



DOL Issues Guidance on Association Health Plans

Issue Date: June 2019

QUICK FACTS

- Responding to a Presidential Order to expand the availability of Association Health Plans (AHP), the Department of Labor (DOL) issued final rules in 2018 that would permit even sole proprietors to form an AHP.
- In March 2019, a U.S. District Court vacated certain parts of the DOL rules that had expanded AHPs.
- The DOL issued a statement in April 2019 and FAQs in May 2019 in which it declared that AHPs formed after and based upon the final rules will remain valid until the end of the current policy or contract year.
- Both the DOL and Department of Health and Human Services (HHS) have stated that they will not pursue enforcement actions for the remainder of the plan or policy year for AHPs formed and operating under the final rules as of the date of the court ruling.

The U.S. Department of Labor on June 19, 2018, issued a final rule that expanded and clarified when employers may join together in a group or association of employers that will be treated as a single employer sponsor of a multiple-employer group health plan (aka Association Health Plan or AHP). The rule enabled certain small employers and sole proprietors to band together as a single group to purchase insurance collectively under an AHP in the large group market.

The final rule responded to Executive Order 13813 (Order). Under the Order, President Trump urged the Secretary of the DOL to consider expanding the conditions that satisfy the commonality of interest requirements under existing DOL interpretations of the definition of an “employer” under the Employee Retirement Income Security Act (ERISA).

On March 28, 2019, the U.S. District Court for the District of Columbia vacated the final rule’s provisions regarding who is an “employer” for purposes of who can sponsor an AHP, which left those who had established AHPs based on the final rule to question whether and to what extent they could continue that coverage. The DOL recently issued a statement and FAQs aimed at answering those questions.

DOL Statement

The DOL issued a statement in the weeks following the court ruling that it understood that many businesses and employees obtained health coverage from an AHP formed based on the 2018 final rule.

The DOL stated that it recognized the hardships that immediately having to terminate those new AHPs would create. Thus, the Department stated that it was committed to take all appropriate action within its legal authority to minimize undue consequences on employees and their families by allowing these newly-formed AHPs to remain in effect through the policy or contract period in effect at the time of the court’s ruling.

Further, the DOL stated that it will work with any affected parties, HHS, and the states to limit any disruptions or hardships resulting from confusion regarding an AHP's status in light of the court's ruling. The DOL and HHS also stated that neither will pursue enforcement actions against parties for potential violations stemming from actions taken before the district court's ruling and in good faith reliance on the final rule. DOL further stated that it would take this limited non-enforcement stance provided affected parties continued to meet their responsibilities to association members and their participants and beneficiaries to pay health benefit claims as promised.

FAQs

On May 13, the DOL issued FAQs to further clarify the scope of its enforcement relief as outlined in its April 2019 statement. The FAQs distinguish between AHPs formed under prior pre-final rule guidance (Pathway 1 AHPs) and those formed after the final rule guidance (Pathway 2 AHPs).

The FAQs provide that:

- Pathway 1 AHPs remain unaffected by the district court ruling and can continue to operate as they always have under prior rules regarding who is an ERISA "employer" that can sponsor an AHP.
- Pathway 2 AHPs can no longer market to and sign up new employer members – other than special enrollments – and still get the enforcement relief provided by DOL and HHS.
- The enforcement relief granted by the DOL and HHS will continue to apply for the remainder of the applicable plan year or, if longer, the contract term that was in force at the time of the district court's decision.

DOL has posted guidance on the Employee Benefits Security Administration's [website](#).

An AHP that wants an advisory opinion (not required) that it continues to qualify as a Pathway 1 AHP, can address its request to:

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-5655
Washington, D.C. 20210

Plans also can contact a DOL benefits law specialist at (866) 444-3272 to informally discuss AHP guidance.

Key Takeaways

AHPs created based on sub-regulatory agency guidance prior to the 2018 final rule continue to be viable and are not impacted by the recent district court opinion vacating key provisions of the AHP final rule. AHPs created in reliance on the final rule can remain in effect until the end of the current plan or policy year. The DOL and HHS will not pursue enforcement actions against such AHPs during that limited time as long as they continue to pay benefit claims for participants and beneficiaries. If you have further questions regarding AHPs or the status of an AHP in which you participate, you can contact the DOL using the information above, or you can reach out to a member of your Frenkel team.

Please be aware that this does not represent legal or tax advice and is only Frenkel's interpretation of the laws, regulations and statutes. It is highly recommended that you seek the advice of your legal and tax professional as to the applicability of this information to your particular situation.