As we advised was likely during our June 29, 2019 webinar, Association Health Plans — Are They Really an Option to Consider?, at least two states were likely to challenge the enforceability of the new regulations issued by the Department of Labor that expand the definition of “employer” for groups who are qualifying association health plans (“AHP’s”). Today, the Attorney Generals of New York, Massachusetts, California, D.C. and six other states have now sued in the D.C. Federal District Court to enjoin the implementation of the AHP Final Rule and declare it invalid primarily because it directly conflicts with the express terms of the Affordable Care Act of 2010 (“ACA”) and increases the risk of fraud and harm to consumers who will lose coverages mandated under the ACA and jeopardize states’ efforts to protect their residents through stronger regulation.

It is far too soon to predict the outcome of this litigation but at the very least this litigation effort will likely cause insurers to move cautiously in the offering of new coverage options under the AHP model until greater clarity is provided, either through the courts or through new regulation issued within these and other states who perceive these types of programs as a threat to their constituents. We will continue to keep you updated on any developments that continue to occur in this emerging area of focus.

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