

**The State of New Hampshire
Insurance Department**

21 South Fruit Street, Suite 14

Concord, NH 03301

(603) 271-2261 Fax (603) 271-1406

TDD Access: Relay NH 1-800-735-2964



John Elias
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

**BULLETIN
Docket No.: INS NO. 18-045-AB**

TO: All Health Insurance Companies

FROM: John Elias
Insurance Commissioner

DATE: August 31, 2018

RE: AHP - Association Health Plan Rule

A handwritten signature in cursive script that reads "John Elias".

On June 21, 2018 the U.S. Department of Labor (“USDOL”) issued its final Association Health Plan rule (“AHP rule”) to provide additional flexibility for a group or association of employers to establish a group health plan (an association health plan or “AHP”) that is an employer welfare benefit plan under the Employee Retirement Income Security Act (“ERISA”) for the benefit of its members. See 83 FR 28912. The AHP rule does not preempt state laws regulating association health plans, which USDOL has confirmed are a type of Multiple Employer Welfare Arrangement (“MEWA”). See AHP Compliance Assistance Publication, <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/compliance-assistance-publication-ahp.pdf>. The AHP rule contains three different effective dates: September 1, 2018 for fully-insured association coverage; January 1, 2019 for existing self-funded associations; and April 1, 2019 for new self-funded associations.

In advance of the September 1, 2018 effective date for the first phase of the AHP rule, this bulletin provides guidance on the provisions of current New Hampshire law that apply to association coverage. It also explains the NHID’s intention to convene a stakeholder group to develop legislation for consideration early in 2019 to update current law with respect to AHP coverage, and create clear standards that will enable New Hampshire employers to benefit from the availability of new coverage options, while minimizing negative impacts to other health insurance markets.

Under New Hampshire law, AHPs are subject to the same statutory and regulatory requirements as any other MEWA or group health insurance plan. For fully insured AHP coverage, the prior approval of the Insurance Commissioner is required under RSA 415:18, I (no group policy or certificate of health

insurance “shall be delivered or issued for delivery in this state to a resident of this state without the prior written approval of the commissioner”). The rating provisions of RSA 420-G apply to fully insured group coverage, including association coverage. RSA 420-G:3, I. Under New Hampshire law, a New Hampshire business or organization “which employed on average, one and up to 50 employees, including owners and self-employed persons, on business days during the previous calendar year” is considered a small employer “whether or not it becomes part of an association, multi-employer plan, trust, or any other entity.” RSA 420-G:2, XVI(a). Thus, regardless of the new flexibility offered by USDOL, fully insured AHP coverage under current New Hampshire law would need to be rated in accordance with small group rating rules, if issued to a small employer.

Self-funded MEWAs are governed by RSA 415-E, a law that has remained largely unchanged since it was passed in 1992. Under this law, MEWAs must be (a) nonprofit; (b) established by a trade association, political subdivision, religious organization, or professional association organized and maintained for at least one 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. RSA 415-E:3, I. The Insurance Commissioner has authority to examine MEWAs’ financial condition (RSA 415-E:6, I), and policy forms must be filed and approved (RSA 415-E:8).

The AHP Rule clearly states that the application and coordination of state insurance law remains the province of the states. See 83 FR 28925. Thus, the statutes described above apply equally to out-of-state association coverage, to the extent it is issued to an employer with a “bricks and mortar” workplace in New Hampshire that employs one or more New Hampshire residents. See Metropolitan Life Ins. Co. v. Whaland, 119 N.H. 894 (1979).

As stated in the preamble of the AHP Rule,

AHPs are an innovative option for expanding access to employer-sponsored coverage (especially for small businesses). Through AHPs, employers band together to purchase health coverage. By participating in AHPs, employees of small employers and working owners are able to obtain coverage that is not subject to the regulatory complexity and burden that currently characterizes the market for individual and small group health coverage and, therefore, can enjoy flexibility with respect to benefit package design comparable to that enjoyed by large employers.

83 FR 28912. The New Hampshire legislature has previously attempted to provide similar flexibility for small businesses under state law; however, these efforts as they currently stand are not compatible with federal law, even under the AHP rule. See RSA 420-G:10 (Qualified Association Trust and Qualified Purchasing Alliance); RSA Chapter 420-M (Purchasing Alliances). It is the Department’s view that the passage of legislation in the 2019 session will be necessary if New Hampshire is to fully avail itself of new coverage options under the AHP Rule.

Accordingly, the NHID intends to convene a working group in September and October of 2018 to discuss options for AHP legislation in 2019. We welcome all stakeholders to participate in the discussion, with the first meeting of the group scheduled for September 21, 2018.

Please contact Jennifer J. Patterson, NHID Director of Health Policy, at Jennifer.patterson@ins.nh.gov with any questions about this bulletin. To participate in the working group, please contact Eireann Aspell, NHID Outreach Coordinator, at Eireann.aspell@ins.nh.gov.