified metropolitan area. **Fail**
- Individual D is a sole proprietor whose principal place of business is within the specified area.
- As part of the membership application process, Individual D provides certain health information to Association C.
- After learning that Individual D has diabetes, based on D's diabetes, Association C denies Individual D's membership application.

Nondiscrimination Examples

Example 3

- Association G sponsors a group health plan, available to all employers doing business in Town H.
- Association G charges Business I more for premiums than it charges other members because Business I employs several individuals with chronic illnesses.

Fail

Example 4

- Association E offers group health coverage to all plumbers working for plumbing companies in a State, if the plumbing company employer chooses to join the association.
- Plumbers employed by a plumbing company on a full-time basis (which is defined under the terms of the arrangement as regularly working at least 30 hours a week) are eligible for health coverage without a waiting period.
- Plumbers employed by a plumbing company on a part-time basis (which is defined under the terms of the arrangement as regularly working at least 10 hours per week, but less than 30 hours per week) are eligible for health coverage after a 60-day waiting period

Pass

Nondiscrimination Examples

Example 5

- Association J sponsors a group health plan that is available to all members.
- According to the bylaws of Association J, membership is open to any entity whose principal place of business is in State K, which has only one major metropolitan area, the capital city of State K. Members whose principal place of business is in the capital city of State K are charged more for premiums than members whose principal place of business is outside of the capital city.

Pass

Example 6

- Association L sponsors a group health plan, available to all its members. According to the bylaws of Association L, membership is open to any entity whose principal place of business is in State M.
- Sole Proprietor N's principal place of business is in City O, within State M. It is the only member whose principal place of business is in City O, and it is otherwise similarly situated with respect to all other members of the association.
- After learning that Sole Proprietor N has been diagnosed with cancer, based on the cancer diagnosis, Association L changes its premium structure to charge higher premiums for members whose principal place of business is in City O.

Fail

Nondiscrimination Examples

Example 7

- Association P is an agriculture industry association.
- It sponsors a group health plan that charges employers different premiums based on their primary agriculture subsector, defined under the terms of the plan as: crop farming, livestock, fishing and aquaculture, and forestry.
- The distinction is not directed at individual participants or beneficiaries based on a health factor.

Pass

Example 8

- Association Q is a retail industry association.
- It sponsors a group health plan that charges employees of employers different premiums based on their occupation: cashier, stockers, and sales associates.
- The distinction is not directed at individual participants or beneficiaries based on a health factor.

Pass

Nondiscrimination Examples

Example 9

- Association R sponsors a group health plan that is available to all employers with a principal place of business in State S.
- Employers are charged different premiums based on their industry subsector, defined under the terms of the plan as: construction, education, health, financial services, information services, leisure and hospitality, manufacturing, transportation, natural resources, and other.
- In addition, within any employer, employees are charged different premiums based on part-time versus full-time status (part time status is defined, under the terms of the plan, as regularly working at least 40 hours, but less than 120 hours, per month). These distinctions are not directed at individual participants or beneficiaries based on a health factor.

Pass

AHP – Dual Treatment of Working Owners

A working owner is any person a responsible fiduciary deems is an individual who:

1. Has an ownership right of any nature in a trade or business, whether incorporated or unincorporated, including partners and other self-employed individuals;
2. Is earning wages or self-employment income from the trade or business for providing personal services to the trade or business; and
3. Either:
 - a. Works at least 20 hours per week or at least 80 hours per month providing personal services to the trade or business, or
 - b. Has wages or self-employment income from such trade or business that at least equals the working owner's cost of coverage for participation by the working owner and any covered beneficiaries in the group health plan sponsored by the group or association in which the individual is participating
4. Must be made when the working owner first becomes eligible for coverage and periodically confirmed pursuant to reasonable monitoring procedures.



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

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



STATE LAWS & APPLICABILITY



Slides and recording are available
www.nahu.org

State Considerations

- Every State has the option to regulate AHPs
- States have different laws and regulations regarding MEWAs and AHPs –
 - Most have laws or regulations regarding MEWAs
 - Some states do not address AHPs at all
- Some states restrict funding types for AHPs or MEWAs, e.g. self-funded arrangements
- Some are very restrictive
- It is imperative to know your State laws!
- NAHU is currently working on a state-by-state resource to be available later this year

State Law Case Study - Florida

- FL §624.436 – 624.446 “Florida Nonprofit Multiple-Employer Welfare Arrangement Act”
- Association must have a constitution or bylaws stating its purpose, and
- Organized and maintained in good faith for a continuous 1 year period, and
- For purposes other than that of obtaining or providing insurance
- Cannot combine members from disparate trades, industries or professions
 - Trade must be same by licensure
 - Same major group based on SIC code
 - Professional association must be same profession by licensing agency



State Law Case Study – Florida – cont'd

- Must have a Certificate of Authority
 - Fines of not less than \$5,000 or more than \$100,000 for each violation
 - Cease and Desist Orders
 - Felony of the third degree
- Operated under Trust Agreement
- Must be governed by a Board of Trustees
 - Must approve applications of members for participation
 - Must be member for 2 consecutive months before offer
 - Operated with sound actuarial principals
 - Physicians offices are eligible, whether a member of the association:
 - Has more than 1 employee
 - Contracts to provide care to the plan participants
 - Agrees to waive any fees due if the AHP becomes insolvent
 - Agrees to the same assessments and surcharges as the other members



State Law Case Study – Florida – cont'd

- Must contain required language on summaries, SPDs, etc.
- Required specific excess insurance and retention levels
- Maintain appropriate loss reserves
- Everything must be available for audit by the State
- Subject to Assessments
 - Individual, several and proportionate, but not joint
 - Any actual losses and expenses
 - If members don't pay, then others are assessed pro rata for the unpaid amounts
 - Plus attorney costs to sue those that don't pay



State Law Case Study – Florida – cont'd

- ...And the fun does not stop there...
- INSURANCE FIELD REPRESENTATIVES AND OPERATIONS
- 626.902 Penalty for representing unauthorized insurer.—
- (1) In addition to any other penalties provided in the insurance code:
 - (a) Any insurance agent licensed in this state who in this state knowingly represents or aids an unauthorized insurer in violation of s. 626.901 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 - (b) Any person other than an insurance agent licensed in this state who in this state represents or aids an unauthorized insurer in violation of s. 626.901 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 - (c) Any person who commits a subsequent violation of this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (2) In addition to the penalties provided for in subsection (1), such violator shall be liable, personally, jointly and severally with any other person or persons liable therefor, for payment of taxes payable on account of such insurance under s. 626.938.
- (3) This section does not apply to actions of a person who is assisting the office at its direction in the administration of its responsibilities under ss. 626.904-626.912, the Unauthorized Insurers Process Law.

History.—s. 343, ch. 59-205; s. 643, ch. 71-136; s. 2, ch. 81-318; ss. 318, 807, ch. 82-243; ss. 206, 207, ch. 90-363; s. 4, ch. 91-429; s. 4, ch. 95-340; s. 39, ch. 2002-206; s. 2, ch. 2005-144.



State Law Case Study – Florida – cont'd

- **...But wait, there's more!**
- **626.901 Representing or aiding unauthorized insurer prohibited.**—(1) No person shall, from offices or by personnel or facilities located in this state, or in any other state or country, directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact such insurance in this state in:(a) The solicitation, negotiation, procurement, or effectuation of insurance or annuity contracts, or renewals thereof;
- (b) The dissemination of information as to coverage or rates;
- (c) The forwarding of applications;
- (d) The delivery of policies or contracts;
- (e) The inspection of risks;
- (f) The fixing of rates;
- (g) The investigation or adjustment of claims or losses; or
- (h) The collection or forwarding of premiums;
- or in any other manner represent or assist such an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. If the property or risk is located in any other state, then, subject to the provisions of subsection (4), insurance may only be written with or placed in an insurer authorized to do such business in such state or in an insurer with which a licensed insurance broker of such state may lawfully place such insurance.
- **(2) If an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance contract which is entered into in violation of this section, any person who knew or reasonably should have known that such contract was entered into in violation of this section and who solicited, negotiated, took application for, or effectuated such insurance contract is liable to the insured for the full amount of the claim or loss not paid.**



BEST PRACTICES AND NEXT STEPS



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Issues for Consumers

Opportunities

- Greater options for employers with no common law employees
- Potential new carriers in the marketplace
- New plan options other than metal tier plans
- Less restrictive networks
- No EHB restrictions – tailored to participant needs
- Composite vs. age-banded rates

Challenges

- Current or future regulations may prohibit or deter formation of AHPs
- No consumer protections from the state in which they reside
- State mandates – based on state of issue, may or may not be applicable
- Financial viability
- Network issues
- They don't read the disclosures now...

Issues for States

Opportunities

- Rectifies lack of carrier choice in the individual marketplace
- Potential additional state revenue
 - Additional plan filings fees
 - New broker appointments
 - Premium taxes from addition of newly insured individuals
- Offset to delinquent risk corridor payments, i.e. fewer high-risk individuals
- Fewer uninsured – reduced subsidization

Challenges

- Multiple States and Cities have filed suit with the Administration over the AHP regulations already, more expected
- Anticipation of lost membership in state-based exchanges
- States may choose to institute extraterritorial application of their State insurance laws
- Cannot give consumer assistance
- Premium tax collections will be reduced
- No oversight for financial viability/stability

Issues for Brokers

Opportunities

- Potential new markets/clients
- More opportunities to sell
- Individual vs. group commissions
- Need for experienced and knowledgeable brokers to help understand traditional and AHP opportunities
- Resources and expertise of NAHU to assist in education and advocacy

Challenges

- Unapproved/Non-admitted entities/Carriers – you cannot sell
- Requirements and cost to be able to market new AHPs
- Licensing
- E&O issues
- Complexity of knowing multiple state laws
- Other compliance issues



QUESTIONS?

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in the questions box at any time.
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during the webinar will be posted on the
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