

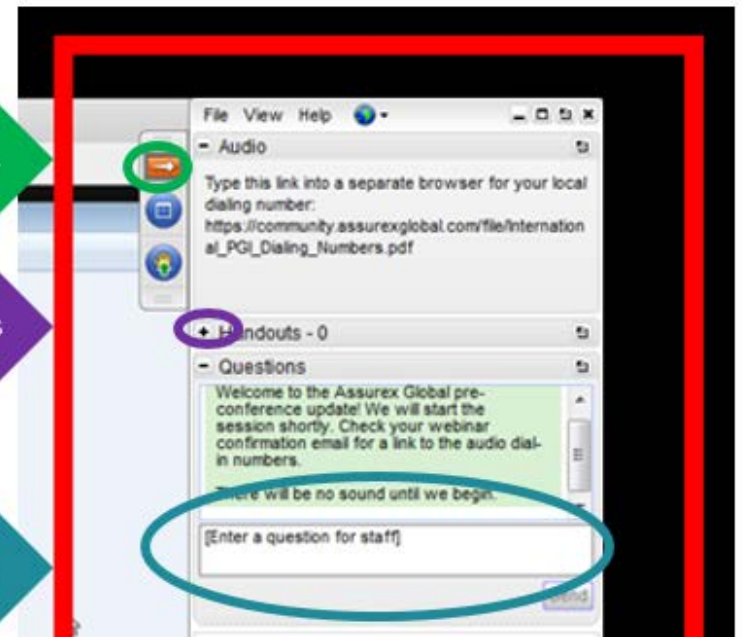
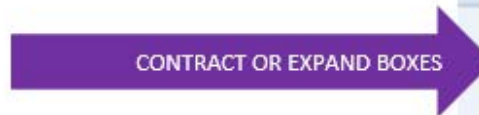
July 26, 2018

# New Association Health Plan Regulations

Presented by Benefit Comply

## New Association Health Plan Regulations

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



## New Association Health Plan Regulations

---

# Assurex Global Partners

- Bolton & Co.
- Catto & Catto
- Cottingham & Butler
- Cragin & Pike, Inc.
- Daniel & Henry
- Gillis, Ellis & Baker, Inc.
- The Graham Co.
- Haylor, Freyer & Coon, Inc.
- The Horton Group
- The IMA Financial Group
- INSURICA
- Kapnick Insurance Group
- Lipscomb & Pitts Insurance
- LMC Insurance & Risk Management
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Parker, Smith & Feek, Inc.
- PayneWest Insurance
- Pritchard & Jerden
- R&R/The Knowledge Brokers
- RCM&D
- RHSB
- The Rowley Agency
- Starkweather & Shepley Insurance Brokerage
- Sterling Seacrest Partners
- Woodruff-Sawyer & Co.

---

# Association Health Plans (AHPs)

- Background
  - New AHP rules are in response to President Trump's executive order requesting the DOL to make it easier for small employers to combine to offer health benefits without having to follow current small employer and individual health insurance rules
- The Basics
  - AHP rules will allow separate employers and working individual owners to join together to offer a common health plan
  - AHPs are a form of a Multiple Employer Welfare Arrangement (MEWA)
  - The new rules expand the ERISA definition of “employer” ONLY for purposes of determining who can sponsor a health plan
    - A group of separate employers who meet the requirements will be considered a single employer for health plan purposes
  - Commonality of interest (who can join to form an AHP) rules expanded

---

# Association Health Plans

- The Basics
  - AHPs will be considered a single ERISA large group plan even if small employers and individual “working owners” participate
  - Treated as a large group, so avoids current small group and individual health insurance rules:
    - Not required to cover essential health benefits (EHBs)
    - Not required to follow modified community rating rules
  - Participating groups and individuals cannot be underwritten or rated based on health status
  - State regulations will still apply to AHP plans (both fully-insured and self-insured)

---

# Association Health Plans

- AHPs are Multiple Employee Welfare Arrangements (MEWAs)
  - Not to be confused with Taft-Hartley multiemployer plans sponsored by unions, which are not MEWAs
  - Self-insured MEWAs are subject to state regulation (more later)
- Two Types of MEWAs Now
  - New rules do not replace existing “pre-rule” guidance
    - Creates two tracks for AHPs by allowing both new and existing associations to sponsor AHPs under either the current “pre-rule” set of DOL sub-regulatory guidance, or the new regulations

---

# Association Health Plans

- Pre-rule MEWAs (the “Old Rules”)
  - Tighter commonality of interest rules
  - “No working owner participation
  - Different non-discrimination rules
    - Old MEWA/association plans could underwrite and rate individual groups
- Other “Old Rule” Association Plans
  - Some older Association Plan offerings that did not meet the stricter commonality of interest rules had ERISA applied at the employer by employer level
  - The ACA required that with these types of plans the individual employer size determined whether the plan was subject to small group rules

---

## The New AHP Rules



---

# Association Health Plans

- Who Can Sponsor an AHP

- Expands the definition of an “employer” within ERISA which defines who can be the sponsor of a MEWA
  - ERISA previously allowed bona fide associations to qualify to band together to offer health benefits based on a “commonality of interest” test
  - The expanded definition loosens the “commonality of interest” standard:
    - Same trade, industry, line of business, or profession
      - NAICS codes, SIC codes, OECD International Standard Industrial Classification, or other “generally-accepted classification system”
      - Treasury regulations IRS line of business test governing VEBAs
    - Same principal place of business in a state, or in the same metropolitan area (even if the metropolitan area includes more than one state)
    - Subgroups of an otherwise bona fide employer group
      - Example - owned by women minorities, veterans, or ESOPs
  - Health insurance carriers cannot form an AHP
- AHP must be “controlled” by employer members

---

# Association Health Plans

- Substantial Business Purpose
  - AHPs cannot be formed solely for the purpose of offering benefits (must also have another “substantial business purpose”)
    - DOL did not define substantial business purpose, but the regulations provide a safe harbor:
      - A substantial business purpose exists if the group would be a viable entity in the absence of sponsoring an employee benefit plan
      - A business purpose includes promoting common business or economic interests of its members
    - Examples of acceptable “substantial business purposes”:
      - Acting as a standard setting organization
      - Hosting conferences or other educational opportunities for the employers
      - Promoting common business or economic interests

---

# Association Health Plans

- Who Can Participate in an AHP
  - Any size business
    - Biggest advantage will be for small businesses that want to avoid existing small group insurance rules
  - Working owners even if they have no employees
    - Owner must either:
      - Work at least 20 hours per week, or 80 hours per month
        - OR –
      - Have earned income from the business that at least equals the cost of covering the owner and dependents on the group health plan

---

# Association Health Plans

- Plan and Coverage Requirements
  - AHP not required to cover essential health benefits (EHBs)
  - AHP not required to use community rating for small employers
  - AHP must still follow large group insurance rules that would apply to all groups regardless of size
    - If AHP chooses to cover any EHBs, the AHP will have to comply with the ACA's maximum out-of-pocket costs and prohibition on annual or lifetime dollar limits for EHBs
    - Must cover certain preventive services without cost-sharing
    - The Newborns' and Mothers' Health Protection Act
    - Applicable state-level mandates
  - One exception will apply based on number of employees in a participating group
    - The Pregnancy Discrimination Act (PDA) - DOL stated that the PDA would only apply to individual member employers with 15 or more employees

---

# Association Health Plans

- Other Laws
  - AHPs subject to ERISA at the AHP level
    - One SPD, 5500, SBC, etc.
  - §4980H Employer Shared Responsibility Rules
    - Each applicable large employer participating in the AHP subject to §4980H
    - Small employers not subject to §4980H due to their participation in an AHP
  - Mental Health Parity and Addiction Equity Act (MHPAEA)
    - Applies based on aggregate number of employees participating in the AHP
  - COBRA
    - AHP would be subject to COBRA, but DOL deferred to IRS for additional guidance
    - Existing COBRA MEWA rules are grey
      - If ERISA applies to each employer separately, participating employers under 20 employees do not have to follow COBRA even if total MEWA is over 20
      - If ERISA applies at the MEWA level (rare), generally accepted that if any participating employers are over 20 employees, then entire MEWA is subject to COBRA, even for participating employers with fewer than 20 employees

---

# Association Health Plans

- Non-Discrimination Rules

- New rules prohibit discrimination based on health factors (health status, medical condition, claims experience, receipt of healthcare, medical history, genetic information, evidence of insurability, and disability)
- AHP prohibited from premium rating at the employer level
  - Can set eligibility requirements and premiums based on “bona fide employment-based classifications” such as:
    - Full-time versus part-time status, date of hire, length of service
    - Different geographic locations
    - Membership in a collective bargaining unit
    - Different occupations
  - AHP may vary premiums on an employer-by-employer basis based on factors such as industry, occupation, or geography
- Existing pre-rule guidance would allow employer-by-employer rating based on health status
  - AHP may decide to use tighter common interest rules and then underwrite groups separately

---

# Association Health Plans

- State Regulation

- In response to a series of high profile fraudulent MEWAs, ERISA was amended in the 1980s to give states the right to regulate self-insured MEWAs
- New rules retain state regulation of fully-insured and self-insured MEWAs
- State MEWA regulation examples:
  - California requires MEWAs to maintain stop-loss insurance and a significant surplus
  - New York state does not allow the creation of an association if formed only for the purpose of obtaining insurance, and has strict community rating requirements for fully-insured and self-insured MEWAs
  - Vermont is considering regulations to ensure the solvency of AHPs, impose benefit mandates, and increase disclosure to consumers

---

# Association Health Plans

- State Regulation
  - AHPs could be subject to state essential health benefits and mandated benefits
    - Some states considering applying EHBs to MEWAs
    - MEWAs subject to state mandated health benefits (based on where MEWA is headquartered)
      - We may see some MEWA “state shopping” – set up an industry basedon MEWA in a state with minimal state requirements or mandates
  - ERISA gives DOL the statutory right to overrule a state regulation
    - This was mentioned in the final rule
    - Possible opening for weakening states’ ability to regulate



---

## Looking Forward

---

# Association Health Plans

- AHP Development Will Be Very Regional
  - Some states will make it harder for AHPs to compete
  - Some states have stronger small group and individual health insurance markets
  - States with a very laissez-faire approach to AHP regulations could see more risky or questionable products brought to market
- Who Will Bring These Plans to Market
  - Geographic plans
    - Chambers of commerce
    - Business groups
  - Industry plans
    - Industry associations
    - Entrepreneurs
  - Insurance companies and TPAs may start selling AHP services to other organizations who will become the sponsor

---

# Association Health Plans

- Cost Impact of AHPs
  - AHPs do nothing to change the underlying claims costs of the participants
  - Cost savings in AHP plans will be due to one or more of the following factors:
    - Limited benefit design
      - Not covering some essential health benefits (EHBs)
      - Organizing in states with limited mandated benefits
    - Attracting better than average risks
      - AHPs set up to attract employers with lower than average claims will be able to offer lower rates
    - Marketing to geographic areas with lower healthcare costs
      - Remember that rules allow different group rates by geography
  - Limited administrative savings
    - Individual and small groups are already subject to 80% MLR rules

---

# Association Health Plans

- Closing Thoughts
  - Rely on your Assurex Global consultant to help you sort through the good, the bad, and the ugly
  - If it sounds too good to be true, it probably is!
    - Be careful about claims of dramatically lower costs for the same benefits
  - There will be winners and losers
    - AHPs designed for low risk groups of employers will have attractive rates
    - Small group and individual health insurance in some markets will suffer from the loss of better risks to AHP plans

## New Association Health Plan Regulations

---

# Assurex Global Partners

- Bolton & Co.
- Catto & Catto
- Cottingham & Butler
- Cragin & Pike, Inc.
- Daniel & Henry
- Gillis, Ellis & Baker, Inc.
- The Graham Co.
- Haylor, Freyer & Coon, Inc.
- The Horton Group
- The IMA Financial Group
- INSURICA
- Kapnick Insurance Group
- Lipscomb & Pitts Insurance
- LMC Insurance & Risk Management
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Parker, Smith & Feek, Inc.
- PayneWest Insurance
- Pritchard & Jerden
- R&R/The Knowledge Brokers
- RCM&D
- RHSB
- The Rowley Agency
- Starkweather & Shepley Insurance Brokerage
- Sterling Seacrest Partners
- Woodruff-Sawyer & Co.

July 26, 2018

# New Association Health Plan Regulations

Presented by Benefit Comply