HR POLICY ASSOCIATION
The Association of Senior Human Resource Executives

Policy Brief

Association Health Plans Aim to Help Small Business Employees Obtain Health Benefits

Small Business Health Fairness Act Has Strong Support of President Bush, Business Groups

Of the 45 million uninsured individuals in America, more than a quarter of them work in firms with fewer than 100 employees. Congress, with the backing of President Bush, is considering legislation intended to assist small employers in offering health insurance to their employees through pools referred to as association health plans (AHPs). The Small Business Health Fairness Act of 2005 (H.R. 525), introduced by Rep. Sam Johnson (R-TX), was reported out of the House passed the House on April 13, 2005. A companion measure (S. 406) was introduced in the Senate by Sen. Olympia Snowe (R-ME). The legislation aims to lower premiums and administrative costs and remove state regulatory burdens for AHPs. Trade, industry, or professional associations that exist for purposes other than providing health insurance could offer a range of health plans to their member firms. Groups supporting the legislation include the U.S. Chamber of Commerce, National Federation of Independent Business, and many small business and professional groups. Those fighting passage of AHP legislation include the Consumers Union, American Association of Health Plans, National Governors Association, National Conference of State Legislatures, and the AFL-CIO.

Associations Currently Regulated by States In an exception to the Employee Retirement Income Security Act (ERISA) preemption of state regulation of employee benefits, states have the authority to regulate health coverage sold by associations and other multiple employer welfare arrangements (MEWAs) even when they are self-funded or self-insured. Congress created this exception in 1983 after several widely publicized failures of association plans. As a result, association plans must comply with the laws and regulations of each state in which they offer plans, including state regulations relating to insurance rates, benefit mandates, funding requirements, grievance and appeals procedures, and solvency standards.

Legislation Would Simplify Regulation of AHPs Under H.R. 525/S. 406, the Department of Labor would assume sole regulatory authority over AHPs with the exception of a few state benefit mandates. The bill would replace various state reserve and solvency requirements with federal standards. Depending upon size, AHPs would be required to maintain surplus reserves of $500,000 to $2,000,000. All certified AHPs would be required to pay into an AHP fund, which could be used by DOL to cover consumer claims for AHPs that may be unable to do so. While AHPs would not be subject to state benefit mandates generally, they would be required to comply with state mandates for coverage of specific diseases, maternal and newborn hospitalization minimums, and mental health parity. The bill includes non-discrimination provisions aimed at preventing AHPs from rejecting sicker applicants from coverage or forcing them to pay higher premiums.

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DOL Certification Process To become a federally qualified AHP, groups must undergo a certification process through DOL, which requires, among other things, that all employers who are members be eligible to enroll and that eligible individuals cannot be excluded because of health status. In addition, an AHP cannot base premiums for any particular small employer on the health status or claims experience of its plan participants. AHPs must have at least 1,000 participants and beneficiaries, and have offered coverage on the date of enactment, or represent trades with average or above average risk.

Opponents Argue AHPs Would Benefit Some Small Employers and Their Employees to the Detriment of Others Opponents of H.R. 525/S. 406 acknowledge that AHPs would likely result in lower costs for some small employers. However, they argue that AHPs would harm existing small group markets because of the effects of only certain small employers participating in AHPs. In insurance markets, healthier groups cross-subsidize the cost of sicker groups, keeping insurance affordable for sicker individuals. Opponents argue that under current AHP legislation, small businesses with healthy workers would be more likely to select AHPs because of the more affordable, slimmed-down benefits packages they offer. Small employers with sicker employees or employees with expensive health care needs would be more likely to stay with insured plans subject to state regulation, which are required to meet state mandates. Since AHPs would not be subject to state rate regulations, they would also be allowed to charge higher rates than insurers in traditional small markets, making certain AHP plans unattractive for some and forcing those individuals into the existing market. Ultimately, this would increase premiums for those outside of AHPs who remain in state-regulated markets, as higher-risk individuals would be spread across a smaller pool.

Supporters Point to Safeguards Against Discrimination Supporters of H.R. 525/S. 406 point out that the bill has expressly included safeguards against adverse risk selection. It clearly requires AHPs to comply with HIPAA provisions, which prohibit excluding employers due to the health status of their workers. In addition, the legislation prohibits AHPs and participating employers from selectively directing their higher-cost employees to the individual insurance market.

Opponents Fear Erosion of Consumer Protections Critics of H.R. 525/S. 406 believe preempting state oversight would place consumers at risk and question DOL's ability to regulate AHPs effectively. State legislatures and consumer advocates believe insurance regulation has traditionally been, and should continue to be, within the province of state regulators. States have developed a body of law to address these matters and are in the best position to monitor market issues specific to each state.

Supporters See Strengthening of Regulations AHP supporters point out that DOL regulation would clarify and strengthen regulatory jurisdiction, ensuring that all AHPs would be held to the same rigorous federal standards. They contend DOL is fully capable of regulating AHPs, which Congress has confirmed by giving DOL increasing jurisdiction over group health plans under HIPAA and the Mental Health Parity Act of 1996.