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Federal Court Blocks New DOL Association Health Plan Rules

In a case brought by 11 states and the District of Columbia, a federal court has struck down significant portions of the Department of Labor's (DOL) association health plan (AHP) final rule. The new DOL rules were designed to make it easier for small employers and individuals to join together to offer or purchase health insurance as a single large group. The judge ruled that allowing employers with very little in common, and including working owners with no employees, in an AHP was unreasonable and inconsistent with ERISA.

BACKGROUND

Prior to the new DOL rules (finalized in July 2018), employers who participated in an AHP had to meet a narrow commonality of interest test for the AHP to be treated as a single large group health plan. If an AHP did not meet this strict test, each employer who offered benefits through the AHP was subject to the insurance, rating, and underwriting rules applicable to that particular size employer (i.e., small group or large group health insurance rules). Individual working owners without employees were also not generally allowed to participate in an AHP that operated as a single large group.

The new rules expanded the types of groups that can form a large group AHP. An AHP could be formed by businesses in the same trade, industry, or profession, or by businesses located in the same state or in a common metropolitan area. Most working owners (sole proprietors and independent contractors) would also have been allowed to join an AHP even if they did not have any other employees.

The new rules would have treated health plans offered by qualified AHPs as a single plan for purposes of determining whether large group health plan rules apply, making most AHPs exempt from current individual and small group health insurance rules, such as coverage for essential health benefits and modified community rating.

THE CASE

AHPs are a form of a Multiple Employer Welfare Arrangement (MEWA). States typically cannot regulate self-insured health plans subject to ERISA, but due to the fraudulent practices of some MEWAs in the 1970s and '80s, Congress amended ERISA to give states regulatory authority over self-insured MEWAs along with some additional ability to oversee fully insured MEWAs.

In New York et al. v. U.S. Department of Labor, the states challenging the new DOL rule asked the judge to vacate the entire final rule, arguing that it violated ERISA and increased the possibility of fraudulent activity by some AHPs. But rather than striking down the entire final rule, the judge concluded that two major provisions (what make up a bona fide association and the inclusion of working owners) were invalid. The judge sent the rule back to the DOL, which could rescind the entire rule, try to revise the rule to conform with the court's opinion, or appeal the decision.

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SUMMARY AND IMPACT OF THE DECISION

The new AHP rules had been scheduled to take effect on three separate effective dates:

- September 1, 2018, for new fully-insured arrangements;
- January 1, 2019, for existing self-insured plan AHP/MEWAs that meet old DOL rules and want to make changes allowed by the new rules; and
- April 1, 2019, for new self-insured AHPs.

The court's decision puts the creation of new self-insured AHPs on hold. It is less clear what will happen to existing AHPs that are designed to operate under the new guidance. States could push those AHPs to reorganize to meet previous requirements but are likely to wait to see how the DOL responds to the court's decision before taking any action against existing plans.

We will keep you updated as we learn more. In the meantime, you can call your Parker, Smith & Feek team if you have any questions.

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