



COUNCIL FOR AFFORDABLE  
**HEALTH COVERAGE**



February 20, 2024

*Submitted electronically*

Office of Regulations and Interpretations,  
Employee Benefits Security Administration, Room N-5655,  
U.S. Department of Labor,  
200 Constitution Ave. NW, Washington, DC 20210,

Attention: Proposed Recission of AHP Final Rule RIN 1210-AC16.

The Council for Affordable Health Coverage (CAHC) and the Health Benefits Institute (HBI) are pleased to give our comments on the proposed rule rescinding the Final AHP rule.

CAHC ([www.cahc.net](http://www.cahc.net)) is a broad-based alliance with a primary focus: bringing down the cost of health care for all Americans. Our members include employers, medical providers, patient groups, insurers, agents and brokers, and insurers.

The Health Benefits Institute ([www.thehealthbenefitsinstitute.org](http://www.thehealthbenefitsinstitute.org)) is a policy organization supported by agents, brokers, insurers, employers, benefit platforms and others seeking to protect the ability of consumers to make their own health care financing choices. We support policies that expand options and foster high quality health outcomes through transparency in health care prices, quality, and the financing mechanisms used to pay for care.

While we understand that the Association Health Plans (AHP) rule promulgated under the prior administration has been disputed in legal proceedings, we are disappointed in this proposed rule rescinding the rule in its entirety. AHPs provide a pathway under the existing Multiple Employer Welfare Arrangements to band together to negotiate lower premiums and better benefits for plan members. We urge you to reconsider the recession of the proposed rule and make revisions to the rule that make AHPs more robust and viable while protecting workers from bad actors.

### **AHP MEWA Background**

Association Health Plans are a new version of Multiple Employer Welfare Arrangements. Unlike most primarily self-funded plans, MEWAs (multiple employer welfare arrangements) are subject to both state and federal authority. Indeed, some states have even banned self-funded MEWAs. States and the federal government have information sharing arrangements that ensures mostly seamless enforcement actions.

Association Health Plans included new flexibility for employers who wish to join together with other employers to provide health benefits to their employees. One of the key changes is a waiver from ACA (Affordable Care Act) rules that limit employer members to be in the same

market. Specifically, associations must be limited to segregated small group and large group risk pools without sharing in a common risk framework.

The AHP rule also allowed additional flexibility by allowing groups located in the same areas to associate for the purposes of creating an insurance plan. This opened up the possibility that businesses located near each other – for example in an industrial park -- could band together in an AHP and leverage their buying power to open their own clinic inside the industrial park or leverage their buying power for discounts with nearby providers.

### **AHP Guardrails**

While AHPs had additional flexibility in membership, AHPs also had significant additional consumer protections over traditional MEWAs. Traditional MEWAs allow rate variation by employer with no community rating requirements. AHPs, on the other hand, limited rate variation and included guaranteed issue requirements. Like all MEWAs, AHP would also be subject to any additional requirements set by the states in which they operate.

### **Adverse Selection**

With no evidence, the rule and its proponents claim AHPs will create an adverse selection problem for the rest of the market. The argument makes almost no sense.

Under the law, small employers have no obligation to provide health insurance to their employees while large employers have significant flexibility in coverage and plan design. Despite this, many offer comprehensive health insurance to their employees and an AHP was designed as one possible tool to assist employers in offering more comprehensive coverage. Joining an AHP requires multiple employers to agree on a common benefit plan design which is likely to be more comprehensive than what is commonly available. In all cases, employers have willingly offered their employees coverage.

Unfortunately, the rule process and court cases created significant ambiguity, making it impossible for any group to offer an AHP. Interested employer groups could not, in good conscience, form an AHP and develop plans without explicit regulatory approval. This is a lost opportunity.

The courts invalidated the ability to offer coverage to individual business owners and sole proprietors, there are continued claims that these plans will select against ACA individual market insurers. Individual market insurers offer subsidized coverage which provides support to individuals with incomes well above 400% of poverty. It is more likely that the AHP will face adverse selection when writing sole proprietors. As a result, individual market plans would have had a distinct advantage over AHP plans offered with no adverse selection issues.

In the small group and large group markets, AHPs compete against other MEWAs, self-funded plans and fully insured markets. Unlike the other groups, all association members are required to be covered by the AHP. Healthy groups have the ability to use risk selection against the AHP.

AHPs would only survive by providing employers – who are voluntarily providing coverage – with a better product at a cheaper price. AHPs do this by focusing on their member needs and by having a significant local market share.

### **AHP Fraud Claim**

We were disappointed that one of the justifications for rescinding the AHP rule was claims of fraud. A number of fraudsters have attempted to use schemes around health insurance products to try and defraud consumers. Indeed, the Affordable Care Act has been used in claims by fraudsters mimicking ACA websites, and ACA insurers. And yet no efforts have been made to shut down ACA plans.

We wholeheartedly support efforts to protect consumers from fraudsters, but removing an employer's ability to make their own health care financing choices empowers fraudsters. Allowing consumers and employers the right to make informed choices in a consistent regulatory environment is the best way to combat fraud. Radically changing course creates consumer harm.

### **Richer, Right Sized Benefits**

One of the chief attractions of plans like AHPs is the ability to right-size benefits for plan enrollees. Pre-ACA, a number of associations offered their members richer benefits focused on the concerns of their members. For example, some organizations in high stress industries offered extraordinarily rich mental health benefits to address the unique needs of their professional membership. In others, trades-based employers wanted to offer additional physical therapy benefits to reflect the physical toll of jobs in construction and buildings trades. Associations covering small farmers provided “24-hour” coverage to cover work-related injuries when the farm may not provide worker's compensation insurance.

In short, AHPs have the opportunity to provide enhanced benefits that better reflect the needs of the employer and their employees.

### **Conclusion**

We urge you not to rescind the AHP rule, but rather work to improve it. Increasingly, employers are dropping insurance coverage and eliminating one of their potential plan options makes it worse.

Thank you again for providing an opportunity to comment on the AHP rule. Please do not hesitate to reach out if you have further questions at [joel.white@cahc.net](mailto:joel.white@cahc.net) or [jpwieske@thehealthbenefitsinstitute.org](http://jpwieske@thehealthbenefitsinstitute.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Joel White". The signature is fluid and cursive, with the first name "Joel" being more prominent than the last name "White".

Joel White  
President, CAHC

A handwritten signature in black ink, appearing to read "J.P. Wieske". The signature is fluid and cursive, with the initials "J.P." being prominent and followed by a long horizontal stroke.

J.P. Wieske  
Executive Director, HBI