



ATTORNEYS GENERAL FILE SUIT TO CHALLENGE ASSOCIATION HEALTH PLANS

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On Thursday, August 2, attorneys general from 11 states and the District of Columbia filed suit against the Department of Labor, challenging the Trump administration's new Association Health Plan (AHP) rule. The attorneys general of California, Delaware, Kentucky, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Virginia, Washington, and Washington, D.C., allege that the new rules violate the Affordable Care Act (ACA) and the Employee Retirement Income Security Act (ERISA).

The rule, which was released on June 19, would allow businesses sharing a common industry or geographic area to join together to purchase health insurance. The release of the rule was prompted by an executive order signed by President Donald Trump in October.

In their complaint, the attorneys general assert that the rule "is part of this Administration's broad effort to undermine the ACA." The complaint further argues that "the Final Rule's purpose and effect are simple: to shift, through manipulation of the Employment Retirement Income Security Act, a large number of small employers and individuals into the large group market because the ACA's core protections do not apply to that market." According to the complaint, AHPs would lack market incentives and statutory protections under federal law that apply to plans from true large employers, resulting in fewer benefits and less coverage in all three markets.

The attorneys general allege that the AHP rule is unlawful because it undermines the statutory structure adopted in the ACA to apply protections to the individual and small group markets. Their suit argues that the rule allows associations of small employers and individuals to be treated as large groups; allows a self-employed individual to qualify as both an “employee” and “employer,” violating ACA, ERISA, and established case law; and it unlawfully expands ERISA to allow all employers in a state or metropolitan area to group together into a profit-making commercial insurance enterprise. Included in the attorneys general’s grievances outlined in the complaint is the fact that AHPs would be permitted to discriminate based on a range of factors, including age, gender, education level, occupation, and claims history, and still qualify as ERISA plans.

Proponents of AHPs argue that they will benefit small businesses owners who cannot afford traditional coverage. In an op-ed published by the Wall Street Journal, Department of Labor Secretary Alexander Acosta describes how the ACA “imposes starkly different rules” on small versus large businesses: “Companies with 50 or fewer employees are subject to the law’s benefit mandates and rating restrictions, while large companies are not. This is backward. Small businesses should face the same regulatory burden as large companies, if not a lighter one. AHPs will help level the playing field.” Dawn Sweeney, president and CEO of the National Restaurant Association, argues in the New York Post that the rule “empowers small businesses to advocate for better, more affordable health care.”

Note: The Association Health Plan rule took effect August 20, 2018.