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Association Health Plans Will Profoundly Affect the Health Plan Marketplace

A newly issued proposed rule significantly relaxes the Department of Labor requirements that currently limit the availability of association health plans (AHPs) and if finalized in its currently form will profoundly affect the health plan marketplace. An AHP is a type of a multiple employer welfare arrangement (MEWA) which, with the proposed changes, would allow unrelated employers and certain self-employed individuals who are "working owners" to band together to purchase health coverage. As a MEWA, the applicability of state laws depends on whether the MEWA is self-insured or fully insured, and on the laws of the particular state. Also, as a MEWA, the Form M-1 and Form 5500 reporting requirements would apply. It is unclear how states will regulate these types of health plans, but the approach taken could impact the success of AHPs in that state (and those that cross state lines). In addition, the DOL has indicated that it would like input on possible approaches to exempt self-insured MEWAs from state insurance regulations.

The expansion of the availability of AHPs is accomplished by changing the definition of "employer" under ERISA to significantly broaden the circumstances under which an AHP is treated as a single employer group health plan under ERISA, ACA and State law. In a reversal of prior rules, associations would be permitted to exist solely for the purpose of providing health coverage, and employers in the same industry or profession, or employers with 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 that area includes more than one State), could establish an association to provide health coverage. However, the proposed regulations retain the requirement that the group or association sponsoring the plan must have a formal organizational structure and be controlled by its members.

The upshot is that, under the proposed regulations, certain self-employed individuals and small employers would be able to establish an AHP to provide health coverage exempt from rules that apply to the individual and small market under the Affordable Care Act, such as those relating to the coverage of essential health benefits and to certain rating rules. The proposed rule does include certain nondiscrimination requirements with regard to eligibility and premiums that would apply to AHPs. AHPs will also affect how the Exchanges established under the Affordable Care Act operate by allowing small employers to bypass the Exchanges even in States where use of the Exchanges may be required for such small employers.

Comments on the proposed regulations are due on or before March 6, 2018.