

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Bulletin 2018-21-INS

In the matter of:

Association Health Plans
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Issued and entered
This 24th day of September 2018
by Patrick M. McPharlin
Director

On June 21, 2018, the federal Department of Labor (DOL) issued a final rule titled “Definition of Employer Under Section 3(5) of ERISA—Association Health Plans” (Final Rule). The Final Rule creates additional flexibility for a group or association of employers to establish a group health plan under the federal Employee Retirement Income Security Act (ERISA) by expanding the definition of “employer” under that statute. The Final Rule does not preempt state laws regulating AHPs, which the federal government considers to be a type of multiple employer welfare association (MEWA).

The Final Rule is applicable to different types of AHPs on a staggered basis. Fully-insured association coverage must comply with its provisions as of September 1, 2018. Existing self-funded associations must comply by January 1, 2019; and new self-funded associations must comply by April 1, 2019.

This bulletin provides general guidance to existing AHPs as well as AHPs seeking authority to market plans in Michigan. Complete rate and form filing guidance for self-funded and fully-insured AHPs can be found in SERFF under “General Instructions and Requirements.”

Self-Funded AHPs

Under Michigan law, a self-funded AHP is governed by Chapter 70 of the Insurance Code, MCL 500.7001 through MCL 500.7090, which applies to MEWAs. DIFS’ MEWA Application can be found here: https://www.michigan.gov/-/media/Project/Websites/difs/Form/Insurance/MEWA/Application_Filing_Package.pdf.

In addition to the requirements in the MEWA application, existing and new self-funded AHPs (i.e., MEWAs) must submit to DIFS a copy of their most recent M-1, no later than 60 days after filing the M-1 with DOL.

Fully-Insured AHPs

Fully-insured AHP coverage is a type of group coverage; see MCL 500.607. Insurers offering fully-insured AHP coverage must hold a Life and Health Certificate of Authority issued by DIFS. In addition, issuers of fully-insured AHP coverage must submit the following documents to DIFS for approval prior to marketing an AHP:

- A copy of the association’s constitution and/or bylaws;

- A description of the association’s history and formation;
- A statement describing the activities of the association and benefits provided to the members that are not insurance-related; and
- A description of how the AHP will comply with the Final Rule’s non-discrimination requirements.

In addition, issuers of coverage to fully-insured AHPs must comply with all requirements applicable to group coverage, including—but not limited to—licensing, registration, certification, financial reporting, examination, audit, coverage, network adequacy, service area, and other requirements of Michigan law. Further, fully-insured association coverage issued to a small employer, as that term is defined in MCL 500.3701(q), must comply with all provisions of the Code that apply to small groups. Group size for AHPs is determined by total number of employees covered, not by the size of each employer group.

To allow DIFS to identify AHP filings in SERFF, all insurers must adhere to the following filing requirements:

- Submissions must use the appropriate TOI and sub-TOI identifying the type of fully-insured policy;
- Filings must use the filing type “Association Health Plan”;
- A separate SERFF filing is required for each AHP; and
- Filings must include either the new form developed for the association for prior approval or the SERFF tracking number for the approved fully-insured form to be sold to the association.

Please note: Insurers that currently have AHPs in force must submit the above filings for all existing AHPs no later than November 15, 2018, even if the filings had previously been submitted.

Fully-insured associations created in a state other than Michigan must comply with all applicable Michigan law if coverage is issued to: 1) an employer with a physical presence in Michigan that 2) employs at least one Michigan resident.

Any questions regarding this bulletin should be directed to:

Department of Insurance and Financial Services
Office of Insurance Rates and Forms
530 W. Allegan Street, 7th Floor
P.O. Box 30220
Lansing, Michigan 48909-7720
(517) 284-8696
Toll Free: (877) 999-6442

/s/

Patrick M. McPharlin
Director