

## Administration Expands Availability of Association Health Plans

PUBLISHED ON  
**June 21, 2018**

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The U.S. Department of Labor on Tuesday issued regulations implementing President Trump's executive order from last October calling for a relaxation of rules governing the availability of association health plans. The regulations make it easier for small employers, including self-employed business owners having no common law employees, to obtain group health coverage under a single association plan constituting a large group health plan for purposes of ERISA and the Affordable Care Act. Smaller organizations could benefit from the opportunity to more easily band together for the purchase of insurance, and because large group plans escape many of the ACA mandates that apply in the small group health insurance market.

Large group health plans, for example, are exempt from the ACA's requirements for providing essential health benefits. In addition, large plans are exempt from many of the restrictions applicable to the underwriting of insurance in the small group market. These factors may lead to savings in the provision of group health coverage, though at the potential sacrifice of certain consumer protections applicable under the ACA's small group market rules.

Unlike under current law, the new regulations will permit an association to have as its primary purpose the provision of employee benefits for the employees of the association's members. The association must, however, have at least one substantial business purpose that is unrelated to employee benefits. Another requirement carried forward from existing law, likewise intended to prevent insurance companies and health care consulting organizations from establishing association health plans primarily for their own benefit, provides that the association must be controlled by its members, and the members participating in the group health plan must also exercise authority over the plan.

The new regulations will permit organizations in the same trade, industry, line of business or profession to form association health plans across state boundaries. Also, organizations having their principal place of business in the same state, or within a single metropolitan area - including a metro area extending into more than one state - can form an association health plan even if the members do not share any commonality of interest in terms of the nature of their business or activities. The regulations, however, leave considerable authority to the states to regulate association health plans, which may affect the extent to which these arrangements will be adopted.

The association health plan regulations become fully operational with respect to insured arrangements on September 1, 2018, and for self-insured programs, on April 1, 2019. If you have questions about these developments or other matters involving employer-provided health coverage, please contact the author or another member of the firm's Employee Benefits group.