

HANDOUT - NHID Association Health Plan Working Group – October 10, 2018

Purpose of Working Group: Forum for stakeholder input and discussion about AHP legislation in NH

Key Discussion for this meeting:

- Assuming NH allows AHPs under the new federal guidance:
 - Which **services** should be required as part of AHP coverage? (e.g., mental health/SUD treatment; maternity; prescription drugs)
 - Coverage for all 10 EHB categories would be required – any state/federal EHB benchmark
 - Compliance with federal Mental Health Parity Act would be required
 - Compliance with NH-specific mandates would *not* be required
 - What **rating requirements** should apply to AHP coverage? (e.g., age, gender, geographic area)
 - 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
 - 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
 - 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
 - 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
 - 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
 - RSA 420-J applies if network-based (network adequacy, no balance billing, etc.)
 - External review/HIPAA
 - ACA large group consumer protections
 - Unfair trade practices

- Will AHPs be subject to claims data reporting to the NH-CHIS all-payer claims database, which supports the NHID's HealthCost website and other insurance regulatory efforts? (A substantial reduction in the universe of people getting coverage through traditional insurance markets/products could diminish the comprehensiveness (and usefulness) of the claims data)
 - Yes, claims data reporting in accordance with Ins 4000 would be required

For further discussion:

1. How might this approach to AHPs affect the **availability, price and range of choices in the (ACA-compliant) individual and small group markets?**
2. Would the eligibility standards below continue to apply? Alternatively, should we look to the eligibility/organizational standards in the current purchasing alliance law? Or to some other source of standards?

415-E:3 General Eligibility. –

- I. To meet the requirements for approval and to maintain a multiple-employer welfare arrangement, an arrangement shall be:
 - (a) Nonprofit.
 - (b) Established by a trade association, industry association, political subdivision of the state, religious organization, or professional association of employers or professionals which has a constitution or bylaws and which has been organized and maintained in good faith for a continuous period of one year for purposes other than that of obtaining or providing insurance.
 - (c) Operated pursuant to a trust agreement by a board of trustees which shall have complete fiscal control over the arrangement and which shall be responsible for all operations of the arrangement. The trustees selected shall be owners, partners, officers, directors, or employees of one or more employers in the arrangement. A trustee may not be an owner, officer, or employee of the administrator or service company of the arrangement. The trustees shall have the authority to approve applications of association members for participation in the arrangement and to contract with an authorized administrator or service company to administer the day-to-day affairs of the arrangement.
 - (d) Neither offered nor advertised to the public generally.
 - (e) Operated in accordance with sound actuarial principles.

BACKGROUND INFORMATION (repeat from 9/21/18 handout)

What is the AHP rule, and what new opportunities does it create for New Hampshire?

- Final Association Health Plan (AHP) rule issued June 19, 2018 by US Department of Labor creates **new routes for groups of small employers to join together** in associations to purchase health insurance.
- The AHP rule **preserves state role as primary insurance regulator**, giving New Hampshire the ability to determine for itself how to frame up standards for association coverage.
- **Passage of state law** in 2019 could clarify standards in NH for both fully-insured and self-funded AHPs.

Key components of federal AHP rule:

- Expands circumstances under which an association of small employers may meet “commonality of interest” standards that allow the association to be treated as an employer under federal law (ERISA)
 - Allows “working owners” without other employees to participate in AHPs
 - Allows AHPs to operate on a regional basis without other commonalities (such as industry or profession)
- USDOL regulation: All AHPs remain subject to large group health plan requirements under ERISA and the ACA
 - AHPs are Multiple-Employer Welfare Arrangements (MEWAs) –fiduciary obligations under ERISA
 - Large Group Market Reforms under ACA apply to AHPs
 - New nondiscrimination requirements for this new AHP pathway
- State jurisdiction: state laws regulating AHPs are not preempted

Current status of AHPs in New Hampshire/existing statutes:

- **Self-funded AHPs/MEWAs** are regulated under [RSA Chapter 415-E](#)
 - Requires approval by insurance commissioner prior to operation in New Hampshire; no new MEWAs have been approved in recent years (since 1990s).
 - Law restricts MEWAs: (a) nonprofit; (b) established by trade association, political subdivision, religious organization, or professional association organized and maintained for 1+ year for a purpose other than providing health insurance; (c) operated pursuant to a trust by a board of trustees; (d) not offered or advertised to the public generally; and (e) operated in accordance with sound actuarial principles
 - Commissioner has authority to examine financial condition, and policy forms must be filed and approved
- **Fully-insured AHPs/MEWAs** – Coverage fully regulated by NHID; small group rating requirements apply to small employers even as members of associations; NH group coverage mandates apply. Statutes include:
 - [RSA Chapter 420-G](#) – Portability, Availability, and Renewability of Health Coverage
 - [RSA Chapter 415](#) – Accident and Health Insurance
 - [RSA Chapter 415-A](#) – Standards for Accident and Health Insurance
 - [RSA Chapter 417-D](#) – Women’s Health Care
 - [RSA Chapter 417-E](#) – Coverage for Certain Biologically-Based Mental Illnesses
- NH laws designed to give options to small groups, but not aligned with new AHP guidance:
 - [RSA Chapter 420-M](#) – Purchasing Alliances
 - [RSA Chapter 420-G](#) – Qualified Association Trust (RSA 420-G:10)