

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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SENATE BILL 86  
PROPOSED COMMITTEE SUBSTITUTE S86-PCS45094-BC-8

Short Title: Small Business Healthcare Act.

(Public)

Sponsors:

Referred to:

February 20, 2019

A BILL TO BE ENTITLED

AN ACT TO CREATE GREATER OPPORTUNITIES FOR SMALL EMPLOYERS TO PROVIDE EMPLOYEES ACCESS TO HEALTH INSURANCE.

Whereas, Association Health Plans are regulated by multiple consumer protection provisions contained in the Employee Retirement Income Security Act (ERISA), including provisions under the Health Insurance Portability and Accountability Act (HIPAA), the Affordable Care Act, the Mental Health Parity and Addiction Equity Act, the Newborns' and Mothers' Health Protection Act, the Women's Health and Cancer Rights Act, and the Genetic Information Nondiscrimination Act; and

Whereas, under ERISA, the State has been regulating self-insured Association Health Plans in such a way that, in addition to the federal consumer protections that apply to the fully insured Association Health Plans, fully protects the citizens of this State; and

Whereas, new federal Department of Labor regulations regarding Association Health Plans allow for states to provide greater opportunities for small businesses and self-employed individuals to access health benefit plans, while still providing health insurance consumers with the coverage protections established by the foregoing legislation and other provisions of federal law; Now, therefore,

The General Assembly of North Carolina enacts:

**PART I. MORE OPPORTUNITIES FOR SMALL EMPLOYERS AND SOLE PROPRIETORS TO ACCESS SELF-INSURED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS/ASSOCIATION HEALTH PLANS.**

**SECTION 1.(a)** G.S. 58-49-40(a) reads as rewritten:

"(a) ~~To meet the requirements for issuance of a license and to maintain a~~ To qualify for licensure as a MEWA, a MEWA must be: meet all of the following requirements:

- (1) ~~Nonprofit;~~ Be a nonprofit.
- (2) ~~Established by a trade association, industry association, or professional association of employers or professionals~~ Be established by a group of employers under an association that (i) has a constitution or bylaws and that bylaws, (ii) has been organized and maintained in good faith for a continuous period of five years for purposes other than that of obtaining or providing insurance; at least two years, and (iii) has at least one substantial business purpose unrelated to offering and providing health coverage or other employee benefits to its employer members and their employees.
- (3) ~~Operated~~ Be operated pursuant to a trust agreement by a board of trustees that has complete fiscal control over the MEWA and that is responsible for all



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operations of the MEWA. Except as provided in this subdivision, the trustees must be owners, partners, officers, directors, or employees of one or more employers in the MEWA. With the Commissioner's approval, a person who is not such an owner, partner, officer, director, or employee may serve as a trustee if that person possesses the expertise required for such service. A trustee may not be an owner, officer or employee of the administrator or service company of the MEWA. The trustees have the authority to approve applications of association members for participation in the MEWA and to contract with an authorized administrator or service company to administer the operations of the ~~MEWA;~~ MEWA.

(4) ~~Neither~~ Be neither offered nor advertised to the public ~~generally;~~ and generally.

(5) ~~Operated~~ Be operated in accordance with sound actuarial principles.

(6) Have a commonality of interest as described in subsection (h) of this section.

(7) Have at least 500 covered lives."

**SECTION 1.(b)** G.S. 58-49-40 is amended by adding two new subsections to read:

"(h) A MEWA will be treated as having a commonality of interest if either of the following is true:

(1) It is established by a group of employers under an association in the same trade, industry, line of business, or profession.

(2) It is established by employers under an association in the same region or metropolitan area, provided that region or area is contiguous to the State and includes the State.

(i) For purposes of this section, a newly created association shall be deemed to have been organized and maintained for as long as its newest constituent association has been in existence."

**SECTION 1.(c)** G.S. 58-49-30 is amended by adding a new subsection to read:

"(f) As used in this section, the term "employer" shall include sole proprietors and self-employed workers."

**SECTION 1.(d)** G.S. 58-49-50 is amended by adding a new subdivision to read:

"(10a) A copy of the most recent M-1 form as filed with the United States Department of Labor."

## **PART II. REGULATIONS IMPACTING FULLY INSURED ASSOCIATION HEALTH PLANS.**

**SECTION 2.(a)** G.S. 58-51-80(b)(1) reads as rewritten:

"(b) No policy or contract of group accident, group health or group accident and health insurance shall be delivered or issued for delivery in this State unless the group of persons ~~thereby~~ insured by the policy or contract conforms to the requirements of the following subdivisions: all of the following requirements:

(1) Under a policy issued to an employer, principal, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, or by a principal or two or more principals in the same industry or kind of business, which employer, principal, or trustee shall be deemed the policyholder, covering, except as hereinafter provided, only employees, or agents, of any class or classes thereof determined by conditions pertaining to employment, or agency, for amounts of insurance based upon some plan which will preclude individual selection. The premium may be paid by the employer, by the employer and the employees jointly, or by the employee; and where the relationship of principal and agent exists, the premium may be paid by the principal, by the principal and agents, jointly, or by the agents. If the premium is paid by the employer and the employees

1 jointly, or by the principal and agents jointly, or by the employees, or by the  
 2 agents, the group shall be structured on an actuarially sound basis. For the  
 3 purposes of this subdivision, the term "employer" includes a multiple  
 4 employer welfare arrangement that has at least 500 covered lives and is  
 5 classified by the United States Department of Labor as a bona fide group or  
 6 association under at least one of the following:

- 7 a. The requirements set forth in section 3(5) of the Employee Retirement  
 8 Income Security Act of 1974 and implementing regulations, including  
 9 29 C.F.R. Part 2510.  
 10 b. Any United States Department of Labor advisory opinion addressing  
 11 circumstances in which the United States Department of Labor will  
 12 consider a person as able to act directly or indirectly in the interest of  
 13 direct employers in sponsoring an employee welfare benefit plan."

14 **SECTION 2.(b)** G.S. 58-51-80(b)(1a) reads as rewritten:

15 "(1a) Under a policy issued to an association or to a trust or to the trustee or trustees  
 16 of a fund established, created, or maintained for the benefit of members of one  
 17 or more associations. The association or associations shall have at the outset  
 18 a minimum of 500 persons and shall have been organized and maintained in  
 19 good faith for purposes other than that of obtaining insurance; shall have been  
 20 in active existence for at least ~~five~~ two years; and shall have a constitution and  
 21 bylaws that provide that (i) the association or associations hold regular  
 22 meetings not less than annually to further purposes of the members; (ii) except  
 23 for credit unions, the association or associations collect dues or solicit  
 24 contributions from members; and (iii) the members, other than associate  
 25 members, have voting privileges and representation on the governing board  
 26 and ~~committees. The policy committees.~~ For purposes of this section, a newly  
 27 created association shall be deemed to have been organized and maintained  
 28 for as long as its newest constituent association has been in existence. Any  
 29 policy issued is subject to the following requirements:  
 30 ...."

31 **SECTION 2.(c)** G.S. 58-68-25(a) reads as rewritten:

32 **"§ 58-68-25. Definitions; excepted benefits; employer size rule.**

33 (a) Definitions. – ~~In addition to other definitions throughout this Article, the~~ The  
 34 following definitions and their cognates apply in this Article:

- 35 (1) ~~"Bona Bona fide association".~~ association. – With respect to health insurance  
 36 coverage offered in this State, an association ~~that meeting all of the following~~  
 37 requirements:  
 38 a. Has been actively in existence for at least five years.  
 39 b. Has been formed and maintained in good faith for purposes other than  
 40 obtaining insurance.  
 41 c. Does not condition membership in the association on any health  
 42 status-related factor relating to an ~~individual (including individual,~~  
 43 including an employee of an employer or a dependent of an  
 44 employee)-employee.  
 45 d. Makes health insurance coverage offered through the association  
 46 available to all members and individuals eligible for coverage through  
 47 a member regardless of any health status-related factor relating to the  
 48 ~~members (or individuals eligible for coverage through a~~  
 49 member)-members or eligible individuals.

- 1 e. Does not make health insurance coverage offered through the
- 2 association available other than in connection with a member of the
- 3 association.
- 4 f. Meets the additional requirements as may be imposed under State law.
- 5 (2) ~~"COBRA-COBRA continuation provision".~~ provision. – Any of the following:
- 6 a. Section 4980B of the Internal Revenue Code of 1986, other than
- 7 subdivision (f)(1) of the section insofar as it relates to pediatric
- 8 vaccines.
- 9 b. Part 6 of subtitle B of title I of the Employee Retirement Income
- 10 Security Act of 1974, other than section 609 of the Act.
- 11 c. Requirements for certain group health plans for certain State and local
- 12 employees under Title XXII of the Public Health Service Act (42
- 13 U.S.C.S. § 300bb, et seq.) as requirements for certain group health
- 14 plans for certain State and local employees. Act.
- 15 d. Article 53 of this ~~Chapter or the Chapter.~~
- 16 e. The health insurance continuation law of another state.
- 17 (3) ~~"Employee".~~ Employee. – ~~The meaning given the term under As defined in~~
- 18 ~~section 3(6) of the Employee Retirement Income Security Act of 1974.~~
- 19 (4) ~~"Employer".~~ Employer. – ~~The meaning given the term under As defined in~~
- 20 ~~section 3(5) of the Employee Retirement Income Security Act of 1974, except~~
- 21 ~~that the term shall include only employers of two or more employees.~~ 1974.
- 22 (4a) ~~"Group-Group health insurance coverage".~~ coverage. – Health insurance
- 23 coverage offered in connection with a group health plan.
- 24 (4b) ~~"Group-Group health plan".~~ plan. – ~~The meaning given the term under As~~
- 25 ~~defined in 45 C.F.R. § 146.145(a).~~
- 26 (4c) ~~"Group market".~~ Group market. – The market for health insurance coverage
- 27 offered in connection with a group health plan.
- 28 (5) ~~"Health-Health insurance coverage" or "coverage" or "health insurance plan"~~
- 29 ~~or "plan".~~ coverage, health insurance plan, coverage, or plan. – Benefits
- 30 consisting of medical care, provided directly through insurance or otherwise
- 31 and including items and services paid for as medical care, under any accident
- 32 and health insurance policy or certificate, hospital or medical service plan
- 33 contract, or health maintenance organization contract, written by a health
- 34 insurer. Health insurance coverage includes group health insurance coverage
- 35 and individual health insurance coverage.
- 36 (6) ~~"Health insurer".~~ Health insurer. – An insurance company subject to this
- 37 Chapter, a hospital or medical service corporation subject to Article 65 of this
- 38 Chapter, a health maintenance organization subject to Article 67 of this
- 39 Chapter, or a multiple employer welfare arrangement subject to Article 49 of
- 40 this Chapter, that offers and issues health insurance coverage.
- 41 (7) ~~"Health-Health status-related factor".~~ factor. – Any of the factors described in
- 42 G.S. 58-68-35(a)(1).
- 43 (8) ~~"Individual-Individual health insurance coverage".~~ coverage. – Health
- 44 insurance coverage offered to individuals in the individual market, but not
- 45 short-term limited duration insurance.
- 46 (9) ~~"Individual market".~~ Individual market. – The market for health insurance
- 47 coverage offered to individuals.
- 48 (10) ~~"Large employer".~~ Large employer. – An employer who employed an average
- 49 of at least 51 employees on business days during the preceding calendar year
- 50 and who employs at least ~~two employees~~ one employee on the first day of the
- 51 health insurance plan year.

- 1 (11) ~~"Large group market"~~-market. – The health insurance market under  
 2 which individuals obtain health insurance coverage, directly or through any  
 3 arrangement, on behalf of themselves and their dependents through a group  
 4 health insurance plan maintained by a large employer.
- 5 (12) ~~"Medical care"~~-Medical care. – Amounts paid ~~for~~for any of the following:  
 6 a. The diagnosis, cure, mitigation, treatment, or prevention of disease, or  
 7 ~~amounts paid~~ for the purpose of affecting any structure or function of  
 8 the body.  
 9 b. ~~Amounts paid for transportation~~-Transportation primarily for and  
 10 essential to medical care ~~referred to in~~under sub-subdivision a. of this  
 11 subdivision.  
 12 c. ~~Amounts paid for insurance~~-Insurance covering medical care ~~referred~~  
 13 ~~to in~~under sub-subdivisions a. and b. of this subdivision.
- 14 (13) ~~"Network plan"~~-Network plan. – Health insurance coverage of a health  
 15 insurer under which the financing and delivery of medical care (including  
 16 items and services paid for as medical care) are provided, in whole or in part,  
 17 through a defined set of health care providers under contract with the health  
 18 insurer.
- 19 (14) ~~"Participant"~~-Participant. – ~~The meaning given the term~~-As defined under  
 20 section 3(7) of the Employee Retirement Income Security Act of 1974.
- 21 (15) ~~"Placed for adoption"~~-Placed for adoption. – The assumption and retention by  
 22 a person of a legal obligation for total or partial support of a child in  
 23 anticipation of adoption of the child. The child's placement with the person  
 24 terminates upon the termination of the legal obligation.
- 25 (16) ~~"Small employer"~~-Small employer. – ~~The meaning given to the term in~~  
 26 ~~G.S. 58-50-110(22)~~-As defined in G.S. 58-50-110(22).
- 27 (17) ~~"Small group market"~~-market. – The health insurance market under  
 28 which individuals obtain health insurance coverage, directly or through any  
 29 arrangement, on behalf of themselves and their dependents through a group  
 30 health insurance plan maintained by a small employer."  
 31

32 **PART III. ALLOW MORE SMALL EMPLOYERS TO PURCHASE STOP-LOSS**  
 33 **COVERAGE.**

34 **SECTION 3.** G.S. 58-50-130(a)(5) reads as rewritten:

- 35 "(5) No small employer carrier, insurer, subsidiary of an insurer, or controlled  
 36 individual of an insurance holding company shall provide stop loss,  
 37 catastrophic, or reinsurance coverage to small employers who employ fewer  
 38 than ~~26~~12 eligible employees that does not comply with the underwriting,  
 39 rating, and other applicable standards in this Act. An insurer shall not issue a  
 40 stop loss health insurance policy to any person, firm, corporation, partnership,  
 41 or association defined as a small employer that does any of the following:  
 42 a. Provides direct coverage of health expenses payable to an individual.  
 43 b. Has an annual attachment point for claims incurred per individual that  
 44 is lower than twenty thousand dollars (\$20,000) for plan years  
 45 beginning in 2013. For subsequent policy years, the amount shall be  
 46 indexed using the Consumer Price Index for Medical Services for All  
 47 Urban Consumers for the South Region and shall be rounded to the  
 48 nearest whole thousand dollars. The index factor shall be the index as  
 49 of July of the year preceding the change divided by the index as of July  
 50 2012.

- 1                   c.       Has an annual aggregate attachment point lower than the greater of
- 2                               one of the following:
- 3                               1.       One hundred twenty percent (120%) of expected claims.
- 4                               2.       Twenty thousand dollars (\$20,000) for plan years beginning in
- 5                                       2013. For subsequent policy years, the amount shall be indexed
- 6                                       using the Consumer Price Index for Medical Services for All
- 7                                       Urban Consumers for the South Region and shall be rounded
- 8                                       to the nearest whole thousand dollars. The index factor shall be
- 9                                       the index as of July of the year preceding the change divided
- 10                                      by the index as of July 2012.
- 11                                      Nothing in this subsection prohibits an insurer from providing
- 12                                      additional incentives to small employers with benefits
- 13                                      promoting a medical home or benefits that provide health care
- 14                                      screenings, are focused on outcomes and key performance
- 15                                      indicators, or are reimbursed on an outcomes basis rather than
- 16                                      a fee-for-service basis."
- 17

18 **PART IV. EFFECTIVE DATE**

19                   **SECTION 4.** This act is effective October 1, 2019, and applies to contracts entered  
20 into, amended, or renewed on or after that date, and to licenses issued or renewed on or after that  
21 date.