

From: DMHC Licensing eFiling

Subject: APL 23-013 (OPL) – Large Group Coverage of Association Health Plans: Extension of Phase Out and Guidance

Date: Thursday, April 20, 2023, 03:24 PM

Attachments: APL 23-013 – Assoc. Health Plans – Extension of Phase Out and Guidance (04.20.23)

Dear Health Plan Representative:

The Department of Managed Health Care (DMHC) issues this All Plan Letter (APL) 23-013, to provide health care services plans (health plans) guidance regarding extension and phase out for Large Group Coverage of Association Health Plans.

Thank you.



Gavin Newsom, Governor
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ALL PLAN LETTER

DATE: April 20, 2023

TO: All Health Care Service Plans

FROM: Jenny Phillips
Deputy Director
Office of Plan Licensing

SUBJECT: APL 23-013 (OPL) – Large Group Coverage of Association Health Plans:
Extension of Phase Out and Guidance

I. BACKGROUND:

On December 9, 2019, the Department of Managed Health Care (DMHC) issued All Plan Letter (APL) 19-024 reminding health plans, solicitors, brokers and others of the law codified in Senate Bill 1375 (Stats 2018 ch 700 §3).

APL 19-024 explained that in California, group coverage may not be sold to individual subscribers directly or “indirectly through any arrangement.”¹ The APL also clarified that large group coverage may not be sold to small employers through multi-employer welfare arrangements (MEWAs),² association health plans (AHPs),³ voluntary employees’ beneficiary associations (VEBAs)⁴ or any similar arrangements (collectively “associations”). APL 19-024 implemented a “phase out” period through June 30, 2020.

¹ Health and Safety Code sections 1399.802 and 1399.846. All statutory citations refer to the Health and Safety Code unless otherwise noted.

² A MEWA is “an employee welfare benefit plan, or any other arrangement... established or maintained for the purpose of offering or providing [welfare plan benefits] to the employees or two or more employers... or their beneficiaries.” 29 U.S.C. section 1002(40)(A).

³ AHPs are a type of MEWA offered by employer groups and associations to provide health care coverage for employees.

⁴ VEBAs are tax-advantaged vehicle for funding certain employee benefits, including health care coverage. Employees can participate in the VEBA based on their common employment-related bond, such as a common employer, coverage under one or more collective bargaining agreements, or membership in a labor union. A VEBA may be, but is not always, associated with an employee welfare benefit plan under ERISA.

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Plans were permitted to renew coverage for those small employers currently purchasing large group coverage through an employer association for one year. A copy of APL 19-024 can be found on the [DMHC's website](#).

On May 5, 2020, due to the COVID-19 state of emergency, the DMHC issued APL 20-019 to extend the end of the phase-out period through October 31, 2020. A copy of APL 20-019 can be found on the [DMHC's website](#). On August 21, 2020, the DMHC issued APL 20-031 to extend the end of the phase-out-period through February 28, 2021. A copy of APL 20-031 is available on the [DMHC's website](#).

On March 24, 2021, the DMHC issued APL 22-012, informing health plans and MEWAs of the requirements of SB 255 (Portantino, Ch. 725, Stats. 2021) and SB 718 (Bates, Ch. 736, Stats. 2021). SB 255 and SB 718 created narrow exemptions to existing law that makes explicit the general rule that small employers and individuals cannot purchase large group coverage through an association. To demonstrate compliance with SB 255 and SB 718, and Section 1357.503, health plans and MEWAs were required to submit specified information to the DMHC on or before April 15, 2022. A copy of APL 22-012 is available on the [DMHC's website](#).

II. HEALTH PLAN EXTENSION OF PHASE OUT PERIOD FOR MEWAS:

The DMHC recognizes that some health plans and MEWAs continued to renew large group coverage while the DMHC reviewed compliance submissions for SB 255 and SB 718. As such, health plans contracting with MEWAs may continue to renew large group coverage for up to one year until December 31, 2023, if the health plan submits the following information to the DMHC on or before May 19, 2023:

1. Submit the filing via eFiling as an Amendment Filing titled "APL 23-013: Compliance with MEWA LG Contract".
2. Submit an Exhibit E-1 in the filing including the following for each MEWA:
 - a. The name of the MEWA and sponsoring association,
 - b. The renewal date(s) for the large group coverage, and
 - c. The number of covered enrollees.

III. EXEMPTION FOR TAFT-HARTLEY AND DAVIS-BACON TRUSTS:

The DMHC seeks to clarify the scope of APL 19-024 and exempt multiemployer plans, also referred to as "Taft-Hartley" plans under the Labor Management Relations Act, 1947, § 302(c)(5) as amended 29 U.S.C. § 186(c)(5) and "Davis-Bacon" trusts authorized under the Davis-Bacon Act, 40 U.S.C. Section 3141 *et seq.*, from SB 1375 and the general rule which prohibits the sale of large group coverage to associations. Health plans may continue to sell large group coverage to both Taft-Hartley plans and Davis-Bacon trusts.

IV. QUESTIONS OR CONCERNS:

If Plans have any questions or concerns regarding this APL, please contact your Plan's assigned Office of Plan Licensing reviewer.

If MEWAs have any questions or concerns regarding this APL, please contact the Office of Plan Licensing at MEWA.Registration@dmhc.ca.gov.