

DOL's Association Health Plan Q&As

NAR Summary

June 6, 2019

On March 28, 2019, a Federal court held provisions of the Department of Labor's (DOL) Association Health Plan (AHP) rule as unlawful, including specific provisions regarding eligibility for working owners (i.e. sole proprietors).

[Read More Here.](#)

In response to the March court decision, DOL has issued a series of "question and answer" guidance documents, which are summarized below. The Department of Justice has also filed an appeal in this case, which NAR supports.

[DOL AHP Q&A – Part 1](#)

After the court decision, DOL issued the first Q&A guidance providing background on the litigation, plans to appeal, and to offer insight into how AHPs should proceed in light of the litigation uncertainty.

The brief guidance explained that participants receiving benefits from existing AHPs should continue to receive those benefits and will not be affected by the court's decision for the rest of the policy year. Insurance providers are bound by the annual policy contract and must pay valid claims as a result. However, future AHP structure or operations may change, so contact AHP plan administrators with any questions.

The guidance also reiterated the states' role in oversight of AHPs, which the court's decision did not impact. Health insurance is jointly regulated at the federal and state level, and the DOL rule did not preempt states' authority to regulate AHPs. Thus, the litigation on the rule does not affect states' authority to regulate these plans, including those who have their own law to allow working owners to participate in AHPs.

[DOL AHP Q&A – Part 2](#)

On May 13, 2019, DOL issued a second Q&A guidance, stating a notice of appeal was filed in the litigation, took a deeper dive into how the rule expanded access to AHPs, and explained their planned exercise of enforcement authority as a result of the ongoing litigation. Several outstanding issues were clarified regarding DOL's enforcement action outline below.

- **DOL Non-Enforcement Action:**
 - DOL emphasized how no enforcement action will be taken against AHP sponsoring parties *for potential violations stemming from actions taken before the court's decision in good faith reliance on the AHP rule's validity*, so long as all participating members receive their benefits as promised.
 - DOL also stated that no action would be taken against existing AHPs *for continuing to provide benefits to members who enrolled in good faith reliance on the AHP rule's validity before the district court's decision*, through the remainder of the applicable plan year or contract term in effect at the time of the court's decision.

- **Pathway 1 AHPs (AHPs formed prior to the June 21, 2018 final rule; “working owners” ineligible)**
 - The guidance made clear that Pathway 1 AHPs are not affected by the court’s ruling as the authority and ability to create these particular AHPs was not dependent on the June 2018 final rule. The court’s decision only vacated portions of the final rule but did not address *prior* DOL guidance on AHP sponsorship, allowing AHPs formed under Pathway 1 in compliance with that prior guidance to remain in effect.
 - Pathway 1 AHPs generally may not include working owners (independent contractors) without other employees and may not establish commonality of interest based on geography – this is only available in Pathway 2 AHPs (see more below).
 - Pathway 1 AHPs may provide benefits to employees of employers who have a sufficiently close economic (such as those that are in the same trade, industry, line of business or profession) or representational nexus to the group or association.
 - [Read more about Pathway 1 AHPs here.](#)
 - DOL also advised that an “Advisory Option” is always available, but not required, to confirm status under Pathway 1.

- **Pathway 2 AHPs (AHPs formed in reliance on the June 21, 2018 final rule, “working owners” eligible)**
 - *DOL stated that Pathway 2 AHPs may not “market to, and sign up” new members and enjoy enforcement relief if such action was taken after the court’s ruling. Even if the AHP was formed prior to the court’s decision pursuant to the final rule, enforcement relief is limited only to actions taken before the district court’s decision in good faith reliance on the rule’s validity.*
 - However, Pathway 2 AHPs may still enroll new participants based on “special enrollment events” such as marriage, birth, adoption, etc. and circumstances allowable under the policy’s terms for eligibility (i.e. newly hired employees). Such enrollment will fall under DOL’s enforcement relief until the courts rule otherwise.
 - If an AHP formed in reliance on the final rule has an insurance contract for greater than one year, the Department’s enforcement relief extends through the remainder of that applicable plan year, so long as the contract term was in force at the time of the court’s decision.

DOL is also coordinating with the Department of Health and Human Services (HHS) on their non-enforcement policy and encouraging states to adopt the same non-enforcement policies. This is in an effort to minimize disruptions or hardships resulting from the ongoing litigation and ensuring that participants continue to have their health benefits claims covered. Check with your state insurance regulator and plan administrator for more insight here.

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