



## State of Utah

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## Insurance Department

TODD E. KISER  
Insurance Commissioner

# BULLETIN 2018-5

To: Health Insurers, Health Insurance Producers, and Third-Party Administrators

From: Todd E. Kiser, Utah Insurance Commissioner

Date: December 11, 2018

Subject: Association Health Plans

On June 21, 2018, the U.S. Department of Labor (DOL) issued its final Association Health Plan (AHP) rule<sup>1</sup> which provides additional flexibility for a group or association of employers to establish a group health plan as an employer welfare benefit plan under the Employee Retirement Income Security Act (ERISA). Under ERISA, an AHP is both a group health plan and a Multiple Employer Welfare Arrangement (MEWA)<sup>2</sup>. No health care coverage provided through a MEWA, including an AHP, is preempted from state regulation<sup>3</sup>.

This Bulletin reminds health insurers, health insurance producers and third-party administrators of existing Utah statutory requirements related to health care coverage offered through an AHP.

### 1. Self-funded AHPs.

A self-funded or level-funded AHP offering health care coverage in Utah is considered the business of insurance and required to be an admitted insurer in Utah, Utah Code § 31A-1-301. Information regarding the process to obtain a certificate of authority is available on the Utah Insurance Department's (Department) website<sup>4</sup>. An admitted insurer is prohibited from constituting or controlling an AHP<sup>5</sup>.

### 2. Authorization Required.

An AHP must be a valid association group authorized by the Commissioner and in compliance with § 31A-22-701. An AHP may contain more than one valid association. A valid association:

- a. Purchases health care coverage on behalf of its members;
- b. is formed and maintained in good faith for purposes other than obtaining insurance;
- c. has been actively in existence for at least five years;
- d. has a constitution and bylaws;
- e. has a shared or common purpose that is not primarily a business or customer relationship;

<sup>1</sup> <https://www.federalregister.gov/documents/2018/06/21/2018-12992/definition-of-employer-under-section-35-of-erisa-association-health-plans>

<sup>2</sup> <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/compliance-assistance-publication-ahp.pdf>

<sup>3</sup> ERISA section 514(b)

<sup>4</sup> <https://insurance.utah.gov/licensee/insurers/company-licensing>

<sup>5</sup> See Federal Register link above.

- f. does not condition membership in the association group on any health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;
- g. makes accident and health insurance coverage offered through the association group available to all members regardless of any health status-related factor relating to the members or individuals eligible for coverage through a member;
- h. does not make accident and health insurance coverage offered through the association group available other than in connection with a member of the association group; and
- i. is actuarially sound.

**3. Designation of Pathway I and Pathway II AHPs.**

Under Utah laws, an AHP is subject to the same statutory and regulatory requirements as any other association group coverage. Utah laws and federal requirements differ based on the formation of an AHP. In order to distinguish between the different regulatory schemes, the Department has identified that for purposes of this bulletin, a Pathway I AHP applies to an AHP formed under federal requirements issued prior to the effective date of the AHP rule, September 1, 2018. A Pathway II AHP applies to an AHP formed under the newly available federal rules, effective on or after September 1, 2018. An AHP may select if it is operating under Pathway I or Pathway II at issuance of the policy, or at renewal, but no more frequently than once every 12 months.

**4. Experience/Claim Rating.**

- a. Pathway I: Except for a bona-fide employer association as defined in § 31A-30, AHP coverage issued to a small employer or individual must comply with the provisions of Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act and § 31A-2-212(5).
- b. Pathway II: Rating is limited to the provisions of the AHP rule.

**5. Benefit Requirements.**

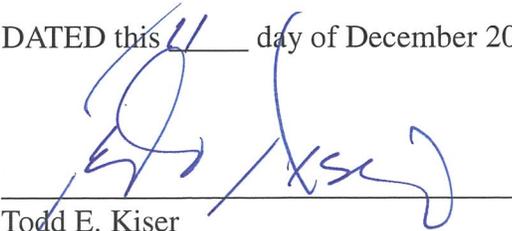
- a. Pathway I: If a Pathway I AHP provides coverage to a sole proprietor or small employer, the association policy must comply with the benefit requirements in both state and federal law for individual and small employers.
- b. Pathway II: A Pathway II AHP must comply with the AHP rule and is based on the size of the AHP, rather than the employers participating in the AHP.

**6. Out of State Association Health Plans.**

Unless exempt under § 31A-1-103(3)(h), AHPs established outside of Utah may only offer a fully insured plan to Utah employers, including sole proprietors, if the plan has been properly filed and meets all applicable Utah laws. A self-funded AHP may not provide coverage to Utah residents unless the AHP obtains a certificate of authority.

An insurer interested in offering coverage to an AHP is encouraged to contact the Health & Life Division at [health.uid@utah.gov](mailto:health.uid@utah.gov) or (801) 538-3077.

DATED this 11 day of December 2018.

  
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Todd E. Kiser  
Insurance Commissioner