



Existing Association Health Plan (AHP) Law vs. New Final Rule

The US Department of Labor released a final rule regarding Association Health Plans (AHPs) as well as a fact sheet on the new rule. The rule was in response to an executive order issued by President Trump on October 12 directing federal agencies to expand the availability of AHPs, short-term limited duration insurance policies and Health Reimbursement Arrangements. The proposal calls for a revision to ERISA in order to redefine "employer" to allow more groups to qualify as associations and treating health coverage sponsored by an employer association as a single group health plan that would not be subject to the ACA's essential health benefits.

The goal of the rule is to provide small-business owners, employees of small businesses and family members of working owners/employees more coverage options, more affordable pricing, enhanced ability to self-insure, less regulatory burden and complexity, and reduced administrative costs. The Congressional Budget Office estimates that 4 million Americans, including 400,000 who otherwise would lack insurance, will join an AHP by 2023.

The final rule does not differ much from the proposed rule that came out in January, of which NAHU specifically sought and received clarification on several issues. The administration opted to grandfather the previous AHP rules themselves after NAHU requested that any AHPs currently operating be grandfathered. Therefore, the new rules establish new regulations on AHPs that allow for an additional method for forming and operating such a plan, while maintaining the previous pathway and permitting its use even for new AHPs that haven't yet been formed.

The final rule has staggered dates for implementation:

- All associations (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

NAHU will continue to provide our members with guidance on the implementation of this new rule, and will work with both state and federal policymakers as they oversee the offerings of these new AHPs.

	Association Health Plans (Existing Law)	Association Health Plans (2018 Final Rule)
Definition	<ul style="list-style-type: none"> A single-plan Multiple Employer Welfare Arrangement (MEWA) that offers group health insurance coverage. These plans are treated as MEWAs because it is maintained by a group or association that is considered an employer under the ERISA definition. 	<ul style="list-style-type: none"> A single-plan Multiple Employer Welfare Arrangement (MEWA) that offers group health insurance coverage. These plans are treated as MEWAs because it is maintained by a group or association that is considered an employer under the ERISA definition, now subject to new regulation 29 CFR 2510.3-5
Bona Fide Association?	<ul style="list-style-type: none"> Several factors are taken into account in pre-2018 Department of Labor guidance to determine whether a group can be considered a bona fide association: <ul style="list-style-type: none"> Who is entitled to participate and who actually participates in the association? Purpose of Association and the preexisting relationship between members Who controls the benefit program's operations? 	<ul style="list-style-type: none"> The 2018 final rule offers more flexibility in its bona fide criteria for association health plans: <ul style="list-style-type: none"> Purpose of AHP Control of plans Commonality of interest Participation Nondiscrimination
Commonality of Interest	<ul style="list-style-type: none"> Requires the association's members and entity that maintains plan to share an economic or other common interest beyond enrolling in health insurance. Employers that belong to group must control the benefit plan. Geographic location not sufficient to start AHP. Business owners without common law employees may join or participate in the association, but may not obtain group coverage. 	<ul style="list-style-type: none"> Association health plan members must have at least one other substantial business purpose unrelated to the provision of health care (industry, line of business, trade, or profession), even if the primary purpose of the association is to offer such coverage to its members. Common geographic location is also sufficient to form an AHP; same state or metropolitan area. Business owners without common law employees may join or participate in the association and are eligible to obtain group coverage in the AHP.
Definition of Employer	<ul style="list-style-type: none"> In existing pre-2018 DOL guidance, employers must have at least one common law employee. 	<ul style="list-style-type: none"> The final rule redefines "employer" to include "working owners"; those who work 80 hours a month for sole proprietorship or earn at least enough to pay the cost of self-only health coverage.
Regulated Under State Law?	<ul style="list-style-type: none"> Yes. Applies to both insured and self-insured. 	<ul style="list-style-type: none"> Yes. Applies to both insured and self-insured.
Non-Discrimination Requirements	<ul style="list-style-type: none"> HIPAA non-discrimination requirements for group health plans generally apply at the MEWA level. No unique nondiscrimination rules. 	<ul style="list-style-type: none"> New final rule includes expanded non-discrimination rules. Association membership must not be conditioned on any health factor of any employee. AHP may rate on other factors such as geography, industry or occupation.