



SENATE BILL 86: Small Business Health Care Act.

2019-2020 General Assembly

Committee:	House Health. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	June 26, 2019
Introduced by:	Sens. Bishop, Krawiec, Edwards	Prepared by:	Jason Moran-Bates Staff Attorney
Analysis of:	PCS to Second Edition S86-CSBC-61		

OVERVIEW: *The Proposed Committee Substitute to Senate Bill 86 would establish standards for Association Health Plans (AHPs). It would define several terms and create requirements for the business associations sponsoring the AHPs, including domicile, solvency, and operational requirements. It would also create requirements for the AHPs themselves, including coverage, premium, and non-discrimination requirements.*

CURRENT LAW: Currently, AHPs are regulated as large group health insurance plans under Chapter 58. There are no requirements that apply to the associations sponsoring the AHPs, unless those associations are also Multiple Employee Welfare Arrangements (MEWAs), which are regulated by G.S. 58-49-40 through 58-49-65.

BILL ANALYSIS: The PCS to Senate Bill 86 would create Article 50A in Chapter 58, establishing standards for Association Health Plans.

- 58-50A-1 would create definitions for Article 50A.
 - "Association health plan" would mean a fully-insured health insurance policy sold to a sponsoring association.
 - "Employer member" would mean any employer, including a sole proprietorship, which is a member of a sponsoring association.
 - "Sponsoring association" would mean an association of one or more employer members that provides an AHP to those members.
- 58-50A-5 would require all AHPs issued in North Carolina to comply with Chapter 58.
- 58-50A-10 would create requirements for sponsoring associations. All sponsoring associations must:
 - Be employers as defined by the Employee Retirement and Income Security Act of 1974 (ERISA).
 - Have bylaws that provide for regular meetings, dues collection, and a board of trustees.
 - Have a substantial business purpose that is unrelated to offering insurance.
 - Register as a MEWA with the Commissioner.

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- Have a commonality of interest among employer members that is based on either (1) being in the same trade, industry, line of business, or profession, or (2) being members of a statewide association.
- 58-50A-15 would require employer members to be domiciled or headquartered in North Carolina and commit to remaining in the sponsoring association for at least two years. Employer members could only provide coverage to employees as defined in G.S. 58-51-80(c), individuals who are paid on an I.R.S. Form 1099, or the spouses and dependent children of either of those two groups.
- 58-50A-20 would require AHPs issued in North Carolina to be:
 - Not offered to the general public.
 - Provide a level of coverage equal to that provided by a bronze plan on the Affordable Care Act exchange.
 - Provide coverage for hospital and physician services.
 - Comply with G.S. 58-3-150.
 - Provide coverage for the essential health benefits required by the Affordable Care Act.
- 58-50A-25 would create solvency requirements for sponsoring associations. All sponsoring associations obtaining an AHP must:
 - Have been in existence for at least five years.
 - Have at least 500 individuals eligible for coverage.
 - Enforce provisions designed to deter employer members from leaving the sponsoring association.
 - Maintain in trust a net worth equal to at least one month's premium.
 - Maintain a plan against insolvency that is acceptable to the Commissioner.
- 58-50A-30 would prohibit AHPs and sponsoring associations from imposing limitations based on pre-existing conditions and from conditioning coverage eligibility on the following factors:
 - Health status.
 - Medical condition.
 - Claims experience.
 - Receipt of health care.
 - Medical history.
 - Genetic information.
 - Evidence of insurability.
 - Disability.
- 58-50-35 would require all individuals receiving coverage through an AHP to pay the same premium, unless a reduction is offered for adherence to programs of health promotion and disease prevention.
- 58-50A-40 would clarify that sponsoring associations can contact licensed brokers for assistance in obtaining an AHP.

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EFFECTIVE DATE: This act would be effective January 1, 2020, and apply to contracts entered into, amended, or renewed on or after that date.

BACKGROUND: An Association Health Plan (AHP) is a group health insurance policy offered to a sponsoring business association. The members of the sponsoring association are usually individual employers. AHPs can be fully funded, or they can be self-insured. Because AHPs are group health insurance, they are regulated—for the most part—by the Employee Retirement Income Security Act of 1974 (ERISA).

Prior to 2018, the federal Department of Labor had several requirements a sponsoring association had to meet before it could obtain an AHP. First, the individual employer members of the sponsoring association had to have a commonality of interest, usually defined as a "close economic or representational nexus" with the sponsoring association. Second, the sponsoring association had to exist for a bona fide purpose other than offering insurance. Third, the employer members of the sponsoring association had to have employees; they could not be sole proprietorships.

In late 2018, the Department of Labor changed the requirements. Under the new rules, a commonality of interest will exist if the employer members of the sponsoring association are either (1) in the same trade, industry, profession, or line of business, or (2) in the same geographic area. The new rules permit the sponsoring association to obtain an AHP if it has a substantial business purpose other than offering insurance, even if the principal purpose of the association is offering benefits. The employee requirement was dropped entirely; sole proprietors can now join sponsoring associations and obtain AHPs.¹

¹ On March 28, 2019, a federal judge struck down the new rules. The Department of Labor filed an appeal, but it did not ask to have the initial ruling stayed while the appeal is pending.