



Employee Health & Benefits
**COMPLIANCE CENTER
OF EXCELLENCE**

Association Health Plans

Southwest Benefits Association

29th Annual Benefits Compliance Conference

November 8, 2018

Association Health Plans (AHPs)

Agenda

1. What's the Point?
2. AHP Requirements and State Challenges
3. Next Steps and Questions

What's the
Point?



Association Health Plans (AHPs)

What's the Point?



An AHP can qualify as a single employer group health plan for certain purposes, enabling its members to self-insure or participate in a large group insured plan



Self-insured or large group insured coverage can avoid some of the plan design requirements applicable to small group and individual insurance potentially lowering cost for member employers through a more flexible plan design



The AHP's combined risk pool may be more favorable to member employers than the community rating in their applicable market



The AHP may have greater buying power than the individual member employers have on their own

Association Health Plans (AHPs)

What are the Obstacles?



AHPs are subject to significant state regulation even if self-insured



AHPs require strong ongoing commitment from the member employers as member volatility will cause an AHP to fail



Insurance carriers/third party administrators (TPAs) may be reluctant to work with AHPs or demand additional requirements be met beyond what the law requires



A number of states are challenging the expansion of the AHP rules, which may limit or prevent the use of AHPs in those states

Association Health Plans (AHPs)

Two Heads are Better than One

There are now two types of AHPs available that can qualify for single employer plan treatment

1

NARROW STANDARD AHP

- More difficult to form
- Self-employed individuals cannot generally participate
- Greater underwriting flexibility

2

RELAXED STANDARD AHP

- Easier to form
- Self-employed individuals may be eligible to participate
- Less underwriting flexibility

AHP Requirements and State Challenges



AHP Requirements

Formation of Association

Narrow Standard	Relaxed Standard	Notes
<p>Member employers must:</p> <ol style="list-style-type: none"> 1) Be within the same industry, trade, line of business or profession; <p style="text-align: center;">AND</p> <ol style="list-style-type: none"> 2) Be located within the same geographic region (generally within the same state) 	<p>Member employers must:</p> <ol style="list-style-type: none"> 1) Be within the same industry, trade, line of business or profession; <p style="text-align: center;">OR</p> <ol style="list-style-type: none"> 2) Their principal places of business must be located within the same state or metropolitan area (even if this crosses state lines) 	<ul style="list-style-type: none"> • If membership will extend to another state, only the Relaxed Standard AHP is available (certain states are currently an obstacle to this) • We realize there are “AHPs” crossing state lines already, but these rarely square with the AHP rules for single employer plan treatment

AHP Requirements

Purpose

Narrow Standard	Relaxed Standard	Notes
The Association must already exist for a business purpose before it can provide the AHP to members	The Association does not have to exist before providing the AHP to members, but it must have at least one other substantial business purpose	<ul style="list-style-type: none"><li data-bbox="1370 455 1906 651">• The “business purpose” requirement is pretty generous and can include member education, marketing, lobbying, etc.

AHP Requirements

Governance

Narrow Standard	Relaxed Standard	Notes
<p>Formal governance structure with a governing body and bylaws required</p> <p>Member employers must be able to:</p> <ul style="list-style-type: none">• elect or remove individuals with decision making authority for the AHP• Vote on actions to form, amend, or terminate the AHP		<ul style="list-style-type: none">• Basically, the association needs to set up a benefits committee that can also act as the plan administrator

AHP Requirements

Eligibility

Narrow Standard	Relaxed Standard	Notes
<ul style="list-style-type: none"> Employees and their eligible spouses and dependents Former employees (and their eligible spouses and dependents) are eligible if COBRA or retiree coverage event occurred while employed with a current member employer Self-employed individuals are not eligible if running a business with no common law employees 	<ul style="list-style-type: none"> Employees and their eligible spouses and dependents Former employees (and their eligible spouses and dependents) are eligible if COBRA or retiree coverage event occurred while employed with current member employer Self-employed individuals who run a business with no common law employees may still be eligible under “Working Owner” test 	<ul style="list-style-type: none"> “Working Owner” test: <ul style="list-style-type: none"> a) Works at least 20 hours/week or 80 hours/month for business <p style="text-align: center;">OR</p> b) Has earned income from the business at least equal to the cost of AHP coverage

AHP Requirements

Plan Design and Underwriting

Narrow Standard	Relaxed Standard	Notes
<p>The AHP <u>may</u> separately experience-rate member employers (i.e. separate risk pools possible)</p> <p>The AHP's ability to vary eligibility, premiums, and benefits within a risk pool is limited to bona fide employment classifications (e.g. FT vs. PT)</p> <p>Additional state law requirements may apply</p>	<p>The AHP <u>cannot</u> separately experience-rate member employers</p> <p>The AHP's ability to vary eligibility, premiums, and benefits within the risk pool is limited to bona fide employment classifications (e.g. FT vs. PT)</p> <p>Additional state law requirements may apply</p>	<p>Experience-rating is a double-edged sword:</p> <ul style="list-style-type: none">• If used, it may keep some potential members looking for a better risk pool and lower costs from joining the AHP• If not used, it may cause some members to exit the AHP if their costs increase due to the bad claims experience of other member employers

AHP Requirements

Federal Law

Narrow Standard	Relaxed Standard	Notes
<p>All AHPs are considered multiple employer welfare arrangements (MEWAs) meaning ERISA preemption does not apply to a self-insured AHP</p> <p>AHPs are generally subject to all of the reporting, disclosure, and other legal requirements applicable to the underlying benefits; the government is still considering how some of this will work (e.g. Should COBRA apply to an employer with less than 20 employees participating in the AHP?)</p> <p>Most AHPs are also required to file the annual Form M-1 MEWA report to the U.S. Department of Labor</p>		<ul style="list-style-type: none">AHPs are generally subject to all of the same rules applicable to the underlying benefits, with a few small extras thrown in

AHP Requirements

Federal Law

Narrow Standard	Relaxed Standard	Notes
<p>All AHPs are subject to state insurance laws wherever the AHP is issued, even if self-insured</p> <p>This can make it difficult to offer an AHP across state lines and the AHP will have to rely on an insurance carrier or TPA for compliance with insurance laws</p> <p>States may also impose additional regulatory requirements on AHPs (as MEWAs) and many do, including filing and financial requirements and annual fees; most of these will be addressed by the insurance carrier for a fully-insured AHP</p> <p>A number of states are attempting to stop the Relaxed Standard AHP from being available within their borders</p>		<ul style="list-style-type: none">• Associations will need to weigh whether the potential savings of self-insuring will be offset by the additional burden and cost of complying with state requirements• A common savings benchmark for self-insuring is 6% to 10%, but how much will be taken up by internal or external staffing costs, complying with state requirements, etc.?

AHP Rules

State Challenges

- A number of states have laws directed at AHPs or MEWAs that may interfere with operations, including:
 - California, North Carolina, and Pennsylvania do not permit self-insured MEWAs
 - Ohio requires an association to exist for 5 years before it may sponsor a self-insured AHP
 - Texas requires at least five members for a MEWA to self-insure
 - Existing New York insurance law imposes “look-through” treatment on all AHPs denying single employer plan treatment; California enacted similar legislation early this Fall

AHP Rules

State Challenges

- Twelve states (New York, Massachusetts, California, Delaware, Kentucky, Maryland, New Jersey, Oregon, Pennsylvania, Virginia, Washington, and D.C.) challenged the DOL's final rules for several reasons:
 - Impermissibly allow small employers to receive large employer treatment
 - Intended only to frustrate the ACA and insurance markets
 - DOL exceeded its authority
- And the empire strikes back with a blistering motion to dismiss and cross-motion for summary judgment on October 30, 2018
 - Among other things, motion lays groundwork to knock out both newly enacted and existing state “look-through” legislation

AHP Rules

Workarounds

- Fully-funded trusts – What is “self-insured” anyway?
- Black market AHPs – We can’t pretend these don’t exist
- Gray market AHPs – Well, it’s not disapproval...
- Newly proposed HRAs – The proposed individual coverage HRAs will probably draw off a number of employers who might otherwise consider participating in an AHP

AHP Rules

Other Benefits

- We've only focused on major medical, but an association/AHP can include other benefits
- Many other health and welfare benefits may qualify for exceptions under certain federal and/or state law(s)

Next Steps and Questions



Next Steps

1. Identify potential members and determine what they have in common
2. Determine which AHP standard, if any, makes the most sense or can work
3. Identify insurance carriers/TPAs who can administer an AHP (early reluctance is high)
4. Review available plan designs from participating insurance carriers/TPAs (more flexibility with self-insured)
5. Determine how the association will govern the AHP and any necessary revisions to its bylaws, etc.



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