

# BENEFITS DEVELOPMENT FOR AGENCIES AND FISCAL INTERMEDIARIES COVERED BY WAGE PARITY

*Home Care Alert*  
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Recently, the U.S. Department of Labor issued regulations expanding opportunities for small employers and working owners to band together to form association health plans (“AHPs”). The AHP regulations present a potential opportunity for home care agencies and fiscal intermediaries to jointly offer health and welfare programs to member employees, including home health aides and personal assistants subject to the Wage Parity Act benefit requirements.

The AHP regulations were issued against the backdrop of an executive order by President Trump, seeking to bypass many of the “costly requirements” of the Affordable Care Act (“ACA”). As large group health plans, AHPs will have greater flexibility in designing benefit packages, will avoid the ACA’s requirement of providing coverage for “essential health benefits,” and potentially will not have to comply with the community rating rules which apply in the small group health plan market. In addition to avoiding these regulatory restrictions, AHPs offer the potential to reduce premiums and administrative costs through economies of scale and increased bargaining power.

The opportunity for home care agencies to form AHPs became available because the new federal rule broadens the formerly restrictive “commonality of interest” standard used to determine when a group of employers may sponsor a single ERISA group health plan. Under federal law, an association of employers in the same industry or geographic area may join together for the primary purpose of sponsoring a group health plan. In addition to the purpose of providing group health benefits to its members, the association must have at least one “substantial business purpose” unrelated to the provision of employee benefits. For example, if a home care industry group formed an association to offer an AHP, they could demonstrate substantial non-benefits related activities by convening conferences, offering classes, or engaging in public relations activities.

AHPs are subject to concurrent regulation by states as multiple employer welfare arrangements. The New York State Department of Financial Services recently issued guidance indicating its position that the DOL’s rules regarding the liberalization of the requirements for AHPs do not preempt contrary New York law requiring associations to be formed for a “principal” purpose other than the provision of

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benefits, and allowing the state to continue to rate policies issued to AHPs based on member employer size and not the size of the association as a whole. It is unclear whether this apparent conflict may result in partial preemption of these contrary New York standards.

In addition to the uncertain application of state law, employers interested in the exploring AHPs should be aware that AHPs are subject to a number of organizational and governance requirements, and must satisfy certain nondiscrimination rules which prohibit restricting membership on the basis of any health factor. As group health plans, AHPs are subject to multiple legal requirements under ERISA, and federal consumer health protection statutes.

For more information, contact a member of the Hodgson Russ Home Care Team.