



# State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

*Tony Evers, Governor*  
*Mark V. Afable, Commissioner*

*Wisconsin.gov*

125 South Webster Street • P.O. Box 7873  
Madison, Wisconsin 53707-7873  
Phone: (608) 266-3585 • Fax: (608) 266-9935  
ociinformation@wisconsin.gov  
oci.wi.gov

DATE: May 2, 2019  
TO: All Insurers, Agents, and Interested Parties  
FROM: Mark V. Afable, Commissioner of Insurance  
SUBJECT: Recent Ruling on Department of Labor Association Health Plan Rule

On June 21, 2018, the U.S. Department of Labor issued a final rule related to association health plans ([AHP Rule](#)). Broadly speaking, the final rule broadened the eligibility standards for a group of employers to be considered a “bona fide association” by allowing groups of unrelated employers to join associations if certain criteria were met. The rule also allowed working owners/sole proprietors to be considered employers who could join a bona fide association.

On March 28, 2019, the U.S. District Court for the District of Columbia granted summary judgment in favor of a group of states who had challenged the validity of the AHP Rule. In doing so, the court vacated the AHP Rule with regard to the expanded eligibility standards to be considered a bona fide association and also vacated the section addressing working owners/sole proprietors. The Department of Labor has appealed that ruling.

Unless this ruling is overturned or stayed, association health plans are now subject to the Department of Labor rules and guidance that were issued prior to the AHP Rule<sup>1</sup>. OCI cannot provide guidance as to whether a particular association meets the Department of Labor pre-AHP Rule requirements.

Insurers who have issued health plans to associations operating under the AHP Rule are reminded that they are obligated to continue to provide coverage and pay claims for the full term of those plans. See Wis.Stat. § 631.15. The ruling, in this case, does not relieve insurers of their obligations under the contract. Unless and until the AHP Rule is reinstated, insurers should not issue health plans to associations who do not meet the pre-AHP Rule Department of Labor requirements.

The Department of Labor has issued [guidance](#) indicating that they will not take enforcement action for potential violations based on actions taken before the district court ruling as long as the parties continue to meet their responsibilities to pay health benefit claims through the remainder of the contract term. The Department of Labor has also stated that insurers will “only be able to renew the coverage for an employer member of an AHP formed pursuant to the Department’s final rule if the coverage complies with the relevant market requirements for that employer’s size (such as, for insurance sold to small employers, the essential health benefits requirements and premium rating rules).”

Any questions concerning this bulletin should be directed to Richard B. Wicka, Chief Legal Counsel, at (608) 261-6018, or by email at [richard.wicka@wisconsin.gov](mailto:richard.wicka@wisconsin.gov).

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<sup>1</sup> See, for example, [“Application of Individual and Group Market Requirements under Title XXVII of the Public Health Service Act when Insurance Coverage Is Sold to, or through, Associations.”](#) September 1, 2011.