

H.R. 1101 and Association Health Plans

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Introduction

Employers with a small number of employees have provided health benefits using association health plans (AHPs) for decades. AHPs allow small employers to join together to buy health insurance, so their workers can gain access to the same pricing and coverage benefits enjoyed by large employers. Congress has a long history of support of AHPs. H.R. 1101, along with the proposed amendment, would clarify the use of AHPs.

Background of Association Health Plans

For years, employers have joined together to provide employee benefits. The reason is that multiple employers can form one large group and thereby receive cheaper costs for employee health benefits with less administrative overhead.

The government broadly defines these groups as multiple employer welfare arrangements (MEWAs) and AHPs fall under this heading. Congress set rules for the conduct of MEWAs, and specifically for AHPs, under the Employee Retirement Income Security Act (ERISA) of 1974.

Some of the initial AHPs were undercapitalized and were forced to close. This left employees without benefits. Because of fraud and abuse, Congress amended ERISA in 1982 and gave states some ability to regulate MEWAs. ERISA was again amended in 1996 and gave the Department of Labor oversight authority of essentially all MEWAs.¹

AHPs can be organized in two ways. A consolidated AHP is underwritten at the group level, where all employees from all employers

are placed in one plan. An affinity AHP is underwritten at the individual employee level. This can save money if the AHP has a much higher percentage of young and healthy workers. Both consolidated and affinity plans can either self-insure or can purchase health insurance from a commercial insurance company.²

Association Health Plans in Washington State

The Washington state legislature legalized AHPs in 1995. Although AHPs have been very popular in Washington state and have provided reasonably-priced health insurance to hundreds of thousands of people, the current state Insurance Commissioner has never been a fan. Commissioner Kreidler believes AHPs “cherry pick” only healthy people and exclude sicker individuals. In 2007, he imposed stricter rating requirements which eliminated health underwriting for AHPs. In effect, Commissioner Kreidler’s regulatory action repealed the state’s 1995 AHP law, since the regulation made the majority of such plans unavailable in the state. Employers using AHP plans sued that same year and the court ruled in favor of allowing AHPs to continue.

A few years later, the federal Affordable Care Act (ACA) imposed a new rating requirement called “community rating” for all health insurance plans sold in the United States. Except in very specific cases, this requirement means insurance companies cannot price insurance policies based on true risk, by charging more for sick individuals

1 “History of EBISA and ERISA,” United States Department of Labor, at <http://www.dol.gov/ebsa/aboutebsa/history.html>.

2 “Association health plans: What’s all the fuss about?,” by M.Kofman, K.Lucia, E.Bangit and K.Pollitz, Health Affairs, vol.25, no.6, pages 1591-1602, November, 2006 at <https://www.venable.com/association-health-plans-and-health-care-reform-a-trap-for-the-unwary-04-22-2013/>

than for healthy people and they cannot account for higher health costs based on age by charging a significant difference for older people.

Republicans in Congress proposed an amendment to the ACA to make it clear that existing AHP plans in the states were allowed under federal law. However, the amendment was defeated in the Democratically-controlled House of Representatives and was not included in the final bill.

Commissioner Kreidler, using the community rating requirement in the ACA, renewed his effort to restrict or eliminate AHPs in Washington state. There were over 60 AHPs serving 500,000 members in our state when the ACA passed in 2010. The Commissioner has established a two part test. First, he says associations must have been formed for purposes other than buying health insurance and second, he says associations must abide by the community rating in the federal ACA.

In defense against the new regulations, multiple AHP plans in Washington state filed lawsuits against the Insurance Commissioner. The basis of these lawsuits was that the ACA does not supersede the 1974 federal ERISA law which outlines rating methodology. In 2015, the Court agreed and ruled in favor of the plans. For the second time, Commissioner Kreidler's efforts to restrict or end AHPs in Washington state had failed.

H.R. 1101

The current Congress is dedicated to health care reform. The stated purpose of H.R. 1101 is "To amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees." The bill would support the use of association health plans and simplify access for small businesses to the AHP market.

Amendment to H.R. 1101

The proposed amendment to H.R. 1101 clarifies the application process for small businesses to join an AHP. The bill allows AHPs to set contribution rates based on the "claims experience of the plan." Federal and Washington state law now permit AHPs to set premium rates based on the claims experience of each small business in the AHP.

The amendment puts in statute that AHPs can set contribution rates based on the claims experience of each small business.

Policy Analysis

Small businesses are typically start-up or low-margin companies where the added cost of employee health insurance can mean the difference between success and bankruptcy.

Association health plans offer a real solution for small business owners who want to provide employee health benefits. AHPs are based on voluntary associations, and they have a track record of offering quality health insurance at a reasonable price. Access to AHPs for any small business should be as easy as possible. Barriers to forming or joining an AHP should be minimal.

If structured properly, the AHP market can be competitive and can allow small employers to access the same health insurance price and benefit advantages that large employers enjoy. The key is the voluntary choices made by small employers and their employees in seeking affordable health coverage.

Policy recommendations

H.R. 1101 would expand the use of AHPs. The proposed amendment would clarify how contribution rates are set. It would allow AHPs to set premium rates based on the claims history of each small business, rather than the experience of the plan overall. This would allow a small company without any claims history access to an AHP.

H.R. 1101, with the proposed amendment, would increase access to health insurance and offer more choices for people employed by small businesses. The bill, with amendment, represents good public policy.

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