The Department of Labor (DOL) June 19 released a final rule that will expand the availability of association health plans (AHPs). The DOL issued the rule in accordance with the Oct. 12, 2017 Presidential Executive Order, “Promoting Healthcare Choice and Competition Across the United States.”

Below are the top six things for hospital and health system leaders to know:

1. The rule allows more small businesses, including sole proprietors, to qualify to join together to offer employer-sponsored coverage. By allowing sole proprietors to enroll, expanded enrollment in AHPs may reduce the number of consumers who seek coverage through the individual market. This could disrupt the individual market risk pool, making such coverage more expensive and making individual market participation less appealing to insurers.

2. The rule loosens requirements around what types of entities can come together to form an AHP. The rule allows AHPs to form on the basis of geography (state or metropolitan area) or industry and will enable plans to be sold across state lines.

3. States have limited regulatory authority over AHPs. Consistent with existing rules, states retain oversight of AHPs’ financial solvency; however, the federal government has primary oversight of AHPs, including setting rules related to consumer protections.

4. The coverage offered through AHPs would not need to meet many of the Affordable Care Act (ACA) requirements that apply in the individual and small group markets, including rules related to the essential health benefits. Therefore, plans could offer more limited coverage and could potentially discriminate against certain consumers by excluding certain benefits.

5. The Congressional Budget Office (CBO) estimates than 4 million individuals will enroll in AHPs, the majority of which will move from another form of coverage.

CBO estimates that approximately 400,000 individuals will newly gain coverage as a result of the rule.

6. The DOL was unable to provide a comprehensive quantitative impact analysis.

The AHA is committed to ensuring that all individuals have access to affordable coverage. However, while the expansion of AHPs may reduce costs for some by catering to healthier individuals, it comes at the expense of the millions who will continue to rely on the health insurance marketplaces, many of whom will bear the full brunt of price increases. We are particularly disappointed that the U.S. Department of Labor preempts states from fully regulating these plans, preventing states from ensuring appropriate consumer protections are in place.

The DOL finalized the policies essentially as proposed. More information on specific provisions of interest follow.

- **Definition of Metropolitan Area.** The rule allows AHPs to serve employers in metropolitan areas that cross state lines. For example, an AHP may form to serve the “Greater New York City Area/Tri-State Region,” including portions of New York, New Jersey, and Connecticut.

- **Requirements Related to Organizational Structure and Functions.** The DOL will require that the group or association sponsoring the AHP have a formal organizational structure with a governing body, and that the employer-members must control the AHP. These rules are intended to serve as a consumer protection to ensure that the organization is acting in the interest of employees.

- **Limitations on Eligible Enrollees.** The rule limits who can enroll in an AHP to employees, former employees and their families/beneficiaries. The DOL finalized its proposal to allow “working owners” (e.g., sole proprietors and other self-employed individuals) to qualify to participate in an AHP. This provision expands the number of individuals eligible to participate in an AHP, including millions who currently enroll in coverage through the individual market.

- **Non-discrimination Protections.** The DOL finalized several policies to prevent AHPs from discriminating against employers who may have high-cost employees. The regulations prohibit the group or association from restricting membership based on any health factor, including health status, medical condition, claims experience, receipt of health care, medical history, genetic information, and disability, among other factors.

- **Impact Analysis.** The DOL discusses some of the potential impacts of these changes, highlighting the potential for AHPs to allow small employers to gain efficiencies by becoming self-insured, increase their market power in negotiations with providers, and tailor benefit packages and pricing to meet employee needs.
The DOL acknowledges that AHPs could disrupt the individual and small group markets by attracting away healthier, younger individuals who do not receive subsidized coverage. The DOL also notes that there have been instances of financial mismanagement and abuse within such plans in the past. Finally, the DOL discusses the potential financial impact and suggests that the proposal could increase or decrease the federal deficit. AHPs could increase the federal deficit if individuals who currently buy coverage with taxable income would now receive health care as a tax-free benefit. They could decrease the federal deficit if individuals who currently are enrolled in subsidized marketplace coverage or Medicaid opt to instead enroll in an AHP.

- **Effective Dates.** The rule takes effect Aug. 20. However, operationally, the DOL will have rolling effective dates from Sept. 1, 2018 to April 1, 2019 for different types of AHPs based on whether the AHP is new or existing and whether the plan will be self-funded or fully-insured.

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