HEALTH CARE REFORM ADVISORY

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New Options for Association Health Plans
MODIFICATIONS TO THE AFFORDABLE CARE ACT

The Department of Labor (DOL) has released regulations to expand access to Association Health Plans (AHPs). The new regulations broaden the criteria for both businesses and self-employed individuals to band together solely to establish health insurance coverage while requiring fewer consumer protections. Previously, a commonality other than providing health coverage among member groups was required to form an AHP.

Yesterday, speaking to the National Federation of Independent Businesses, President Trump acknowledged the DOL’s efforts to reinterpret and develop new regulations within the confines of the Affordable Care Act (ACA), which remains the law today. According to DOL Secretary, Alexander Acosta, the plans are intended to level the playing field between the health insurance rules that apply to larger companies and those applicable to small businesses.

Association Health Plans are Group Health Plans that employer groups and associations offer to provide health coverage for their members’ employees. They allow small employers, through associations, to gain regulatory and economic advantages available to large employers.” -- DOL Secretary, Alexander Acosta

The 198 pages of regulations will be phased in with some plans available as early as September 1, 2018. However, insurance agencies need time to develop plans options and state regulators must reconcile the new regulations with various state laws.

Expansion of Association Health Plans

The proposed changes not only create an opportunity for self-employed individuals, but also expand access across state lines. The revised commonality-of-interest test permits sole proprietors, i.e., those without Form W-2 employees, as well as additional employer members without common law employees, to join an Association Health Plan 1) if the plan is within a limited geographic location, such as a single state or metropolitan area; or 2) if employers / individuals are in the same trade, industry or profession regardless of geographic location.

The proposed regulations:

• Expand the definition of a single employer under ERISA
• Expand the commonality-of-interest requirements by allowing an Association Health Plan to be established:
  o 1) within a common industry or trade, regardless of geographic location, or;
within a shared geographic region, regardless of industry or trade

- Expand access for self-employed individuals and sole proprietors
- Limit the ACA requirement to cover 10 types of Essential Health Benefits
- Retain several ACA requirements, including capping the amount an individual pays out-of-pocket annually and the ban of lifetime and annual limits for services covered for Essential Health Benefits, as well as the ban on preexisting condition exclusions
- Continue the ACA requirement to cover preventive services with no out-of-pocket cost
- Maintain HIPAA and ACA nondiscrimination rules
- Restrict the ability for an Association Health Plan to act in the role of an insurance company

Considerations

As new plans with greater flexibility enter the marketplace, Association Health Plan sponsors may have greater bargaining power to negotiate pricing with providers and prescription drug companies. However, state insurance regulators consistently warn these plans may foster a chance for fraud, citing historically unscrupulous practices and plan insolvencies. State regulations will continue to influence the implementation and oversight process despite the ability to cross state lines.

Takeaways

As a result of our experience operating numerous association and cooperative programs, Oswald believes the expanded flexibility of Association Health Plans has potential to deliver meaningful value for employers and enhanced service to members. Oswald will continue to monitor changes and assess both risks and opportunities for our clients in providing essential industry guidance through this transition. We remain vigilant in monitoring all regulatory actions, and through our relationships with industry experts in Washington, DC, we will continue to anticipate changes and keep you informed.

Please contact your Oswald client team representative for further information.