

## More Small Business Health Plans to Form in New Year

By Madison Alder

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- Existing small business health plans that are “self-insured” can expand scope Jan. 1
- Land O’Lakes will add thousands in 2019 under DOL’s expanded rule

The new year will bring a new health insurance option for some small businesses.

Existing small business health plans that pay members claims on their own will be able to take advantage of a recent Labor Department rule Jan. 1 that allows them to expand their coverage to more people. While some groups are ready to take advantage of the new health plan offering, critics caution it may bring more fraud and insolvency into the health insurance market.

The DOL rule, finalized in June, allows more small businesses, including self-employed people, the ability to band together in an association health plan and offer their employees health coverage as a large group.

The plans, which were once popular before the Affordable Care Act, largely disappeared after the health law placed requirements on them, like coverage of essential health benefits, that were the same as those in the small group marketplace. The ACA’s 10 essential health benefits require coverage of minimum health needs, including emergency care, mental health services, and maternity care. The new rule allows the groups of small employers collectively to be considered a large employer and circumvent those requirements.

The rollout date for the existing plans that pay claims on their own, known as “self-insured” or “self-funded” plans, is the second of three created under the DOL’s rule. Those employers or groups that choose to buy an insurance product from an insurer—a “fully insured” plan—were able to do so under the new rule in September, and groups that want to create a new self-insured plan will be able to do so in April 2019.

In the next five years, the plans will provide coverage for 4 million small business workers, including 400,000 who didn’t already have health care, the Congressional Budget Office estimated.

While there are no estimates on their use so far, the Labor Department “has seen strong enthusiasm in AHPs since the rule went into effect just a few months ago, ” an agency spokesperson told Bloomberg Law,

“The number of groups and organizations interested is steadily growing across the nation,” the spokesperson said in an email.

## Solvency Issues

Self-funded plans which have more freedom than their fully insured counterparts draw caution from state regulators because they have been prone to insolvency.

“The biggest concern for self-funded plans is that there could be solvency issues,” Christina Goe, an attorney and former general counsel for the Montana Department of Insurance, said.

Self-insured plans can be risky because they require plans to pay claims on their own and operate almost like an insurance company. In fact, some states choose to regulate them like a commercial insurance company to reduce the risk of fraud and insolvency.

Alabama, Connecticut, Louisiana, Maryland, New York, and Pennsylvania are just a few examples of states that have this requirement, according a recent study by Goe and several other researchers of states’ reactions to the new rule. The study published by health-care researcher The Commonwealth Fund, looked at the advisory bulletins and laws that have come out of several states in response to the rule.

## State Bans

Other states, like Washington and California, have banned the establishment of new self-insured association health plans in their states.

Kevin Lucia, a researcher and professor at Georgetown who also worked on the study, said it makes sense that states that have had issues with self-funded association health plans are “being thoughtful in how they approach them.”

Between 2000 and 2002, the plans left 200,000 people without coverage and racked up \$252 million in unpaid bills, according to a 2004 Government Accountability Office report. That report was last time the federal government has released data about the plans.

Right now, many states are looking at their history with these plans and laws on the books and thinking about ways to regulate the new version, Lucia said. The actions that states are taking aren’t to punish those who establish these plans, but to protect consumers and providers in their state, he said.

“There’s a deep concern about the problems these arrangements have had in the past,” he said.

## New Opportunity

For some groups, however, the effective date for self-insured plans presents an opportunity for them to provide coverage to populations that they couldn’t reach before.

Minnesota-based agriculture and dairy cooperative Land O’Lakes announced in October it plans to expand its existing self-insured plan under the new rule in 2019 to include about 15,000 farmers in Minnesota and 28,000 farmers in Nebraska who are individuals or part of co-ops. The plan also complies with the ACA’s coverage requirements.

Chris Condeluci, a health policy lawyer who is counsel for the Land O'Lakes plan, said the group's decision to self-insure was partially due to the fact that no health carrier would underwrite the farmers' plan and the group believed it had the ability to manage the plan itself.

"If you're a self-insured plan, you want to make sure your claims are managed because it's on your dime," Condeluci said. "There's a desire to keep your cost low and make sure your participants are healthy."

Plans aren't likely to experience the same level of fraud and insolvency as they have in the past because of the federal and state regulations that have since been put into place to protect against bad actors, he said.

Competition will help ensure plans are providing the best product for the consumer, Condeluci, who helped develop portions of the ACA as counsel to the Senate Finance Committee, said.

Association health plans have to compete against plans on the ACA marketplace that offer comprehensive coverage, he said. "In other words, the ACA itself is providing competition for the AHPs. That wasn't the case before."

—With assistance from Stephen Joyce

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