

### Introduction

In response to President Trump’s October 12 executive order (EO), the U.S. Department of Labor (DOL) has published proposed rules to expand the availability of health coverage sold through associations to small businesses and self-employed individuals. The public has until March 6, 2018 to submit comments on these proposed rules.

Questions? Contact Heather Howard at [heatherh@princeton.edu](mailto:heatherh@princeton.edu).

### What’s in the Association Health Plan Proposed Rule?

The President’s EO asks DOL to expand the conditions under which a group of employers can join together to be considered a single employer under the Employee Retirement Income Security Act (ERISA). The proposed rule has the primary aim of allowing more groups to form association health plans (AHPs) so that they can offer coverage that is regulated under federal law as large-group coverage. As a result, such arrangements would be exempt from Affordable Care Act (ACA) requirements, such as the essential health benefits standard, premium rating restrictions, the single risk pool requirement, and the risk adjustment program, and would raise new challenges for states attempting to regulate this business under state law. See Table 1.

Table 1. Application of ACA Insurance Protections by Market Segment (Fully Insured)

ACA Market Reform	Description	Individual Market*	Small-Group Market*	Large-Group Market*
<b>Guaranteed Issue</b>	Insurers must accept every individual or employer that applies for coverage, regardless of their health status or claims experience	Yes	Yes	Yes**
<b>Essential Health Benefits</b>	Insurers must provide coverage that includes 10 categories of defined benefits***	Yes	Yes	No
<b>Rating Rules</b>	Insurers cannot vary rates based on health status or gender; age rating is limited to 3:1	Yes	Yes	No
<b>Single Risk Pool</b>	Insurers must consider claims experience of all enrollees in all plans in setting premium rates	Yes	Yes	No
<b>Risk Adjustment Program</b>	Transfers funds from insurers with relatively low-risk enrollees to insurers with relatively high-risk enrollees	Yes	Yes	No

\*Applies to fully insured, non-grandfathered, non-grandmothered products. The small-group market is defined in most states to be groups of up to 50 employees; the large-group market is composed of fully insured groups with 51 or more employees.

\*\*The ACA requires insurers that market in the large-group market to accept all employers that apply for coverage.

\*\*\*The 10 categories of benefits outlined in the ACA are: ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services, prescription drugs, rehabilitative and habilitative services and devices, laboratory services, preventive services and chronic disease management, and pediatric services, including vision and oral care.

The underlying brief, [Association Health Plan Proposed Rule: Summary and Implications for States](#), examines in greater detail other aspects of the proposed rule including a proposed change to “large-group” status under ERISA, expansion of AHPs to the individual market, and implications for health nondiscrimination protections.

## Implications for States

States are the primary regulators of health insurance, and have broad authority to regulate AHPs, including financial solvency, marketing and rating practices, and insurance contracts. The proposed rule raises several issues likely to be of interest to states seeking to retain that authority and potentially amend their current rules and standards related to AHPs; DOL specifically asks for comments on the interaction and consequences of the proposed rule for other state and federal laws. The [full brief](#) also examines the extent to which states would be able to regulate AHPs under the proposed rule and considers the impact on state premium tax revenue.

## Conclusion

The proposed rule could dramatically expand the number of AHPs that market insurance to small businesses and individuals but are regulated as large-group, single employer health plans. It will have significant implications for the small businesses and individuals enrolled through these AHPs, as well as for the markets subject to the ACA and state small-group and individual market standards.

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Support for this research was provided by the Robert Wood Johnson Foundation. The views expressed here do not necessarily reflect the views of the Foundation.

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### ABOUT THE CENTER ON HEALTH INSURANCE REFORMS AT GEORGETOWN UNIVERSITY

This brief was prepared by Sabrina Corlette. The Center on Health Insurance Reforms at Georgetown University's Health Policy Institute is a nonpartisan, expert team of faculty and staff dedicated to conducting research on the complex and developing relationship between state and federal oversight of the health insurance marketplace. For more information, visit <https://chir.georgetown.edu>.