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Trump Administration Releases Regulations to Expand Association Health Plans

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On June 19, the Department of Labor (DOL) released a final rule to expand access to association health plans (AHPs), which allow employers to form groups to collectively purchase health coverage for their employees. The new AHPs will not be subject to the full coverage or non-discrimination requirements under the Affordable Care Act (ACA), allowing these plans more flexibility on benefit designs and premiums. The Administration and Republican lawmakers argue that expanding AHPs will provide cheaper alternatives for small businesses and self-employed individuals that have struggled to find affordable options in the ACA's insurance exchanges. However, Democrats, state regulators, and many health care stakeholders warn that expanding AHPs is likely to drive up premiums in the ACA's insurance exchanges by siphoning off younger and healthier consumers.

The final rule is one of three regulations stemming from President Trump's October 2017 executive order to continue shaping the ACA through the regulatory process. The Administration released a proposed rule earlier this year to expand Short-Term Limited Duration Insurance ([explained here](#)). The Administration has yet to release the third proposal expanding the use of health reimbursement arrangements (HRAs).

Under the new regulations, DOL will permit new AHPs to form based on a two-pronged "commonality of interest test": 1) to serve employers in a city, county, state, or a multi-state metropolitan area, or 2) to serve employers within a particular industry nationwide. DOL will require AHPs to serve a business purpose other than just supplying insurance coverage. In a major change to how AHPs previously operated, the new regulations allow self-employed individuals to enroll in AHPs. The final rule does not affect previously existing AHPs and does not modify or otherwise limit existing state authority under the Employee Retirement Income Security Act (ERISA) to subject AHPs to benefit mandates, licensing, registration, certification, financial reporting, and other state standards.

DOL established a staggered implementation timeline for the final rule. Any new or existing association 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-funded AHP beginning on January 1, 2019. All other new or existing associations may establish a self-funded AHP beginning on April 1, 2019.

DOL declined to require the new AHPs to meet the ACA's rules for essential health benefits or minimum value coverage, arguing that the flexibility to design benefit packages and cost-sharing requirements is critical for enabling AHPs to provide more affordable coverage options. In addition, DOL would not prohibit AHPs from charging higher premiums for individuals based on age or gender. DOL would still require AHPs to meet certain other ACA consumer protections, including prohibiting coverage denial for pre-existing conditions, annual or lifetime limits, cost sharing for preventive services, and setting premiums based on health status. However, without protections for essential health benefits, there is concern over the risk of plan cherry-picking and adverse selection, which could increase premiums for the sicker and more expensive individuals in need of comprehensive coverage in the individual and small group markets.

The Congressional Budget Office estimates that the new regulations will result in approximately four million additional individuals enrolling in AHPs by 2023, including approximately 400,000 previously uninsured

individuals. However, CBO also projects that due to the new regulations on AHPs and Short-Term Limited Duration Insurance Plans, average premiums will increase two to three percent in the ACA insurance exchanges.