



Information Alert

State-Federal Relations Division

National Conference of State Legislatures

Office of State-Federal Relations

Aug. 28, 2018

Update on Association Health Plans (AHPs) and Short-Term, Limited-Duration Plans

Associated Health Plans:

On June 19, 2018, the Department of Labor (DOL) approved a [rule regarding flexibility for Association Health Plans \(AHPs\)](#). In response to comments made during the rule's open comment period, proposed provisions on nondiscrimination based on a patient's health were retained. AHPs will also be required to have at least one business purpose other than providing health insurance plans.

The rule will be finalized in 60 days, with staggered implementation dates, including:

- Any existing or new health insurance plan may establish a fully insured AHP after Sept. 1, 2018.
- Existing associations that already sponsored an AHP on or before the final date of the rule may establish a self-funded AHP by Jan. 1, 2019.
- Any other new or current associations will be allowed to establish a self-funded AHP starting April 1, 2019.

The rule does not change any regulatory structures of [existing, fully insured AHPs](#); they will still be overseen by federal and state officials. AHPs also will not be exempt from state regulation for self-insured products. It should also be noted that some states have banned the sale of AHPs.

DOL declined to adopt age-rating restrictions in the final rule and concluded that an AHP's ability to discriminate based on nonhealth factors will be subject to state regulation. Some of these considerations were based on comments that were made during the open comment period regarding plan discrimination that could be based on nonhealth factors such as age, gender, industry, occupation and geography, and ultimately gives authority on this issue to the states.

[Health insurance companies remain skeptical](#) of the final rule and find that previous attempts at AHP plans have not proven to provide comprehensive coverage. Insurers also have voiced concerns that this new rule could provide an incentive for younger and healthier participants in state marketplace plans to leave for AHPs.

The rule also modifies the definition of “employer” under the [Employee Retirement Income Security Act](#) (ERISA) regarding associations and how they can sponsor group health coverage. This means employers anywhere in the country that can pass a “Commonality of Interest” test can work together to offer health care coverage to their employees. Commonalities can include geography or industry if the members are in the same trade, industry or profession throughout the United States.

Additional Resources:

[DOL Overview of Final Rule and Association Health Plans](#)

[Federal Register Final DOL Rule on AHPs](#)

Short-Term, Limited Duration Insurance:

The administration approved a final rule on Aug. 1, [2018 changing enrollment terms for short-term, limited-duration insurance](#) health insurance plans. These plans have been in existence for a while and provide coverage when an individual has a gap in health care coverage. Short-term plans typically do not provide as comprehensive of a range of benefits like other marketplace or private plans. This could result in plans not covering services including mental health, maternity care and outpatient prescription drugs among others. Short-term plans are exempt from the definition of individual health insurance coverage under the Affordable Care Act (ACA) and are not subject to all the same rules as ACA plans in the individual market.

As of this year the least expensive short-term, limited-duration policy premium cost 20 percent less than the lowest cost ACA-compliant bronze plan. There were also 24 short-term, limited-duration plans offered in 45 states and the District of Columbia, with New Mexico offering one type of plan and 22 being offered in West Virginia.

Previously [these plans had been subjected to rules established under the ACA](#) that only allowed an individual to purchase a plan for up to 90 days. Now plans can be purchased for less than 12 months and can be renewed up to, but for no longer than 36 months. The rule also establishes language requiring that issuers of short-term, limited-duration plans must clearly explain the type of policy that is being purchased, as well as language deferring to state authority.

Additional Resources:

[White House Statement on Short Term, Limited-Duration Plans](#)

[CMS Statement on Short Term, Limited-Duration Plans](#)

[KFF Overview of Short Term Limited Duration Insurance \(April 2018\)](#)