



Regulatory UPDATE

www.bgrdc.com

Association Health Plans

The Biden Administration has proposed to rescind a 2018 rule that broadened the situations in which employers can form association health plans, offerings from employers that are not subject to the coverage rules of the Affordable Care Act.

Who It Impacts

Primary impact to health plans in the commercial market, though any stakeholder working with commercially insured individuals may also be interested.

Background

The Affordable Care Act created new requirements for commercial health insurance plans to meet coverage requirements, including coverage of a collection of Essential Health Benefits. Plans were required to meet these standards to receive a “Qualifying Health Plan” (QHP) designation, which is required for plans to be sold in the marketplace and eligible for federal subsidies, among other ramifications.

Some insurance offerings are not subject to the coverage mandates of the Affordable Care Act. Included:

- Short-term limited Duration Insurance – Plans intended to provide coverage for shorter periods to support consumers in a transition period.
- Association Health Plans (AHPs) – Plans offered by multiple employers who pool employees, offering medical benefits. The Affordable Care Act did apply coverage requirements to many AHPs, but included a carve-out for small employers banded together by a common purpose.

Republicans and Democrats have generally taken differing approaches to the role of these products, and the issue of the ACA’s coverage mandates more broadly.

- The Trump Administration and Congressional Republicans have tended to argue that coverage mandates from the government unduly restrict the plans available to consumers by excluding lower cost plans with more limited coverage.
- Conversely, the Biden Administration and Congressional Democrats tend to argue that the commercial insurance options available to consumers should be limited to those that offer broader coverage, ensuring consumers don’t inadvertently enroll in plans that don’t offer the coverage they need – products they call “junk insurance.”

Trump Administration on AHPs

The Trump Administration sought to use the power of the executive branch to broaden access to some of the products not subject to the ACA's coverage mandates.

In 2018, the Department of Labor issued a regulation "intended to broaden the types of employer groups and associations that may sponsor a single group health plan under ERISA."

- [Rule Text](#)
- [Press Release](#)

As noted earlier, typically, employer-sponsored insurance is still subject to the coverage requirements of the ACA. However, the law also allows for instances in which multiple employers offer health benefits as an association, in which coverage provided to members of that association are not subject to the coverage requirements of the ACA.

The 2018 rule "substantially loosened the requirements" (words from the new rule issued last week, not mine) that employers must meet to form AHPs. Specifically, the rule:

- Established additional and broader standard for "employer," using eight criteria.
- Addressed instances of "dual classification" in which consumers could be treated as both employers and employees.

The 2018 rule also stated that "primary purpose of the group or association" could be "to offer and provide health coverage to its employer members and their employees," though it must also have at least "one substantial business purpose unrelated to offering and providing health coverage or employee benefits." Prior guidance had stated that the group or association must exist for purposes other than providing health benefits. The 2018 rule also went into greater detail on how these common interests could be met.

The Courts Knock Down the 2018 Rule

Eleven states and the District of Columbia sued the federal government over the 2018 rule, arguing that the Department's interpretation of employer and entities with a common interest was too broad. The federal courts agreed, and the Department agreed to rescind the rule.

This Week's News

The Department of Labor has formally proposed to rescind the 2018 rule in its entirety.

- [Rule text](#)
- [Press Release](#)

The 2018 rule had proposed new text to existing regulations spelling out circumstances in which employers would meet the criteria of AHPs. The proposed change would strike this text in its entirety.

Under the proposal, the federal government's interpretation of permissible instances for forming AHP would revert to the pre-2018 guidance.

What it Means For You

The Biden Administration continues to take actions that limit insurance options that do not fully comply with all of the ACAs coverage requirements. The decision is not particularly surprising, particularly given the Courts had already struck down key parts of the 2018 rule.

Of course, these changes should be watched in the event of a change in Administration. Republicans have continued to talk about the benefits of AHPs as a pathway to more affordable coverage, particularly for employers and smaller businesses. Consider the regulation of AHPs to be an area subject to change based on who is running the executive branch.

What's Next

Comments on the proposal to rescind the 2018 rule are due February 20, 2024.

Resources

New [Rule text](#)

DOL [Press Release](#)



BGR | GROUP

202-333-4936 

www.bgrdc.com 

BGR Group 

www.bgrdc.com