

Haynes Comments on Proposed Rules for Bona Fide Association Health Plans

Issue. CMS issued Proposed Rules regarding Health Insurance Market and Rate Review. CMS requested comments on the PPACA amendments to the bona fide association plan exception to the guaranteed availability and guaranteed renewability rules.

Background. HIPAA initially set forth new guaranteed availability and guaranteed renewability rules for the individual and group marketplace. The HIPAA rules included a special exception for bona fide association plans, so that such plans need only be offered and renewed for association members. PPACA, however, repealed the exception to the guaranteed availability rule but retained the exception to the guaranteed renewability rule.

Comments. Because Haynes Benefits has a number of association health plan clients that would be affected by these rules, Andy Haynes filed comments with CMS. He noted that the exception to the guaranteed availability and guaranteed renewability rules is based on a common sense rule—associations should be able, and even required, to limit enrollment in bona fide association plans to association members.

Haynes stated that, under the new rules, association plans would have to enroll the member but could then immediately terminate the employer for lack of membership in the association. This sequence of events surely was not intended by Congress.

Proposed Exception. In order to minimize disruptions while maintaining consumer protections, Haynes stated that CMS should establish a regulatory exception for associations that otherwise meet the definition of a bona fide association plan under the still-existing guaranteed renewability exception. Utilizing the same test for guaranteed availability and guaranteed renewability assures a consistent and seamless test for both rules for the association and carrier at issue.

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