

Susan Nash Weighs in on DOL's Final Rule on Association Health Plans

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In Law360's "DOL Blesses ACA-Skirting Association Health Plans," published June 19, Health and Welfare Benefits Partner Susan Nash discussed the Department of Labor's approval of its final rule on association health plans (AHPs). The rule eases the requirements for small businesses to come together to create health care plans that get around certain Affordable Care Act requirements. The Secretary of Labor noted that the expansion of who is permitted to create an AHP should lead to about 4 million people enrolled by 2023.

While appreciative of the DOL's liberalizing the rules, Susan expressed mixed feelings about the eased standard, noting, "I'm a little concerned about how wide-open the rules appear to be in terms of who can sponsor an association health plan."

On behalf of clients, Winston attorneys wrote several of the 900 comments submitted to the DOL during the AHP rule's public comment period. According to Susan, a top question from her clients was: "If you allow an association to be formed purely for the purposes of forming an association health plan, how can you combat the abuses that have occurred in the past?"

In the 2000s, con artists taking advantage of ambiguous laws as to whether federal or state government regulated multi-employer welfare arrangements (MEWAs) created fake health insurance vehicles, such as AHPs, to steal people's premiums.

While the final rule says that state insurance rules will apply to association health plans in the same way they apply to other large-group health plans, a spokesperson for the Coalition on Insurance Fraud noted that consumers will be at risk from scammers unless the DOL clearly delineates how ERISA and state insurance law will work in conjunction to regulate AHPs.

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