

Indiana Department of Insurance

October 17, 2018

Bulletin 245

ASSOCIATION HEALTH PLANS

This bulletin is directed towards all existing Association Health Plans (“AHPs”) as defined by IC § 27-8-5-16, existing Multiple Employer Welfare Arrangements (“MEWAs”) as defined by IC § 27-1-34-1, small business owners, sole proprietors, insurance producers, third-party administrators (“TPA”) as defined by IC § 27-1-25-1, and consumers. The purpose of this bulletin is to announce the Department’s position regarding the regulation of AHPs.

On June 19, 2018, the U.S. Department of Labor (DOL) issued the “Definition of ‘Employer’ under Section 3(5) of Employer Retirement Income Security Act (“ERISA”) – Association Health Plans” final rule 83 Fed. Reg. 28912 (“Final Rule”), implementing President Trump’s executive order of October 12, 2017, to provide more flexibility for employer health coverage. The Final Rule recognizes and maintains the authority of the states as primary regulators of insurance. The Final Rule affirms that the states have authority to regulate both fully insured and self-insured AHPs.

The Final Rule includes but is not limited to the following:

- Redefines the definition of “employer” to allow sole proprietors to qualify as both an employer and as an employee for purposes of participating in an AHP;
- Establishes a substantial business purpose requirement where the primary purpose of the group or association can be to offer health insurance to members as long as the group has at least one substantial business purpose that is unrelated to providing health insurance; *and*
- Establishes a new commonality test, where employers can form a group or association if they are in the same trade, industry, line of business, or profession; *or* have a principle place of business within the same state or same metropolitan area including across state lines.

AHPs established prior to the enactment of the Final Rule may elect to follow the preceding guidance and “employer” definition as stated under Section 3(5) of ERISA.

Pursuant to the Final Rule, fully-insured AHPs are subject to state regulation, including but not limited to: (1) maintenance of specified contribution and reserve levels; (2) licensing; (3) registration; (4) certification; (5) financial reporting; (6) examination; (7) auditing; and (8) other requirements necessary for compliance with state law regarding reserves, contributions and funding. Fully-insured AHPs must satisfy the requirements of group plans as stated in Title 27.

Self-insured AHPs are regulated as MEWAs and subject to requirements outlined in IC § 27-1-34 and 760 IAC 1-68. Pursuant to 760 IAC 1-68, self-insured AHPs must follow the guidelines outlined on the IDOI website prior to implementation. These guidelines include but are not limited to: (1) certificate of registration; (2) reinsurance requirements; (3) reserve levels; (4) financial reporting; (5) fidelity bonds; and (7) business operations.

The Final Rule also implements staggered effective dates. New or existing associations may establish a fully-insured AHP beginning on September 1, 2018. Existing associations that sponsored an AHP on or before the date the Final Rule was published may establish a self-insured AHP beginning on January 1, 2019. New or existing associations may establish a self-insured AHP beginning on April 1, 2019.

Questions regarding this Bulletin should be directed to compliance@idoi.IN.gov.

INDIANA DEPARTMENT OF INSURANCE

A handwritten signature in black ink, appearing to read "Stephen W. Robertson", is written over a horizontal line. The signature is fluid and cursive.

Stephen W. Robertson
Insurance Commissioner