
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 504 Session of
2023

INTRODUCED BY BROOKS, LAUGHLIN, ROTHMAN, PHILLIPS-HILL,
HUTCHINSON AND COSTA, MARCH 6, 2023

REFERRED TO BANKING AND INSURANCE, MARCH 6, 2023

AN ACT

1 Amending Title 40 (Insurance) of the Pennsylvania Consolidated
2 Statutes, in regulation of insurers and related persons
3 generally, providing for association health plans.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 40 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 41

9 ASSOCIATION HEALTH PLANS

10 Sec.

11 4101. Definitions.

12 4102. Policy requirements.

13 4103. Applicability.

14 § 4101. Definitions.

15 The following words and phrases when used in this chapter
16 shall have the meanings given to them in this section unless the
17 context clearly indicates otherwise:

18 "Association." As follows:

1 (1) A member-based organization of employer members.

2 (2) The term shall include all of the following:

3 (i) Employers that are in the same industry, trade
4 or profession.

5 (ii) Employers that are domiciled or residing in
6 this Commonwealth that do not share the same industry,
7 trade or profession to the extent permitted under the
8 regulations of the United States Department of Labor in
9 relation to ERISA.

10 "Employee." An individual employed by an employer. The term
11 shall include a sole proprietor to the extent permitted under
12 the regulations of the United States Department of Labor in
13 relation to ERISA.

14 "Employee welfare benefit plan." As the term is defined in
15 29 U.S.C. § 1002(1) (relating to definitions).

16 "Employer." As follows:

17 (1) As the term is defined in 29 U.S.C. § 1002(5).

18 (2) The term shall include an association. For purposes
19 of determining employer size of an association, all of the
20 employees of employer members of the association shall be
21 aggregated and treated as employed by a single employer.

22 "ERISA." The Employee Retirement Income Security Act of 1974
23 (Public Law 93-406, 29 U.S.C. § 1001 et seq.).

24 "Group health plan." An employee welfare benefit plan, to
25 the extent that the plan provides health care service and
26 includes items and services paid for as health care service to
27 employees of an employer, to employees of employer members of an
28 association, to small employers or to any combination of these
29 persons, directly or through insurance, reimbursement or
30 otherwise.

1 "Health care service." A covered treatment, admission,
2 procedure, medical supply or equipment or other service,
3 including behavioral health, prescribed or otherwise provided or
4 proposed to be provided by a health care provider to an insured
5 under a health insurance policy.

6 "Health insurance policy." As follows:

7 (1) An insurance policy, subscriber contract,
8 certificate or plan that provides medical or health care
9 coverage, including emergency services.

10 (2) The term does not include any of the following:

11 (i) An accident only policy.

12 (ii) A credit only policy.

13 (iii) A long-term care or disability income policy.

14 (iv) A specified disease policy.

15 (v) A Medicare supplement policy.

16 (vi) A TRICARE policy, including a Civilian Health
17 and Medical Program of the Uniformed Services (CHAMPUS)
18 supplement policy.

19 (vii) A fixed indemnity policy.

20 (viii) A dental only policy.

21 (ix) A vision only policy.

22 (x) A workers' compensation policy.

23 (xi) An automobile medical payment policy.

24 (xii) A homeowners insurance policy.

25 (xiii) Another similar policy providing for limited
26 benefits.

27 "Insured." As follows:

28 (1) A person on whose behalf an insurer is obligated to
29 pay covered health care expense benefits or provide health
30 care services under a health insurance policy.

1 (2) The term includes a policyholder, certificate
2 holder, subscriber, member, dependent or other individual who
3 is eligible to receive health care services under a health
4 insurance policy.

5 "Insurer." An entity licensed by the department with
6 accident and health authority to issue a health insurance policy
7 that is offered or governed under any of the following:

8 (1) The act of May 17, 1921 (P.L.682, No.284), known as
9 The Insurance Company Law of 1921, including section 630 and
10 Article XXIV of that act.

11 (2) The act of December 29, 1972 (P.L.1701, No.364),
12 known as the Health Maintenance Organization Act.

13 (3) Chapter 61 (relating to hospital plan corporations)
14 or 63 (relating to professional health services plan
15 corporations).

16 "Large employer." As follows:

17 (1) In connection with a group health plan or health
18 insurance coverage with respect to a calendar year and a plan
19 year, an employer that:

20 (i) employed an average of at least 51 employees on
21 business days during the preceding calendar year; and

22 (ii) employs at least one employee on the first day
23 of the plan year.

24 (2) The term shall include an association that includes
25 at least 51 employees of employer members of the association
26 on the first day of the plan year.

27 "Large group market." The health insurance market under
28 which individuals obtain health insurance coverage, directly or
29 through any arrangement, on behalf of themselves and their
30 dependents through a group health plan maintained by a large

1 employer.

2 "Small employer." As follows:

3 (1) In connection with a group health plan or health
4 insurance coverage with respect to a calendar year and a plan
5 year, an employer that:

6 (i) employed an average of at least one but not more
7 than 50 employees on business days during the preceding
8 calendar year; and

9 (ii) employs at least two employees on the first day
10 of the plan year.

11 (2) The term shall include:

12 (i) An association that includes 50 or fewer
13 employees of employer members of the association on the
14 first day of the plan year.

15 (ii) A sole proprietor to the extent recognized by
16 regulations of the United States Department of Labor in
17 relation to ERISA.

18 "Sole proprietor." An individual that meets all of the
19 following criteria:

20 (1) The individual has an ownership right in a trade or
21 business, regardless of whether the trade or business is
22 incorporated or unincorporated.

23 (2) The individual earns wages or self-employment income
24 from the trade or business.

25 (3) The individual works at least 20 hours a week or 80
26 hours per month providing personal services for the trade or
27 business or earns income from the trade or business that at
28 least equals the cost of the policy issued to an association.

29 § 4102. Policy requirements.

30 (a) Association policies.--A policy may be issued to an

1 association, in which the association shall be deemed the
2 policyholder, if all of the following requirements are
3 satisfied:

4 (1) The policy is issued by an insurer or a foreign
5 health insurance issuer that is duly licensed in the state in
6 which the foreign health insurance issuer is domiciled as
7 permitted under the laws of this Commonwealth.

8 (2) The association:

9 (i) Has been actively in existence for at least two
10 years.

11 (ii) Has been formed and maintained in good faith
12 for purposes other than obtaining insurance.

13 (iii) Has a constitution and bylaws that provide the
14 following:

15 (A) The association shall hold regular meetings
16 not less than annually to further purposes of the
17 members of the association.

18 (B) The association shall collect dues or
19 solicit contributions from members of the
20 association.

21 (C) The members of the association have voting
22 privileges and representation on the board governing
23 the association.

24 (iv) Does not condition membership in the
25 association on any health-status-related factor relating
26 to an individual or a dependent of the individual.

27 (v) Makes health insurance coverage offered through
28 the association available to all members of the
29 association regardless of any health-status-related
30 factor relating to the members or their dependents.

1 (vi) Does not make health insurance coverage offered
2 through the association available other than in
3 connection with a member of the association.

4 (b) Large group market plans.--If the association described
5 in subsection (a) includes 51 or more employees, the policy
6 issued to the association shall:

7 (1) Be treated as a large group market plan subject to
8 the large group market insurance regulations under 42 U.S.C.
9 Ch. 6A (relating to public health service). The policy shall
10 be guaranteed issue and guaranteed renewable.

11 (2) Be subject to the group health plan coverage
12 requirements under the Patient Protection and Affordable Care
13 Act (Public Law 111-148, 124 Stat. 119), including, but not
14 limited to, the prohibition against denying coverage based on
15 a preexisting condition.

16 (3) Comply with all coverage mandates applicable to a
17 large group market plan offered in this Commonwealth.

18 (4) Provide a level of coverage that equals the
19 actuarial value for a platinum, gold, silver or bronze plan
20 as specified under 42 U.S.C. § 18022(d) (relating to
21 essential health benefits requirements). The level of
22 coverage under this paragraph shall not have an actuarial
23 value below 60%.

24 (c) Issuer requirements.--

25 (1) If the association specified under subsection (a) (2)
26 is composed of employer members that are sole proprietors or
27 do not share the same industry, trade or profession to the
28 extent permitted under regulations of the United States
29 Department of Labor in relation to ERISA, a health insurance
30 issuer under subsection (a) (1) shall:

1 (i) Treat all of the employees who are enrolled in
2 coverage under the policy as a single risk pool.

3 (ii) Set premiums based on the collective group
4 experience of the employees who are enrolled in coverage
5 under the policy.

6 (iii) Set premiums based on the average age of the
7 employees who are enrolled in coverage under the policy.

8 (iv) Be prohibited from varying premiums based on
9 gender.

10 (v) Be prohibited from establishing discriminatory
11 rules based on the health status of an employer member or
12 an individual employee of an employer member for
13 eligibility or contribution requirements.

14 (2) In the case of an association specified under
15 subsection (a)(2) that does not include sole proprietors, a
16 health insurance issuer under subsection (a)(1) may vary
17 premiums for each employer member by the average age of the
18 employees of the employer member. Premiums under this
19 paragraph may not vary among each employer member by more
20 than five to one.

21 (d) Compliance and administration.--

22 (1) The association shall comply with the requirements
23 applicable to a plan sponsor, as that term is defined in 29
24 U.S.C. § 1002(16)(B) (relating to definitions).

25 (2) The health plan providing coverage under the policy
26 to employees shall be administered in accordance with the
27 requirements applicable to an employee welfare benefit plan.

28 (e) Governing board.--The association shall establish a
29 governing board to manage and operate the health plan. The
30 following shall apply:

1 (1) At least 75% of the governing board shall be
2 comprised of employees of employer members of the association
3 participating in the health plan, with the remaining
4 percentage being comprised of representatives designated by
5 the association.

6 (2) The employees of employer members of the association
7 participating in the health plan shall nominate and, through
8 an election where each employee is given a vote, elect
9 members to serve on the governing board.

10 (3) The governing board shall be treated as a fiduciary,
11 as that term is described in 29 U.S.C. § 1002(21)(A), and the
12 board shall manage and operate the health plan:

13 (i) For the exclusive purpose of all of the
14 following:

15 (A) Providing health benefits to employees
16 enrolled in coverage under the health plan.

17 (B) Defraying expenses relating to
18 administration of the health plan.

19 (ii) With the care, skill, prudence and diligence
20 under the circumstances then prevailing that a prudent
21 person in a similar capacity and familiar with such
22 matters would use in the conduct of an enterprise of a
23 similar character and with similar aims.

24 (f) Coverage.--If an employee of an employer member of the
25 association terminates employment with the employer member and
26 is subsequently reemployed by another employer member of the
27 association, the employee shall remain covered under the policy
28 issued to the association.

29 § 4103. Applicability.

30 This chapter shall not apply to an association that offers or

1 provides health care services through a health insurance policy
2 that is not fully insured. An association offering or providing
3 health care services through a health insurance policy that is
4 not fully insured shall be subject to the requirements of
5 section 208 of the act of May 17, 1921 (P.L.789, No.285), known
6 as The Insurance Department Act of 1921.

7 Section 2. This act shall take effect in 60 days.