



THE  
PHIA  
GROUP

EMPOWERING PLANS



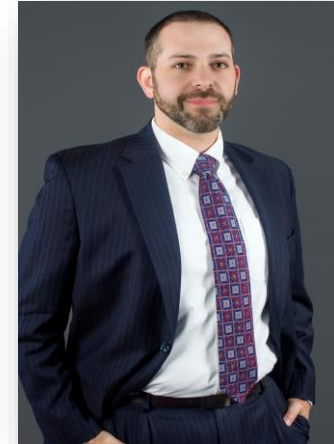
**Final Rule on  
Association Health Plans and YOU:  
Phia's Take**

**June 21, 2018**

# Today's Speakers



**Adam V. Russo, Esq.**  
Chief Executive Officer & Principal



**Ron E. Peck, Esq.**  
Senior Vice President & General Counsel



**Brady Bizarro, Esq.**  
Director, Healthcare Attorney

# Today's Agenda



- Association Health Plans 101
- The Timeline: From Executive Order to Final Rule
- The Final Rule: A Deep Dive
  - Formation
  - Three Categories
  - Non-Discrimination Protections
  - Staggered Implementation
- Impact on Self-Insurance
- What Do We Expect Next?
- Legal Challenges to the Final Rule

# Association Health Plans 101



# ASSOCIATION HEALTH PLANS



# Association Health Plans 101



- What Are They?
  - Association Health Plans (“AHPs”) are group health plans that allow small employers access through associations to the regulatory and economic advantages available to large employers.
  
- Types
  - Professional or trade association offering health insurance as a secondary benefit of membership
  - Captive association of an insurance company
  - Association established by a Professional Employer Organization (“PEO”)
  - Multiple Employer Welfare Arrangement (“MEWA”)

# The Timeline: From EO to Final Rule



- *October 12, 2017 – Presidential Executive Order Promoting Healthcare Choice and Competition Across the United States*
  - President Trump had asked federal agencies to look for ways to expand the use of association health plans
  - Would allow individuals and business to join or create associations that could purchase insurance as a group across state lines, like large corporations do now
    - Theory here is permitting groups to buy insurance plans across state lines, there could be more options available, and health insurance companies in states that allow AHPs would have to compete with one another.
    - Second advantage would be the economy of scale
- Crafted with the help of Senator Rand Paul (R-KY)

# The Timeline: From EO to Final Rule



- January 4, 2018, the DOL issued a Notice of Proposed Rulemaking relating to AHPs (the “Proposed Rule”)
- An association health plan would be considered a single, large group for insurance-rating purposes, as long as:
  - Members in the same trade, industry, line of business or profession, OR (the “or” here is key)
  - Members are in the same state or same geographic/metro area within a state
  - The association can exist solely for the purpose of providing health insurance.
    - In fact, it can be newly formed just for that purpose.
- This is not a free-for-all
  - The association observe some formalities. The association must have a formal organizational structure, bylaws and similar indications of formality. Also, the association plan can only offer coverage to employees (and dependents) and former employees (and dependents) of the employer members.
- The proposed rule did not promote self-insured AHPs



# The Timeline: From EO to Final Rule



- June 19, 2018 → Final Rule issued by the DOL
- Does not differ much from the proposed rule
- Congressional Budget Office expects 4 million Americans will join an AHP by 2023
- Staggered implementation (more on this later)



# The Final Rule: A Deep Dive



## DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210-AB85

Definition of “Employer” under Section 3(5) of ERISA -- Association Health Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation under Title I of the Employee Retirement Income Security Act (ERISA) that establishes additional criteria under ERISA section 3(5) for determining when employers may join together in a group or association of employers that will be treated as the “employer” sponsor of a single multiple-employer “employee welfare benefit plan” and “group health plan,” as those terms are defined in Title I of ERISA. By establishing a more flexible “commonality of interest” test for the employer members than the Department of Labor (DOL or Department) had adopted in sub-regulatory interpretive rulings under ERISA section 3(5), and otherwise removing undue restrictions on the establishment and maintenance of Association Health Plans (AHPs) under ERISA, the regulation facilitates the adoption and administration of AHPs and expands access to affordable health coverage, especially for employees of small employers and certain self-employed individuals. At the same time, the regulation continues to distinguish employment-based plans, the focal point of Title I of ERISA, from commercial insurance programs and other service provider arrangements. The final rule also sets out the criteria that would permit, solely for purposes of Title I of ERISA, certain working owners of an incorporated or unincorporated trade or business, including partners in a partnership, without any common law employees, to qualify as employers



# Formation



- Under the proposed rule, AHP could be established for sole purpose of offering health coverage → the final rule prohibits this
- Sole-Purpose Associations Are Prohibited
- “Bona Fide Group” sponsoring an AHP must have a “substantial business purpose unrelated to the provision of health care benefits.”
  - Can include offering certain services, such as convening conferences or offering classes or education materials on issues related to the group’s members
  - This was done to assuage fears of fraud



# Three Categories



- **Category #1 – AHPs Satisfying the DOL’s Existing Rules**
  - Existing and newly-formed ER groups may establish a fully-insured “large group” or self-insured AHP by qualifying as a bona fide group or association of employers, but:
    - 1.) Must be in the same industry, trade, or profession, and
    - 2.) Be located in the same geographic location
    - \*Cannot include “working owners”
  
- **Category #2 – AHPs Satisfying the DOL’s New Final Regulations**
  - May establish a fully-insured “large group” or self-insured AHP, but:
    - 1.) Must be in the same industry or profession (but not limited by geography), or
    - 2.) Are “unrelated” but confined to the same state or metro area.
    - \*Can include “working owners”
  
- **Category #3 – Non-“Bona Fide” AHPs**
  - Don’t fit into 1 or 2?
  - Subject to CMS’s “look through” rule, where carriers are required to impose ACA’s small group and individual market rules based on the underlying size of the AHP member.
  - If Self-insured AHP, states can regulate you and state’s benefit mandates apply

# Non-Discrimination Protections



- Prohibits an AHP from Developing Different Premium Rates for Different Employer Members Based on “Health Claims Experience”
  - Only applies to Category #2 AHPs
  - AHPs that meet Category #1 and #3 do not have to comply → they can “experience-rate” employer members.
- All AHPs can vary premiums based on a “bona fide employment-based classification,” including full-time vs. part-time, union vs. non-union, EEs in different locations, different occupations, date of hire, and length of service.
- Varying premium rates based on age or gender is also permitted.



# Staggered Implementation



- Important Dates for AHP Expansion Under the Final Rule
  - All association (new or existing) may establish a fully-insured AHP on September 1, 2018
  - Existing associations that sponsored an AHP on or before the date the Final Rule was published may establish a self-funded AHP on January 1, 2019
  - All other associations (new or existing) may establish a self-funded AHP on April 1, 2019



# Impact on Self-Insurance



- Final Rule Confirms that Self-Insured AHPs are MEWAs
- Self-Insured AHPs Remain Subject to the Individual MEWA Laws in Each State that Coverage May Be Offered
- As a Result, We Do Not Expect Self-Insured AHPs to Thrive At This Time
- No “Class Exemption” for Self-Insured AHPs
  - But note the favorable treatment of the issue on page 96, “*a potential future mechanism for preempting State insurance laws that go too far in regulating [self]-insured AHPs...*”



# What Do We Expect Next?



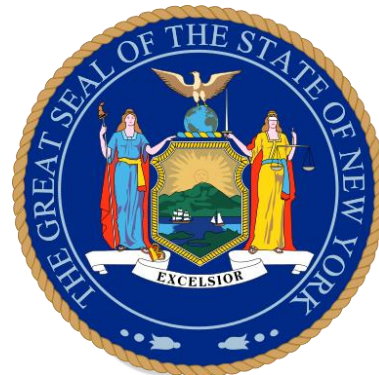
- A Continued Push for a Class Exemption for Self-Insured AHPs
- Pushback from Democrats Who Believe AHPs will Crush the ACA
- Market Impact: 4 million Americans will join an AHP by 2023 – mostly healthier, younger, and wealthier – switching from ACA-backed plans to cheaper AHP plans
  - Could increase premiums in individual market by 3.5% and small group ACA premiums by 0.5% → *Avalere Health*
- States Will Face Pressure to Moderate their MEWA Laws
- Also...Legal Challenges



# Legal Challenges to the Final Rule



- 17 Attorneys General Previously Wrote to DOL Opposing the Rule
  - Concern over Fraud and Abuse
  - Concern over Skimpy Insurance with Minimal Coverage
- Massachusetts Attorney General Maura Healey & New York Attorney General Barbara Underwood Announced Lawsuit Against Trump Administration over Expansion of AHPs



# Legal Challenges to the Final Rule (cont.)



- Joint Statement by Healey and Underwood:
- *“Yesterday's announcement by the Trump Administration to dramatically expand the footprint of Association Health Plans will invite fraud, mismanagement, and deception - and, as we've made clear, will do nothing to help ease the real health care challenges facing Americans. We believe the rule, as proposed, is unlawful and would lead to fewer critical consumer health protections. We will sue to safeguard the protections under the Affordable Care Act and ensure that all families and small businesses have access to quality, affordable health care.”*



# Thank You!



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