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DOL Enforcement Relief Clears Pathway for Association Health Plans

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On May 13, 2019, the Department of Labor released additional guidance addressing questions about the enforcement relief announced earlier by the Department pending its appeal of the district court's ruling that invalidated key provisions of the Department's Association Health Plan (AHP) rule. In that guidance, the Department makes it clear that it is committed to helping AHPs and their employer members avoid adverse impacts from the district court's ruling.

The Department confirms that AHPs formed under the pre-AHP rule guidance (referred to as a "Pathway 1 AHP") are not impacted by the district court's ruling and may continue to operate as long as the legal requirements are met. The Department has posted guidance on EBSA's website, including many of its pre-rule advisory opinions, to assist Pathway 1 AHPs in determining their legal status. Although not required, AHPs can seek an advisory opinion from the Department regarding their status as an AHP. However, because it can take some time for an opinion to be issued, the Department also offers to speak informally with AHPs and their counsel.

AHPs formed in response to the Department's AHP rule (referred to as a "Pathway 2 AHP") are eligible for the Department's enforcement relief. Specifically, the Department will not take action against Pathway 2 AHPs with respect to violations which stem from actions taken in good faith reliance on the AHP rule's validity before the district court's decision as long as the AHP satisfies its obligations to plan members, including paying claims. This means, for example, that Pathway 2 AHPs may not market to, and sign up, new employer members. However, nothing prevents existing employer members who are participating in a Pathway 2 AHP from enrolling new eligible employees on account of a special enrollment event, like marriage or birth of a child. The Department's enforcement relief extends through the end of the current plan year or, if later, the end of the contract or policy year that was in force at the time of the district court's decision.

The Department also confirms that the Department of Health and Human Services ("HHS") will take the same approach with respect to enforcement of potential violations of Title XXVII of the Public Health Service Act against nonfederal governmental plans or health insurers. The Department and HHS encourage states to adopt a similar non-enforcement policy with respect to health insurance coverage issued within their state. Those states that have already passed legislation to make it easier to establish an AHP under the Departments new rule may be more receptive to providing some type of enforcement relief.