SENATE BILL 86:
Small Business Healthcare Act.

2019-2020 General Assembly

Committee:	Senate Health Care. If favorable, re-refer to Rules and Operations of the Senate	**Date:**	March 5, 2019
Introduced by:	Sens. Bishop, Krawiec, Edwards	**Prepared by:**	Jason Moran-Bates Staff Attorney
Analysis of:	PCS to First Edition S86-CSBC-7		

OVERVIEW: The Proposed Committee Substitute to Senate Bill 86 would allow business associations to obtain group health insurance for their members in accordance with newly-issued federal rules. It would also allow insurers to sell stop loss insurance to employers with twelve or more employees. <u>The PCS makes a few technical changes to the original bill. It also requires an association to have at least 500 covered lives before it can obtain self-funded or fully-insured group health insurance plans.</u>

CURRENT LAW: Under current law, in order to be licensed for the purposes of obtaining group health insurance, a Multiple Employer Welfare Arrangement (MEWA) must be: (1) a non-profit organization, (2) established by a business association that has been in existence for at least five years for purposes other than obtaining insurance, (3) run by a board of trustees with complete fiscal control over the association, (4) not offered to the public generally, and (5) run on sound actuarial principles.

In order to obtain a fully-insured association health plan (AHP), a business association must be in existence for at least five years. Currently, the term "employer" does not necessarily include MEWAs for purposes of obtaining a fully-insured health plan. Under current law, MEWAs do not have to meet any size requirements before being able to obtain self-funded group health insurance. Associations cannot obtain group health insurance unless they are made up of 500 persons.

Insurers may not provide stop loss insurance to an employer with fewer than 26 employees.

BILL ANALYSIS:

<u>Part I</u> of the PCS to Senate Bill 86 would amend G.S. 58-49-40 to codify in North Carolina law the new federal regulations for AHPs as they pertain to MEWAs.

<u>Section 1.(a)</u> would allow associations that had been in existence for two years, rather than five, to obtain licensure as a MEWA. It would also require MEWAs to have one substantial business purpose other than offering insurance, have a commonality of interest, and to consist of at least 500 covered lives.

<u>Section 1.(b)</u> would define "commonality of interest" to mean either: (1) established by employers in the same trade, industry, line of business, or profession; or (2) established by employers in the same region or metropolitan area of the State.

<u>Section 1.(c)</u> would allow sole proprietors and self-employed workers to participate in a MEWA.

Part II of the PCS to Senate Bill 86 would amend G.S. 58-51-80 to codify in North Carolina law the new federal regulations for association health plans as they pertain to fully-insured AHPs.

Section 2.(a) would define the term "employer" in 58-51-80(b)(1) to include a MEWA that has at least 500 covered lives and meets the new federal requirements for business associations.

Section 2.(b) would amend G.S. 58-51-80(b)(1a) to allow associations that had been in existence for two years, rather than five, to obtain group health insurance.

Section 2.(c) would amend G.S.58-68-25(a) to require bona fide associations to offer insurance coverage to all individuals eligible for coverage through a member of the association. It also would make conforming changes to G.S. 58-68-25(a).

Part III of the PCS would amend G.S. 58-50-130(a)(5) to allow insurers to provide stop loss insurance to small employers with 12 or more employees.

EFFECTIVE DATE: This act would be effective October 1, 2019, and apply to contracts entered into, amended, or renewed on or after that date and licenses issued or renewed on or after that date.

BACKGROUND: An Association Health Plan (AHP) is a group health insurance plan offered to a business association. The members of the business association are usually individual employers. AHPs can be fully funded, or they can be self-insured. A business association that obtains a self-insured AHP is generally referred to as a Multiple Employer Welfare Arrangement (MEWA). Because AHPs are group health insurance, they are regulated—for the most part—by the Employee Retirement Income Security Act (ERISA).

Prior to 2018, the federal Department of Labor had several requirements a business association had to meet before it could obtain an AHP. First, the individual employer members of the association had to have a commonality of interest, usually defined as a "close economic or representational nexus" with the association. Second, the association had to exist for a bona fide purpose other than offering insurance. Third, the employer members of the 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 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 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 business associations and obtain AHPs.