

Explanation of the Provisions of a Model Law for Fully-Insured AHPs

The following summarizes the model law language that was developed with the help of outside legal counsel, laying out the definitional and other potential changes needed in state law for self-employed independent contractors to join an association health plan (AHP).

Because this is model legislation designed for broad applicability, it may not address all the nuances of the specific state law provisions, so additional review by counsel is recommended. Additionally, with the federal appeals court decision still pending, there is no guarantee of successful AHP implementation, should the state legislature adopts this.

Definitions Must Be Modified

- Under State law, there are various definitions that need to be modified to allow an AHP to cover employers in different industries as well as self-employed individuals with no employees.
 - They include the definition of an “association,” a “group health plan,” and a “self-employed individual.”
- In addition, there are various definitions that need to be modified to allow this type of AHP to be treated as a fully-insured “large group” plan.
 - They include the definition of an “employer,” a “large employer,” and a “small employer.”
- This model law modifies and adds the appropriate definitions under State law (1) to allow an AHP to cover employers in different industries or self-employed individuals with no employees (or both) and (2) to allow this type of AHP to be treated as a fully-insured “large group” plan.

Amending the Statute to Allow an Insurance Policy to Be Issued to an Association of Employers In Different Industries or Self-Employed Individuals (Or Both)

- Most State statutes already include language that allows an insurance policy to be issued to an association.
 - In this case, it is advisable to amend the existing language to allow employers in different industries as well as self-employed individuals to be members of the association that will be treated as the policyholder.
 - If there is NO existing language, you can simply add this language to the statute as a new section.
- It is also advisable to specify the conditions that the association must meet in order to be considered an association that can serve as the policyholder.

Coverage Requirements and Other Guardrails to Ensure That the Fully-Insured AHP Offers Comprehensive Health Coverage

- Critics of AHPs have continually argued that AHPs will provide “skimpy” or “junk” insurance coverage. In response to these critics – and to ensure that AHPs will indeed offer comprehensive coverage – this model law requires the insurance policy issued to the association to comply with various “coverage” requirements, including:
 - Compliance with the “large group” market insurance regulations under the Public Health Service Act, which shall include, among other things, the requirement that the policy be guaranteed issue and guaranteed renewable.
 - Compliance with the “group health plan” coverage requirements under the Affordable Care Act, including but not limited to the prohibition against denying coverage based on a pre-existing condition.
 - Compliance with all coverage mandates applicable to a “large group” market plan offered in the State.
 - Providing a level of coverage equal to or greater than sixty percent.
 - Providing coverage for the “essential health benefits” as defined under section 1301(b) of the Affordable Care Act, except pediatric dental and vision coverage may be offered outside of the policy under a stand-alone arrangement.
 - Compliance with any additional insurance regulations that the Insurance Commissioner may deem appropriate.

- Critics of AHPs have also argued that these arrangements will discriminate against individuals and employers by increasing their premiums if the individual or an employee of the employer gets sick. Critics further argue that AHPs will discriminate against individuals and employees on the basis of age and gender. In response to these critics – and to ensure that AHPs will NOT discriminate against employer members, an individual employee of an employer member, and self-employed individuals – this model law provides that the insurance company offering the policy to the association shall:
 - Treat all of the employees or self-employed individuals (or both) who are enrolled in coverage under the policy as a single risk pool.
 - Set premiums based on the collective group experience of the employees or self-employed individuals (or both) who are enrolled in coverage under the policy.
 - Vary premiums by age, except that such rate shall not vary by more than 5 to 1.
 - Be prohibited from varying premiums based on gender.
 - Be prohibited from varying premiums based on the health-status of an employer member, an individual employee of an employer member, or a self-employed individual, except as provided in the second bullet above.
 - Be prohibited from establishing discriminatory rules based on the health-status of an employer member, an individual employee of an employer member, or a self-employed individual for eligibility or contribution requirements.

The AHP Must Be Operated In a Manner That Is Consistent With the Employee Retirement Income Security Act (ERISA)

- This model law also requires the health plan that is providing coverage to employees of employer members or self-employed individuals members (or both) through the insurance policy to administer the plan in accordance with ERISA.
 - This means that the plan must comply with all of ERISA’s notice and disclosure requirements.
 - In addition, the association and the Board tasked with managing and operating the plan must comply with ERISA’s fiduciary duties.
 - And, participants in the plan shall have the ability to sue the association and/or the Board if the participants believe that are being wrongly denied benefits.

Portability of Coverage for Employees of Employer Members and Self-Employed Individual Members

- This model law also offers an employee of an employer member and a self-employed individual member “portability” of their coverage in the event the employee is re-employed by another employer member or the self-employed individual becomes an employee of an employer member.

Section 1332 Language

- In the event the DC Circuit Court rules that the Department of Labor’s (DOL’s) final AHP regulations are invalid, there is question as to whether Federal law will preempt a State law like this model law.
 - To ensure that this State law can be implemented as enacted, it is advisable that the State submit a 1332 Waiver with the Department of Health and Human Services (HHS) to modify certain aspects of the Affordable Care Act, including the definition of a “group health plan,” a “large employer,” and a “small employer.”
 - This “AHP 1332 Waiver” is intended to ensure that an AHP that covers employers in different industries or self-employed individuals (or both) will be treated as a “large group” market plan.