



Association Health Plans Issue Brief

Background

For some small employers, health insurance for employees is purchased through an association or group of multiple small employers in an arrangement known as an Association Health Plan (AHP). The theory is that AHPs can enable small businesses to come together at an association level and pool their employees as a group—with the aim of taking advantage of the additional value and reduced administrative expenses that larger-group plans offer.

Most AHPs are organized around a common professional interest, such as a professional organization or industry group, a trade organization, or a state or local chamber of commerce. An AHP can be a plan where the policy itself is held by the association or an arrangement where the association self-insures for members' medical claims. Rather than being an actual product, Association Health Plan is an umbrella term used to refer to the concept of different associations that offer health insurance, as well as for Multiple Employer Welfare Arrangements (MEWAs)

Types of Association Health Plans

An Association Health Plan may take on one of the following forms:

- Professional or trade association offering health insurance as an incidental benefit of membership
- Captive association of an insurance company used to market insurer's products
- Association established by a Professional Employer Organization (PEO)
- Multiple Employer Welfare Arrangement
- ERISA Association Health Plan

An Association Health Plan may be established within a single state and, if fully insured, subject to the insurance laws of that state. As an AHP is not itself an insurance product, the particular regulation of an AHP varies depending on the state and how the AHP is structured. If an AHP markets to individuals, it is treated by the ACA as individual insurance, subject to the requirements of the ACA for nongroup coverage. Federal

regulations adopted in accordance with the ACA further strengthens consumer protections, requiring AHPs to comply with applicable insurance standards and consumer protections, including covering essential health benefits, community rating, and rate review.

ERISA Association Health Plans are associations that sell health insurance as an ERISA bona fide group or association of employers, according to standards established by the Department of Labor, interpreting the Employee Retirement Income Security Act (ERISA).

AHPs that are subject to ERISA are governed by both the state in which they operate and the U.S. Department of Labor.

Proposals to Deregulate AHPs

For more than a decade, there have been proposals to exempt Association Health Plans from state insurance laws, segment the AHP enrollees from the small group unified risk pool,



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and to allow for interstate AHPs. Legislation has been proposed at the federal level dating back to the late 1990s to create federally-recognized Association Health Plans, referred to in some bills as “Small Business Health Plans.” Whether fully-insured or self-funded, these plans would be exempt from most state regulation and oversight, subject only to ERISA and oversight by the U.S. Department of Labor, and most proposals would also allow for interstate plans. The proposals, including The Small Business Health Fairness Act (H.R. 1101), passed by the U.S. House of Representatives in March 2017, establishes requirements for creating a federally-certified AHP, including for certification itself, sponsors and boards of trustees, participation and coverage, nondiscrimination, contribution rates, and voluntary termination.¹

Policy Concerns

Exemptions would lead to market instability and higher premiums in the traditional small-group market. AHPs exempt from state regulation and oversight would enable them to be more selective about who they cover. They will be less likely to cover higher-risk populations, which would cause an imbalance in the risk pool for other small-business health plans that are part of the state small group risk pool. Adverse selection would likely abound and Association Health Plans would be selling an unregulated product alongside small group plans, which creates an unlevel playing field. Premiums would go up for those buying in the traditional small-group market, according to the Congressional Budget Office (CBO).²

Exemptions would eliminate consumer and patient protections. Under federal association plan proposals, AHPs would not be subject to state patient protections, such as laws that provide access to emergency care, access to

specialists, mandatory grievance procedures, and required internal and external review of denied medical claims. Fewer consumers would have their rights protected, according to the National Association of Insurance Commissioners. AHPs would also be exempt from state solvency requirements, putting consumers at serious risk of incurring medical claims that cannot be paid by their Association Health Plan.³

Exemptions would increase the potential for fraud and abuse. Allowing AHPs to operate outside of state oversight creates opportunities for unscrupulous entities to engage in fraud and abuse. For example, between 2000 and 2002, insurance scams through associations left more than 200,000 policyholders with unpaid medical bills totaling \$252 million. Policy experts have found that “the most prevalent way to sell phony insurance continues to be either through real or phony associations.” Weakening state oversight would expose more consumers to hardship, loss of coverage, and unpaid medical bills.⁴ Proposals like H.R. 1101 would essentially create a newer version of the unregulated Self-Funded MEWAs that existed until Congress intervened in 1983. Self-funded MEWAs had no clear regulatory authority, as initially it appeared that ERISA exempted them from state-level regulatory oversight. Multiple MEWA bankruptcies resulted, and consumers had limited avenue for redress.⁵

¹ <https://www.congress.gov/bill/115th-congress/house-bill/1101/text>

² CBO Paper—Increasing Small-Firm Health Insurance Coverage Through Association Health Plans and HealthMarts, January 2000.

<https://www.cbo.gov/publication/12066>
America’s Health Insurance Plans

³ NAIC Consumer Alert: Association Health Plans Are Bad For Consumers.

http://www.naic.org/documents/consumer_alert_ahps.pdf

⁴ Mila Kofman, Kevin Lucia, Eliza Bangit, and Karen Pollitz. “Association Health Plans: What’s All The Fuss About?” Health Affairs; November/December 2006.

<http://content.healthaffairs.org/content/25/6/1591.full>

⁵ Mila Kofman, Eliza Bangit, and Kevin Lucia. “MEWAs: The Threat of Plan Insolvency and Other Challenges.” Commonwealth Fund; March 2002.

http://www.commonwealthfund.org/usr_doc/kofman_mewas.pdf

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Resources

- Kaiser Family Foundation: Association Health Plans for Small Groups and Self-Employed Individuals under the Better Care Reconciliation Act - <http://files.kff.org/attachment/Issue-Brief-Association-Health-Plans-for-Small-Groups-and-Self-Employed-Individuals-under-the-Better-Care-Reconciliation-Act>
- Georgetown University Health Policy Institute and Health Affairs—Association Health Plans—What’s All The Fuss About? <http://content.healthaffairs.org/content/25/6/1591.full.pdf+html>
- NAIC Consumer Alert—Association Health Plans are Bad for Consumers http://www.naic.org/documents/consumer_alert_ahps.pdf
- Commonwealth Foundation – House Proposal to Promote Association Health Plans Poses Risks for Insurance Markets, Consumers <http://www.commonwealthfund.org/publications/blog/2017/mar/house-proposal-to-promote-association-health-plans-poses-risks-for-insurance-markets-consumers>
- U.S. Department of Labor – MEWAs: A Guide to Federal and State Regulation <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/mewa-under-erisa-a-guide-to-federal-and-state-regulation.pdf>