



Final Regulations Offer Small Employers an Alternative Source for Health Care Coverage

by Ted Ginsburg, CPA,JD

On June 21, 2018, the Department of Labor issued a final regulation (29 CFR 2510.3-5) which will allow smaller employers to provide health care coverage for their employees at a lower cost than they would have paid for coverage that would qualify under the Affordable Care Act (ACA). These programs are called Association Health Plans (AHPs) and can begin operations as early as Sept. 1, 2018. This blog offers a basic understanding of what AHPs are and how they can drive down your costs.

Employer health coverage before AHPs

Under the ACA, employers with over 50 “full-time equivalent” employees were required to purchase health coverage for their employees that would meet the ACA’s requirements. This coverage was very wide-ranging in terms of the benefits provided, and as a result was viewed as expensive by employers.

Employers with less than 50 full time equivalent employees were not subject to the ACA, and so they did not have to provide coverage to employees. However, those who did provide coverage found only ACA-compliant programs offered. Many smaller employers found these programs to be too expensive, and as a result, did not offer any coverage to employees.

The AHP Concept

The Trump administration, which is not an advocate of the ACA, believes that the cost of providing coverage under the ACA is burdensome to small employers and is restricting employers that might otherwise offer coverage to employees from doing so. In January 2018, the administration issued a proposed regulation which created AHPs; the regulation was finalized on June 21.

The concept is that small employers (those that are not subject to the ACA because they have less than 50 full-time equivalent employees) could join an association and purchase health coverage for their employees through the association. While the association concept has been in existence for a long time, AHPs allow associations offering coverage to small employers to offer non-ACA compliant coverage.

Non-ACA compliant coverage means that the coverage offered can be less than that required under the ACA. The ACA required programs to cover “essential health benefits,” which included such items as emergency services, hospitalization, maternity and newborn care, mental health and substance abuse, prescription drugs, rehabilitative services, wellness services, pediatric services, hospitalization and ambulatory patient services. Under an AHP, programs are not required to offer all of these benefits. Reducing benefits offered should reduce cost to employers and employees.

AHP Status

The final regulations provide that these programs can begin offering fully insured coverage on Sept. 1, 2018. AHPs that choose to be self-insured can begin offering their coverage on Jan. 1, 2019. However, there are a number of other hurdles that an AHP will face, including:

- Who will the sponsor of the AHP be? The regulation provides that the group sponsoring the AHP must have a “substantial business purpose” for a participating employer aside from acquiring health coverage. The regulation provides that the group will satisfy the substantial business purpose if the group would be a viable entity if it did not offer the health program to its members. The group’s main purpose can be sponsoring the health program, but the other service(s) must be substantial.
- Which types of employers can belong to the AHP? The group needs to show a commonality of interest among its members. The regulation provides that geographical limitations, trades, industries and lines of business would be appropriate. The regulation allows sole proprietors to participate, as well as formalized business entities.
- What types of coverage can be offered, and what are the related premiums? An issue could arise if the employers are in multiple states.
- Who will be the insurer who will provide coverage? This may be dependent on the size of the group that the AHP believes it can attract.

This is a brief overview of the final regulation, which was contained in a 198-page document published in the Federal Register. It is obvious that AHPs are a developing product, and that the market may provide an employer a choice of associations and health plans.

Do you have questions about AHPs? The Compensation and Benefits Group at Skoda Minotti would be glad to discuss whether your company could benefit from an AHP, and how to make a wise choice in selecting an AHP. Please contact Ted Ginsburg at 440-449-6800.