

FAQs Regarding Association Health Plans (AHPs)

Q-1. Does the recent U.S. Department of Labor Association Health Plan Rule, 83 FR 28912, (AHP Rule) preempt New York’s regulation of associations or multiple employer welfare arrangements (MEWAs)?

A. No. The AHP Rule has no impact on, and does not preempt in any way, state regulation of insurance coverage issued to or by associations or MEWAs, or to individuals therein. For more information on the regulation of AHPs in New York, see Insurance Circular Letter No. 10 (2018), available at https://www.dfs.ny.gov/insurance/circltr/2018/cl2018_10.htm.

Q-2. Does the Department of Financial Services (DFS) regulate insurance coverage sold to MEWAs?

A. Yes. DFS regulates the insurance coverage sold to MEWAs.

Q-3. Is an AHP considered a MEWA under the Employee Retirement Income Security Act (ERISA)?

A. Yes. The AHP Rule expressly states that an AHP is a type of MEWA.

Q-4. May an AHP sponsor fully-insured coverage to its members in New York?

A. Only under certain specified circumstances. For a group or association of employers to sponsor a group health plan in New York, the group or association must meet specific requirements to be a recognized group under the Insurance Law. For example, Insurance Law § 4235(c)(1)(H) and (K) require that an association be in active existence for at least two years and be formed principally for purposes other than obtaining insurance coverage for its members. In addition, the insurance coverage issued to the association is subject to DFS approval and oversight.

Q-5. May an AHP offer large group coverage to its individual and small employer members if the AHP has over 100 members?

A. No. Insurance Law §§ 3231(g) and 4317(d) require that any coverage issued to an association or group of employers must be rated based on its underlying member employers, and not based on the size of the association. Individuals must receive individual coverage, small employers must receive small group coverage, and large employers must receive large group coverage. This requirement is often referred to as the “look through” provision.

Q-6. Must coverage issued to an association that includes individual members and/or small employer members offer the Essential Health Benefits (EHB) package?

A. Yes. Insurance Law §§ 3221(h) and 4303(11) require every association group policy delivered or issued for delivery in New York that provides hospital, medical or surgical coverage and is not a grandfathered health plan to provide coverage for the EHB package pursuant to 42 U.S.C. § 18022(a) and 11 NYCRR 52.71, for its individual and small

employer members. The EHB package includes essential health benefits, annual out-of-pocket maximums for cost-sharing, and actuarial value requirements (i.e., metal levels). A grandfathered health plan means coverage provided by an issuer in which an individual or group was enrolled in on March 23, 2010 for as long as the coverage maintains its grandfathered status as defined in 42 U.S.C. § 18011(e).

Q-7. Must insurance coverage issued to an association comply with all consumer protections in the ACA and the Insurance Law?

- A. Yes. Insurance coverage sold to an association must comply with all consumer protections including state mandated benefits, rating requirements, surprise bill provisions, external appeal requirements, non-discrimination provisions, prohibitions on pre-existing condition exclusions, and no lifetime limits or annual benefit limits.

Q-8. May an AHP offer self-funded coverage to its members in New York?

- A. Yes, under certain circumstances. An AHP that offers self-funded coverage to its members in New York would be deemed to be doing the business of insurance in New York and must become licensed as an insurer in accordance with the Insurance Law. As a result, self-funded associations doing the business of insurance in New York are subject to New York Insurance Law requirements such as solvency, premium rate review, state benefit mandates and consumer protections.

Q-9. Are out-of-state associations offering coverage to members in New York subject to New York regulation?

- A. Yes. The AHP Rule does not preempt state jurisdiction over insurance coverage issued to state residents or insurance policies delivered or issued for delivery in a state. Therefore, the AHP Rule does not affect how DFS regulates out-of-state association coverage. DFS will continue to enforce New York's Insurance Law and consumer protections such as state mandated benefits, rating requirements, surprise bill provisions, external appeal requirements, non-discrimination provisions, prohibitions on pre-existing condition exclusions, and no lifetime limits or annual benefit limits.

Q-10. Could persons who solicit, negotiate or sell unlicensed out-of-state association coverage be subject to enforcement action by DFS?

- A. Yes. Any person who solicits, negotiates or effectuates any coverage on behalf of an unlicensed or unauthorized self-funded association would be in violation of Insurance Law §§ 2117 and 2122 and would be subject to DFS administrative action and penalties, including an order to cease and desist from such activities, pursuant to Insurance Law § 2406.

Q-11. Are licensed brokers and agents responsible for ensuring that the coverage sold through self-funded AHPs complies with the Insurance Law?

- A. Yes. DFS may find that any licensed insurance agent or broker that engages in behavior that is contrary to the Insurance Law is untrustworthy or incompetent and DFS may suspend or revoke all licenses issued to such licensee pursuant to Insurance Law § 2110

and/or impose monetary penalties pursuant to Insurance Law § 2127 or take such other enforcement action as authorized under the law.