



# U.S. CHAMBER OF COMMERCE HEALTH POLICY ISSUE BRIEF

## Association Health Plans (AHPs): An Overview

In alignment with the Administration's commitment to reducing health care costs for small businesses, the Department of Labor's (DOL's) final rule on AHPs enabled small businesses and self-employed individuals to band together and purchase robust and affordable coverage in the large group market. Published in June 2018, the final rule established criteria for determining when an association can be treated as an "employer" for purposes of offering a single group health plan to all member companies' employees. Two key provisions in the rule:

1. Allowed an association with membership within a common geographic area to offer an AHP; and
2. Permitted a dual classification of working owners as both employers and employees.

## Litigation Timeline: What has Happened?

July  
2018



After the regulation was finalized, a dozen democratic Attorneys General (AGs or plaintiffs) sued the Department of Labor alleging the regulation is unlawful. The AGs argued that the DOL's new interpretation of "employer" was inconsistent with the text and purpose of the Employee Retirement and Income Security Act (ERISA), that the goal of the final rule was to undermine the Affordable Care Act (ACA), and that the DOL is changing long-standing interpretations of ERISA to do so. The Chamber and other associations filed an amicus brief defending the AHP rule.

March  
2019



Judge Bates in the US District Court for the District of Columbia found in favor of the plaintiffs and struck down the regulation's two key provisions as unlawful. Judge Bates' decision stated that the DOL's interpretation of "employer" is unreasonable under ERISA and strains the ACA's definition of employer.

April  
2019



The decision was appealed by the Department of Justice and the DOL issued a non-enforcement policy permitting AHPs to continue to cover individuals who were enrolled in a DOL AHP before Judge Bates issued his decision. The Chamber, along with the National Federation of Independent Business, and more than 85 associations, chambers of commerce, and state attorneys general, filed amicus briefs with the appellate court defending the AHP rule.

November  
2019

The U.S. Court of Appeals for the DC Circuit (DC Circuit) heard oral arguments on November 14, 2019, with Judges Henderson, Tatel, and Katsas serving on the panel.



# HEALTH POLICY ISSUE BRIEF ASSOCIATION HEALTH PLANS

## THE LATEST: WHERE ARE WE NOW?

Although there is no way to know when the DC Circuit will issue its opinion or how it will rule, the court could issue a decision as early as February. Questions posed by the judges during oral arguments suggest the court may not entirely resolve the dispute. The DC Circuit could reverse the district court by upholding the reasonableness of the DOL's interpretation of "employer" under ERISA but leave open the question of whether an AHP should be treated as a "large employer" under the ACA. The Department of Health and Human Services, which is responsible for administering this section of the ACA, would then need to address that interpretive question.

While the establishment of new DOL AHPs and/or the enrollment of new individuals under an existing plan is prohibited, the DOL's non-enforcement policy allows current AHPs to continue to cover enrolled individuals for the remainder of the plan year, pending a resolution to the court case.

## WHY DOES IT MATTER?

The number of small businesses offering health coverage has declined substantially over the years, from 47% in 2000 to 29% in 2016, in part because many entrepreneurs and small employers simply can't afford to offer high-priced comprehensive plans.

The U.S. Congressional Budget Office estimates that 400,000 people who would have been uninsured will enroll in AHPs and 3.6 million other people will elect to enroll in an AHP, resulting in 4 million additional people electing to participate in an AHP within the next year.

## OUR POSITION

As a strong advocate for the expansion of flexible and affordable health coverage options for every American, the Chamber supports the AHP final rule as it provides small businesses with a new affordable way to provide their employees with the same robust coverage options traditionally enjoyed by large employers.

The U.S. Chamber of Commerce remains diligently at work to provide solutions for the 20,000 workers who are currently covered under AHPs and the more than 300,000 workers who were expected to enroll within the year of the final rule's 2018 promulgation.

To learn more about the Chamber's recent activity, please visit our AHP webpage at the link below.

## KEY FACTS: REFUTING THE MYTHS

AHPs operating under the DOL's final rule are subject to the same ACA consumer protections as other self-insured and large group plans and provide comprehensive benefits.

These new DOL AHPs are subject to state insurance law requirements including licensing, registration, certification, financial reporting, examination, and auditing (among others) to ensure compliance. For self-insured AHPs, any state law that regulates insurance may also apply to the AHP to the extent that it is not inconsistent with ERISA.