BCLP. Client Intelligent

BenefitsBCLP

DEEP DIVE: ASSOCIATION HEALTH PLANS: BUSINESS AND OPERATIONAL ISSUES ASSOCIATED WITH FORMING AN AHP

ENGAGING AN INSURANCE CARRIER

Oct 16, 2018

On October 12, 2017, President Trump signed a "Presidential Executive Order Promoting Healthcare Choice and Competition Across the United States" (the "Executive Order") to "facilitate the purchase of insurance across state lines and the development and operation of a healthcare system that provides high-quality care at affordable prices for the American people." One of the stated goals in the Executive Order is to expand access to and allow more employers to form Association Health Plans ("AHPs"). In furtherance of this goal, the Executive Order directed the Department of Labor to consider proposing new rules to expand the definition of "employer" under Section 3(5) of the Employee Retirement Income Security Act of 1974 ("ERISA"). The Department of Labor issued its proposed rule on January 5, 2018 and its final rule on June 19, 2018.

THE INSURANCE CARRIER: AN ESSENTIAL BUT SOMETIMES RELUCTANT PARTNER

A successful AHP must engage skilled and experienced service providers who will be crucial to the smooth day-to-day operation of the AHP. A partial list of required AHP services includes (i) billing and collection of premiums, (ii) marketing and sales, (iii) clear and comprehensive participant communications, some of which are mandated by law, (iv) legally-required governmental fillings, (v) call centers, (vi) internet resources, (vii) claims processing, (viii) underwriting, (viii) robust provider networks, (ix) pharmacy benefit management, (x) procedures for compliance with a myriad of state laws which are often inconsistent with each other, and (xi) stop loss insurance to protect against claims costs which exceed premiums. The ideal partner is a strong insurance carrier.

The United States is fortunate to serve as the domicile for several dynamic and cutting-edge health insurers. Perhaps because of the tremendous power they wield with respect to health care, our country's health insurance carriers are a favorite punching bag for doctors, politicians, the media, and the entertainment industry. In fact, however, they are truly remarkable organizations, deep in talent, having spent many billions of dollars on perfecting state-of-the-art systems that are unrivaled in the rest of the world. Given the substantial barriers to entry into the health insurance industry, forming a successful AHP would be very difficult without a strong insurance company partner. As it turns out, however, health insurance companies are often not that interested in contracting with startup AHPs, so engaging an insurance company partner will range from difficult to nearly impossible. Having said this, it can be done. An understanding of the motivations of the carriers is crucial to the success of this effort.

First, let's look at start-up AHPs from the carriers' point of view. An association which is starting a new AHP will typically require a lot of assistance and expertise from its prospective insurance company partner. This means diversion of time and precious resources without immediate compensation; the carrier's reward will only arrive if the AHP is successful and the member firms generate profitable revenue to the carrier. In most cases, it takes years for a startup AHP to build up to a sustainable level, and there's no guarantee of success. Moreover, if in fact the AHP is successful, it will often "cannibalize" the existing business of the AHP's insurance carrier partner, *i.e.*, employers which already have a group health insurance policy with the carrier may choose to switch coverage to the AHP. Since the carriers typically earn higher profits on their small group business than their AHP business, this will typically be an unwelcome development. Finally, following the promulgation of the DOL's final AHP rule on June 19, a few of the "blue" states have become aggressively hostile towards AHPs, and are looking for any excuse to fine a carrier which partners with one or have placed constraints on AHPs to limit their potential growth (for example, California recently enacted SB1375 to prohibit sole proprietors, partners of a partnership, and their spouses and partners from participating in an AHP).

So why would a carrier ever partner with an AHP? To a large extent, it's often a defensive measure. If a carrier believes that a startup AHP has a good chance of long-term success, then it might be willing to enter into an exclusive arrangement with the AHP to prevent a competitor from doing so. The ideal AHP startup partner, from the carrier's standpoint, is one which has both the will to succeed and a substantial small employer membership. As a result, the carrier will be looking for demonstrated commitment from the association to the success of the AHP in the form of positive answers to the following questions:

- Has the sponsoring association assigned a strong, entrepreneurial project manager with the task of getting the AHP up and running?
- Has the association provided the project manager with the financial resources to succeed?

The carrier also will be interested in the strength and quality of the association's legal support. In the case of a self-insured AHP, the carrier may have some concerns regarding the AHP's startup capital and ability to continue as an ongoing plan in the event of adverse claims experience. Finally, as will be more fully discussed in our next "Deep Dive", the carrier will typically be much more interested in partnering with a startup AHP which plans to operate in AHP-friendly states (such as Oklahoma or Texas) versus states which are actively hostile to AHPs.

RELATED PRACTICE AREAS

- Employee Benefits & Executive Compensation
- Insurance
- Association Health Plan Practice

MEET THE TEAM

Stephen J. Evans

St. Louis

steve.evans@bclplaw.com
+1 314 259 2387
