ASSOCIATED HEALTH PLANS STAKEHOLDERS' MEETING

October 10, 2018

Commissioner Elias opened the meeting by welcoming returning and new attendees. He stressed that neither the Governor nor the Department had a specific AHP "agenda" in mind and that we were looking for this group (AHP stakeholders) to provide input as to what approach New Hampshire should take, if any, in regard to the opportunities created by the US Department of Labor (DOL) rule on Associated Health Plans (AHPs). It was noted that any action considered by the group would need to go through the process of legislation at the state level.

Jenny Patterson, Director of Health Policy for the Department, provided a high level review of the Principles for Discussion 10-10-18 handout which presented a potential approach to answering the following questions:

- What services should be required as part of AHP coverage?
- What rating requirements should apply to AHP coverage?
- How will NH handle AHP coverage issued by an out-of-state entity or across state lines?
- How should NH requirements vary between fully-insured and self-insured coverage offered?
- What, if any, additional limits or restriction should NH place on AHPs?
- Will AHPs be subject to claims data reporting to the NH-CHIS all-payer claims database?

Jenny then led a more in-depth group discussion on each question, with key discussion points summarized below (Note: all underlined or italicized text is from the "Principles for Discussions" document):

<u>What services should be required as part of AHP coverage?</u>

- *Coverage of all 10 EHB categories would be required*
    - On the issue of Essential Health Benefits (EHBs) there was some disagreement about whether it made sense to include coverage in all 10 EHB categories, mainly focused on a suggestion that pediatric dental not be required.
    - A participant suggested that NH should "cut out the fluff" benefits and only keep benefits for "sick" services, eliminating such services as "preventative care." Much discussion followed on the Pros/Cons…it appeared that the majority supported inclusion of preventive benefits. A comment was made that preventative services reduce claims costs overall and should be left in
    - The group engaged in a lengthy discussion on what DOL's contemplated goal that AHP benefits should be consistent with current Large Group benefits meant in terms of covered services.
    - Several participants discussed Pedi-Dental benefits and whether or not they should be included. A participant indicated that dental can be purchased separately in the market and is not typically included within health offerings for large groups.

- *Compliance with federal Mental Health Parity Act and coverage of mental health/substance use disorder treatment required*
    - Several participants addressed the importance of complying with MH/SA parity.
- *Compliance with NH-specific mandates would not be required*
    - It was noted that it is not required under federal law that NH specific mandates be covered. There is a need to review all NH Mandates vis-à-vis benefits applicable to self-funded vs. fully-insured MEWAs.
    - NH staff was asked to provide details on what benefits are currently offered in the large group market, including info on NH mandates which are currently required.

- Summary of discussions on covered services:
    - There was recognition that some questions would likely be the subject of vigorous debate in the legislature, including whether AHP coverage should comply with NH mandates and whether the state should be treated as a single geographic rating area. A producer felt strongly that self-funded plans should exclude mandates as is the case with current "captive" offerings in small group.
    - Mental Health/Substance Abuse parity is important and essential
    - How "friendly" (eliminate mandates and AHP limits requirement?)the state (NH) regulation are will determine who/how many carriers will offer AHPs in NH
    - There seemed to be support for broadening the types of associations that can offer AHP coverage, perhaps looking to the standards in the current purchasing alliance law which permits different industries to ban together to form an alliance
    - There was an acknowledgment that the legislature would be wanting further information about market effects of this approach…availability, price and range of choice in the Individual & Small group markets.
    - Recommendation: the benefits for AHPs should look and act like Large Group benefits currently offered in NH.
    - There seemed to be a consensus that new legislation on AHPs in NH should require them to include coverage for behavioral health services, and be subject to mental health parity, claims data reporting under Ins 4000, and RSA 420-J requirements if network-based.

What rating requirements should apply to AHP coverage?

- *AHPs/MEWAs meeting all NH requirements would be rated as a single large group (i.e., experience rated) even if individual employers within the AHP/MEWA would otherwise be classified as small group*
    - A participant expressed concerns that rating requirements decisions could create an incentive for groups to move to self-insured coverage and that we should be aware of the potential impact to the overall stability of the market
    - There was a brief discussion about whether the same coverage and rating factors such as tiering should apply to self-funded v. fully-insured AHPs. While there was some support for a "continuum" approach, there seemed to be an understanding that a simpler approach made more sense. It was agreed that we should focus only on fully-insured for now.
        - Note: a clearer understanding of ACA and ERISA implications is needed
    - There was fairly broad agreement with the idea of allowing NH-compliant AHP coverage to be rated as large group, although there were many good questions about the minimum number of NH members that would be needed, and the rating approach for AHPs with fewer than this number of NH members. An important question is whether a trade equates to a single employer group and thus eligible for membership in an AHP. This needs to be flushed out.

- *All NH groups/members within a single AHP/MEWA would be subject to the same rating standards*

- *No gender rating, single geographic rating area for entire state*
    - Several participants had comments/questions on using gender as a rating factor
        - NHID staff pointed out that gender rating under ERISA with respect to the subscriber and dependent rate as offered to "employees" cannot discriminate. No agreement is necessary as it would be a violation.
        - General agreement that AHP premiums not be permitted to vary by gender among members, although nondiscriminatory gender-related experience difference between different AHPs could result in differential rates between AHPs.
        - Gender rating is OK for developing composite rates but not allowed in determining what is charged to employees and their dependents
    - On issues of Geographic Rating factors some participants concurred that it was not needed, while others stated that not using Geographic rating factors would

increase costs to some consumers leaving the urban areas to subsidize rural, more expensive markets

- *For an AHP/MEWA with fewer than [200] members, standard actuarial rates would apply*

How will NH handle AHP coverage issued by an **out-of-state entity/across state lines?** (under current state law, a group insurance policy is regulated by the NHID if issued to an employer with a "bricks and mortar" workplace in NH where at least one NH resident works)

- *Any AHP coverage issued to a NH group or self-employed NH resident would be subject to NHID jurisdiction*
    - There was support for NHID jurisdiction/regulatory authority, although some questions remain about how this would work in practice, especially for sole proprietors.

How should NH requirements vary between **fully-insured coverage** issued to an AHP**,** and **self-insured coverage** offered by an AHP (aka a Multiple Employer Welfare Plan, or MEWA)?

- *There would not be any distinction between the standards applicable to coverage by fully- insured and self-funded MEWAs, or the types of groups eligible to offer the coverage; both would be addressed by the same statute.*

- *Solvency/financial standards in MEWA statute would apply to self-funded MEWAs only* Impact on solvency standards; RBC requirements for fully-insured vs. self-insured (how do we account for the impact of Stop Loss coverage?)

- There was strong support, particularly among carriers, for full financial regulation of self-funded MEWAs, with some questions (that seemed resolvable) about the specifics of how this would work.
    - Questions: 1) regulatory authority and 2) definition of eligible employer

What, if any, **additional limits or restrictions** should NH place on AHPs? (e.g., risk selection parameters, additional or clarifying nondiscrimination requirements beyond what is in the AHP rule itself, requirements aimed at promoting the solvency/financial stability of AHPs, fraud prevention or other consumer protections)

- *Financial standards: RBC, based on national entity (Creation of NH entity not required)*

- *Exam/enforcement authority*

Consumers need to be well-informed of any "shortcomings" of AHP benefits….Consumers need very specific info

- *RSA 420-J applies if network-based (network adequacy, no balance billing, etc.)*
- *External review/HIPAA*
- *ACA large group consumer protections*
- *unfair trade practices*

Action Item: NHID staff will provide details on benefits plans currently permissible under the ACA in the large group market.

Next meeting: Wednesday, November 7, 2018