

**From:** [Craig Start](#)  
**To:** [Mary Oglesby](#)  
**Subject:** FW: Hi There - AHP Coalition - DOL Takes Steps to Withdraw/Replace 2018 AHP Reg - Our Work on AHP 2.0 Legislation  
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Hi there. Happy New Year! I hope everyone enjoyed their holidays!! I hope you are getting off to a great start to the year.

Speaking of the start of 2023, it finally looks like the Biden Administration is going to go after the 2018 AHP Regulation this year. As you know, for the past 2 years, we have been watching the DOL and waiting to see if the Department makes a move on the 2018 AHP Regs. Well, the shoe-has-finally-dropped.

Just yesterday, the Administration released its Regulatory Agenda (which reaches back to Fall 2022, but it's really a road-map for 2023). On the DOL's list: A forthcoming proposed regulation that will withdraw the 2018 AHP Regs – or at minimum – ask stakeholders to weigh in on whether the Regs should be withdrawn or replaced with some other governing requirements (see the below explanation and link from the Regulatory Agenda):

- In this rulemaking, the Department of Labor's Employee Benefits Security Administration (EBSA) will explore whether to withdraw, or withdraw and replace, its regulation at 29 CFR 2510.3-5, published as a final rule in 2018, which established an alternative set of criteria for determining when an employer association may act indirectly in the interest of an employer under section 3(5) of the Employee Retirement Income Security Act (ERISA) for purposes of establishing a multiple employer group health plan. The United States District Court for the District of Columbia vacated portions of the final rule in a 2019 decision in *New York v. United States Department of Labor*, 363 F. Supp. 3d 109 (D.D.C. 2019). EBSA will reevaluate the criteria for a group or association of employers to be able to sponsor a multiple employer group health plan. (see <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=1210-AC16>).

Our Coalition will be engaging with the DOL (along with HHS) on this immediately, and we will also be putting together public comments whenever the proposed reg is released.

As you also know, our goal this year is to work with House and Senate Committee staff to introduce an AHP 2.0 bill (a bill that does NOT codify the 2018 AHP reg, but rather a bill that amends various definitions in the PHSA and ERISA allowing industry-based, non-industry-based, and self-employed individual associations to establish an AHP that would be regulated like a "large group plan," and also including a number of our other priorities like allowing AHPs to vary premiums by employer member based on the health claims experience of a respective employer member).

Today, I had a very productive conversation with Talyor Hittle with the House Education & Labor Committee about the contours of a forthcoming AHP 2.0 bill. Some time in February or March, Taylor would also like to include the issue of AHPs in an Education & Labor Committee hearing on health care-related issues. So, we are making progress on one of our stated goals for 2023.

Lastly, I would like to schedule a Steering Committee call next week to discuss the DOL's actions here, as well as provide you an update on our continued work on an AHP 2.0 bill. Currently, I am looking at Tuesday 1/10 at 11 am EST. Alternatively, Thursday 1/12 at noon EST. Or, Monday 1/16 at 1 or 2 pm EST. I will be circling back with a separate email about scheduling a Steering Committee call. In the meantime, if you have a preferred date/time, please let me know. Thanks!!

Again, I hope everyone enjoyed their holidays. This year is already starting off with a bang for us!

It's certainly going to be an interesting 2023!!

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## **Priorities for Legislative and Regulatory Changes**

### **Codify the Establishment of the Following Fully-Insured AHPs**

- *Employer-Only Industry-Based AHP* – An AHP established by an association of employers in the SAME industry that employ at least 1 common-law employee (note, if, after aggregating all of the employees employed by all of the employer members, the association does NOT include at least 51 employees, the association CANNOT establish an AHP).
- *Employer-Only Non-Industry-Based AHP* – An AHP established by an association of employers in DIFFERENT industries that employ at least 1 common-law employee (note, if, after aggregating all of the employees employed by all of the employer members, the association does NOT include at least 51 employees, the association CANNOT establish an AHP).
- *Self-Employed Individual-Only AHP* – An AHP established by an association made up solely of at least 51 self-employed individuals (note, if an association does NOT include at least 51 self-employed individuals, the association CANNOT establish an AHP).
- *Employer & Self-Employed Individual AHP* – An AHP established by an association made up of BOTH (1) at least 51 or more self-employed individuals and (2) two or more employers either in the SAME industry or DIFFERENT industries with at least 1 common-law employee (note, if an association does NOT include at least 51 self-employed individuals, the association CANNOT establish this type of an AHP (however, the association may establish an AHP under #1 or #2 above, provided the association includes at least 51 employees employed by the employer members)).
- *Professional Association AHP* – An AHP established by (1) a professional association made up of individual common-law employee-members employed by a non-profit organization where the non-profit organization itself may not be a member of the association or (2) a professional association made up of individual common-law employee-members who are employed by a particular employer in the SAME industry where the employer itself may not be a member of the professional association (note, if a professional association does NOT include at least 51 individual employee-members, the association CANNOT establish an AHP).

### **Codify an “Aggregation Rule” for These AHPs**

- In the case of Employer-Only Industry-Based AND Employer-Only Non-Industry-Based AHPs, the association MUST be permitted to aggregate together ALL of the employees employed by ALL of the employer members of the association.
- In the case of Self-Employed Individual-Only, Employer & Self-Employed Individual, and Professional Association AHPs, the association MUST similarly be permitted to aggregate together ALL of the self-employed individuals, common-law employee members, and employees employed by all of the employer members, as the case may be.

### **Codify “Large Group” Plan Status**

- If, after the aggregation discussed above, there are at least 51 employees in the case of an Employer-Only Industry-Based AND Employer-Only Non-Industry-Based AHP – and at least 51 self-employed individuals, common-law employees, and employees employed by employer members in the case of a Self-Employed Individual-Only, Employer & Self-Employed Individual, and Professional Association AHP – the AHP shall be regulated like a “large group” plan.

### **Do NOT Limit Employer-Only Non-Industry-Based AHPs to the Four-Corners of a State or a Metropolitan Area**

- The 2018 regulations placed a geographic limit on Employer-Only Non-Industry-Based AHPs. This geographic limit prevented Employer-Only Non-Industry-Based Groups (such as the NFIB and Chambers of Commerce) from establishing 1 single health plan (i.e., AHP) that could offer health coverage to employer members located in multiple States.
- Currently, single-large employers domiciled in a particular State are permitted to offer health coverage to employees at worksites located in other States. In addition, Employer-Only Industry-Based AHPs are currently allowed to offer their AHP health coverage to employees of employer members located in multiple States.
- Just like large employers and Employer-Only Industry-Based AHPs, Employer-Only Non-Industry-Based AHPs MUST be permitted to offer health coverage to employees of employer members located in multiple States.

### **Allow BOTH Employer-Only Industry-Based AND Employer-Only Non-Industry-Based AHPs to Vary Premiums By Employer Member Based on Health Claims Experience**

- Codify that BOTH Employer-Only Industry-Based AND Employer-Only Non-Industry-Based AHPs can vary premiums for participating employer members by the health claims experience of the employees employed by each respective employer member. Then, each employee of the respective employer member will be charged the SAME premium amount.
  - You may consider limiting the premium variation for a particular employer member. For example, any increase over the base premium rate cannot exceed 15%.

### **Allow Associations of Self-Employed Individuals to Offer AHP Health Coverage to Self-Employed Individual Members**

- Self-employed individuals should be permitted to access quality and affordable health coverage through an AHP.
  - *Self-Employed Individual-Only AHP* – Here, the self-employed individual members of this association will be aggregated together and treated as 1 single risk pool. The premium rates for these self-employed individuals would NOT vary among each individual. Rather, each self-employed individual member will be charged the same premium. This is consistent with the rules under HIPAA that prohibit premium variation among individual participants of a health plan.

- *Employer & Self-Employed Individual AHP* – In the event an association would like to offer AHP health coverage to (1) employers with at least 1 common-law employee and (2) self-employed individuals, the self-employed individual members **MUST** be aggregated together and treated as their own group alongside each employer member (each employer is also treated as its own group).
  - Here, **ALL** of the employees **AND** self-employed individuals participating in the AHP will first be aggregated together as 1 single risk pool for purposes of developing a “base” premium rate for the entire risk pool.
  - Then, for purposes of varying this base premium rate by group member, the self-employed individual group’s premium will vary based on the health claims experience of the entire self-employed individual group (and then each self-employed individual in the group will be charged the **SAME** premium).
  - Then, each employer member’s premiums will vary as discussed above (i.e., employer member premiums may vary based on the health claims experience of the employees employed by the respective employer member, and then each employee of this respective employer member will be charged the **SAME** premium).