



Illinois Department of Insurance

JB PRITZKER
Governor

SHANNON WHALEN
Interim Acting Director

TO: All Accident and Health Insurance Companies, HMO's, LHSO's and VHSP's

FROM: Shannon Whalen, Acting Director

DATE: December 30, 2020

RE: Company Bulletin 2020-20 - Association Health Plans (UPDATED)



The purpose of this Company Bulletin is to update guidance provided by the Department of Insurance within "Company Bulletin 2018-07 – Association Health Plans" (since removed). As previously posted, in June 2018, the U.S. Department of Labor (DOL) enacted a federal rule under the Employee Retirement Income Security Act of 1974 (ERISA) expanding its construction of "employer" in 29 U.S.C. § 1002(5) to include a bona fide group or association of employers that meets a new set of criteria specified in the rule (the AHP Rule). 83 Fed. Reg. 28912 (Jun. 21, 2018). The AHP Rule aimed to expand the types of associations eligible to provide health benefits to the employees of their member employers through an association-wide group health plan. The rule continued to allow an association to offer a group health plan if the association were to satisfy the narrower standards previously established under ERISA case law and DOL sub-regulatory guidance.

However, in March 2019, a federal district court vacated the AHP Rule's expanded eligibility standards to be considered a bona fide association and also vacated the section which addresses working owners without common law employees, finding that the federal rule unreasonably expanded ERISA's definition of "employer." *See New York v. U.S. Dep't of Labor*, 363 F. Supp. 3d 109 (D.D.C. 2019). Although DOL has appealed the decision, the district court's order remains in effect.

As a result, the Department seeks to notify companies that the expanded eligibility provisions set forth under the AHP Rule no longer apply. An association health plan only is recognized as a group health plan under ERISA if the sponsoring association satisfies the narrower standards that were in effect prior to the AHP Rule. Under ERISA, the federal Health Insurance Portability and Accountability Act, and the Illinois Health Insurance Portability and Accountability Act, "group health insurance coverage" is issued in connection with a "group health plan," and a "group health plan" is an ERISA "employee welfare benefit plan" established or maintained by an ERISA "employer" (or by an "employee organization," though the AHP Rule did not affect employee organizations). *Accord* 29 U.S.C. §§

1002(1), (5) and 1191b(a)(1), (b)(4), with 42 U.S.C. § 300gg-91(a)(1), (b)(4), (d)(6), and with 215 ILCS 97/5.

Accordingly, if a health insurance issuer enters into an insurance-related contract with an association of employers that does not, itself, qualify as an employer under the pre-AHP Rule regime and have its own ERISA group health plan, that contract between the issuer and association would not qualify as group health insurance coverage for purposes of those statutes. If an association is not an employer with its own group health plan under the pre-AHP Rule regime, then the applicability of large group or small group market standards to the health insurance coverage of the association's member employers would be separately determined for each member employer based on that employer's number of employees. The court in *New York v. U.S. Dep't of Labor* also confirmed that working owners without common law employees cannot have or be part of a group health plan under the pre-AHP Rule regime, even if they are members of an association.

The Department cannot provide guidance as to whether a specific association meets the Department of Labor pre-AHP Rule requirements.

Note: For all coverage subject to the Patient Protection and Affordable Care Act guaranteed availability requirements, the Department of Insurance does not generally require filing of documents demonstrating an association's qualification for group health insurance coverage unless the group insurance policy or certificate incorporates by reference the association's documents. For all other health insurance coverage, the Department does not require filing of an association's documents unless the group policy or certificate incorporates them by reference, or unless the association is a discretionary group under Section 367.3 of the Illinois Insurance Code [215 ILCS 5/367.3]. The Department of Insurance reserves the right to request association documents as deemed necessary.