

Association Health Plans

An Update on NAR's Plan of Action

Jun 14, 2019

On June 21, 2018, the U.S. Department of Labor (DOL) issued a new rule opening the door for small employers and self-employed individuals, including real estate professionals, to participate in Association Health Plans (AHPs). AHPs are “large group” plans that often offer more coverage options at typically lower costs than in the “individual” and “small group” insurance markets where many NAR members purchase their health coverage. NAR created the detailed plan of action outlined below to determine whether and how AHPs can offer health insurance solutions to members and their families under the rule. While NAR has made significant progress, there is still a number of concrete steps to take before finding workable solutions.

After the new rule was issued, more than a dozen states filed suit to overturn the rule or issued conflicting legal guidance that has created an uncertain legal landscape for insurance providers. As the litigation remains ongoing, at this time, no national carrier is offering a nationwide AHP option to any national trade association until the legal questions are resolved or more states issue legislation or regulations providing certainty that expanded AHPs will be acceptable.

NAR remains committed to vigorously engaging insurers and pursuing options that could offer additional health insurance options to members. There are a number of state and local REALTOR® associations pursuing health insurance solutions for members, including AHPs, which NAR supports. Successful state and local implementation could serve as an example for insurers and set the stage for a national plan down the road.

NAR PLAN OF ACTION

Phase I – Department of Labor Regulation

1. → **Advocate for Health Insurance Options for Real Estate Professionals.**

For more than a decade, NAR has been advocating for expanding health insurance options such as AHPs to small employers and self-employed individuals, including real estate professionals. Extensive advocacy efforts, congressional testimony, policy feedback, and research data helped lay the groundwork for a workable Federal regulatory solution issued in 2018 by DOL.

Status: Ongoing

2. → **Ensure that Real Estate Professionals Are Eligible for Regulatory Flexibility.**

When DOL proposed this rule, NAR, along with a number of state and local associations and nearly 150 members, provided comments to ensure that self-employed individuals would remain in the final rule and successfully advocated to remove proposed restrictions that otherwise would have severely limited NAR member eligibility.

Status: June 2018

Phase II – Research and Outreach

1. → **Secure Partnerships with Key Insurance Experts and Legal Consultants.**

Since DOL opened the door to AHPs for “working owners” (independent contractors), NAR has been collaborating with insurance consultants and legal experts to determine the range of options available to NAR members and their families. New partnerships have been forged as a result, including with other trade associations uniting in coalition to advocate and explore broad adoption of AHPs.

Status: Ongoing

2. → **Research and Data Collection.**

While NAR already has substantial data on the health insurance needs of members and their families, NAR employed outside consultants to gather additional data requested by insurance companies to offer a more complete picture of the membership and determine what health benefits and premium costs would be competitive and attractive to members and be sustainable. NAR's Research Department has continued this collection of information to ensure the most recent and comprehensive data is available for all AHP related efforts.

- → [NAR Member Survey](#): In July 2018, NAR surveyed 364,000 members and received 16,590 completed responses. Click [here](#) for more. This survey will be repeated in 2019.¶
- → [Focus Groups](#): Several focus groups were conducted across the country in August 2018 (Arlington, VA; St. Louis, MO; and Portland, OR) to augment survey data and drill-down into particular member insurance needs and concerns. Additional focus groups with state and local Association Executives were also conducted in May 2019 to better understand progress and interest in AHP implementation regionally.¶
- → [Survey of State & Local Associations](#): Given the uncertain legal landscape due to conflicting state laws and federal litigation, in October 2018, NAR surveyed state and local associations to learn about their efforts to find AHP and other insurance solutions. This survey will likely be repeated in 2019.¶

Status: Ongoing ¶

3. Insurer Negotiations¶

As NAR continues to conduct research, and states and courts provide some legal certainty, NAR will continue to engage with insurers about potential nationwide, regional, state, and local AHP options that benefit members.¶

Status: Ongoing □

Phase III – Legal Certainty □

1. → Build Coalition to Engage in State Regulatory Challenges¶

Ongoing uncertainty remains with how states may regulate AHPs under DOL's new rule. NAR is a founding steering member of the "Coalition to Protect and Promote AHPs," which is working with state and federal regulators to find solutions in support of the new AHP rule. Working independently and through this coalition will allow NAR to help provide clarity in overcoming state regulatory hurdles while preserving flexibility under the rule. [Read the Press Release](#).¶

Status: Ongoing ¶

2. → Monitor and Engage in Federal Legal Challenges¶

Since the final rule was released, legal challenges have increased uncertainty for insurance companies considering offering an AHP option. NAR has and will continue to seek every opportunity to weigh in on behalf of NAR members and ensure that AHPs remain a viable option for self-employed real estate professionals. [Read about the case](#). NAR's engagement in the litigation include (starting with most recent).¶

- → [NAR's Amicus Brief in Support of DOL Appeal](#)¶
- → [NAR Press Release on Amicus Brief Filing in Appeal](#)¶
- → [NAR's Coalition Amicus Brief Filing in Appeal](#)¶
- → [NAR Letter to DOJ Requesting Appeal](#)¶
- → [NAR Response to the March U.S. District Court Decision](#)¶
- → [NAR's Coalition Amicus Brief in Support of DOL](#)¶

Status: Ongoing ¶

3. → Work with State and Federal Regulators to Provide Certainty¶

Both federal and state governments jointly regulate AHPs. NAR has been working with DOL to provide guidance to implement and clarify aspects of the final rule, especially in light of the legal challenge. While the rule opens the door to small employer and sole proprietor participation in AHPs, each state retains the authority to regulate and approve association plans. In partnership with state and local REALTOR® Associations, NAR will engage state insurance commissioners individually and in coalition to protect consumers while preserving rule flexibility. Read [NAR's Summary of DOL's Guidance](#) issued in response to the litigation.¶

Status: Ongoing ¶

4. → Create a Toolkit to Support State & Local Efforts¶

The DOL rule expanded access to AHPs for independent contractors, but litigation challenges and state regulatory hurdles are currently preventing broad adoption of AHPs at the national level. As a result, NAR remains invested in state and local association efforts to pursue AHPs as an attractive and affordable benefit for REALTORS® and their families. To support these efforts, NAR created the [AHP Toolkit](#) as a resource for Associations to use as they investigate and seek to implement an AHP in their area.¶

Status: June 2019 ¶

5. Petition the Department of Labor for an Authoritative Advisory Opinion

Based on initial feedback from insurers, there remains significant uncertainty with how the new regulation functions, including how it intersects with state insurance laws and treats self-employed/sole proprietors. Associations interested in offering a health plan often start by creating a legal memo and/or seeking a DOL Advisory Opinion to provide legal certainty to insurers and state insurance departments. Once the courts establish the future of the DOL regulation, NAR will likely pursue steps toward securing an Advisory Opinion.

Status: October 2019

6. Work with Congress to Support the DOL AHP rule

Legislation has been introduced that would help secure the regulatory expansion of AHPs through statute. This is especially important given the uncertainty of the federal litigation and varied state regulations on AHPs at play. NAR will continue to seek ways to support these federal proposals and similar proposals being considered at the state level. [Read about the bills.](#)

Status: Ongoing