



Implications of DOL's Final Rule on Association Health Plans

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“There is **good news** at last for the millions of small businesses nationwide that have struggled to find affordable health insurance.”

Thomas J. Donahoe, President and CEO, U.S. Chamber of Commerce

“AHPs offer **an important market-based pathway** to expanded health coverage and lower health care costs.”

Statement of the National Association of Manufacturers (NAM)

“There are going to be lots of ways for [AHPs] to **cherry-pick healthy people**”. This will “further deteriorate the individual market”. “It will **destroy the small-group market**.”

Tim Jost, Emeritus Professor, Washington and Lee University School of Law, quoted by Vox.

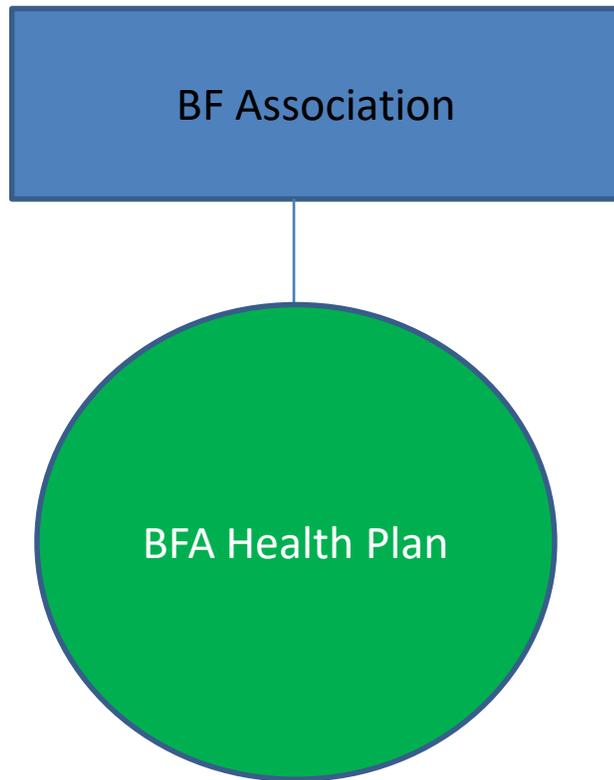
“California law prohibits the formation of any new [AHPs]..., however, outside California, the Trump Administration’s final rule **threatens the continued existence of comprehensive health insurance coverage**”.

David Jones, California Insurance Commissioner

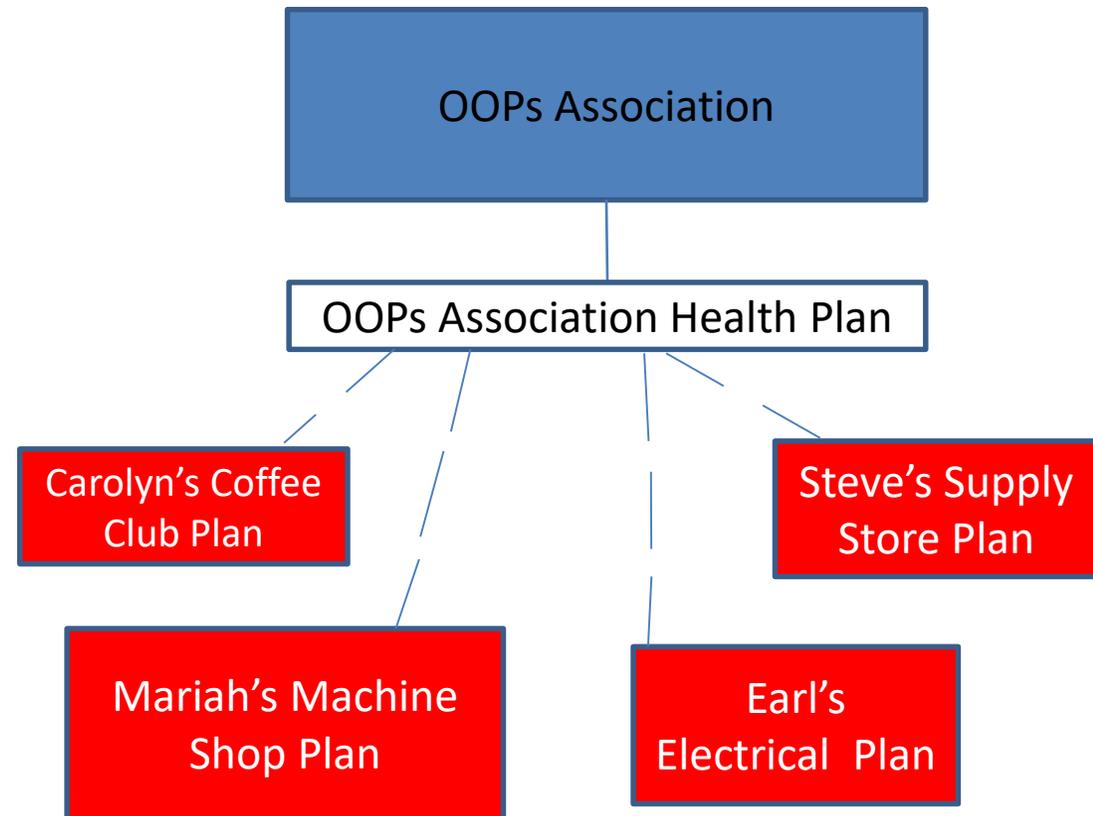


A bit of history and background....

Bona fide association -- a single, large group health plan of the “employer” association



If no bona fide association, each employer has a separate small group health plan





The Affordable Care Act – One Size Doesn’t Fit All

MANDATE*	LARGE GROUP (AND SELF-FUNDED)	SMALL GROUP FULLY INSURED
Essential health benefits	NO	YES
Premiums subject to modified community rating	NO	YES
Required preventive care without cost-sharing	Yes	Yes
Coverage of pre-existing conditions	Yes	Yes
Other ACA mandates (e.g., maximum out of pocket limit, no annual or lifetime dollar limit on covered essential health benefits, coverage of dependents to age 26)	Yes	Yes

*Some requirements do not apply to grandfathered plans



Executive Order 13813



DONALD J. TRUMP

THE WHITE HOUSE,
October 12, 2017.



Goals of expanding access to AHPs (per EO 13813)

“Help small businesses overcome [a] competitive disadvantage [compared to large employers] by allowing them to group together to self-insure or purchase large group health insurance”



“Allow more small businesses to avoid many of the PPACA’s costly requirements”

“Provide more affordable health insurance options to many Americans”



Bona-fide associations will be easier to form – two types based on “commonality of interest”

Industry based

- Employers are in the same trade, industry, line of business or profession
- Association and the AHP can be nationwide (or a subset)

Geographically based

- Can be state-wide
- Or based on a metropolitan area (even if more than one state)
- Based on principal place of business of the employers
- Not required to cover the entire state or metro area

- In either case, employers must exercise “control” over the association (similar to prior rules)
- Primary purpose can be to provide health benefits; must be some other substantial business purpose
- For the first time, self-employed individuals (“working owners”) can participate in an AHP



Four Big Things

1. Rules for multiemployer health plans are not affected
2. AHP coverage may be cheaper, but also likely to be “thinner”
 - The AHP will not have to offer the 10 categories of essential health benefits
3. Pricing and nondiscrimination issues
 - Association cannot deny an employer membership based on health status of any employee, former employee, or family members
 - AHP cannot rate each separate employer as a separate group
 - This rule does not apply to AHPs organized under the prior rules
 - AHP, can, however, vary employer rates based on non-health factors, including industry, industry sub-sector, occupation, geographical region
 - Part-time and full-time employees of employer members may be treated differently



The last big thing..

4. States continue to have considerable authority to regulate AHPs, including self-funded AHPs
 - AHPs are Multiple Employer Welfare Arrangements (MEWAs)
 - Due to past history of mismanagement, fraud, and abuse, ERISA has special preemption rules that give states significant authority
 - In contrast, self-funded multiemployer plans receive full ERISA preemption from state laws
 - Insurance coverage provided through a multiemployer plan or AHP is always subject to state law
 - DOL has authority to exempt self-funded MEWAs from state laws
 - DOL cannot exempt MEWAs from state laws that relate to reserve requirements or required levels of contributions
 - DOL has not acted on exemptions, but requested comments
 - State laws continue to evolve; could be a source of litigation; DOL could take further action



One last thing

