
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 555 Session of
2023

INTRODUCED BY GAYDOS, JAMES, CIRESI, KEEFER, TWARDZIK, STRUZZI,
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GLEIM AND CABELL, APRIL 24, 2023

REFERRED TO COMMITTEE ON INSURANCE, APRIL 24, 2023

AN ACT

1 Amending Title 40 (Insurance) of the Pennsylvania Consolidated
2 Statutes, providing for association health plans; imposing
3 penalties; and making repeals.

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. Association requirements.

13 4103. Association health plan coverage requirements.

14 4104. Association health plan rate and premium requirements.

15 4105. Health insurer association health plan filing
16 requirements.

17 4106. Regulations.

1 4107. Enforcement.

2 § 4101. Definitions.

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

6 "Affordable Care Act." The Patient Protection and Affordable
7 Care Act (Public Law 111-148, 124 Stat. 119), together with the
8 Health Care and Education Reconciliation Act of 2010 (Public Law
9 111-152, 124 Stat. 1029), as amended.

10 "Association." As follows:

11 (1) A member-based organization of employer members
12 composed of:

13 (i) Employers in the same industry, trade or
14 profession.

15 (ii) Employers that do not share the same industry,
16 trade or profession to the extent permitted under
17 regulations of the United States Department of Labor in
18 relation to ERISA.

19 (iii) Employers domiciled or residing in this
20 Commonwealth.

21 (2) The term does not include a union trust established
22 under a collective bargaining agreement that makes available
23 health care coverage to the union trust's members.

24 "Commissioner." The Insurance Commissioner of the
25 Commonwealth.

26 "Covered individual." As follows:

27 (1) An individual on whose behalf a health insurer is
28 obligated to pay covered health care expense benefits or
29 provide health care services under a health insurance policy.

30 (2) The term includes a policyholder, certificate

1 holder, subscriber, member, dependent or other individual who
2 is eligible to receive health care services under a health
3 insurance policy.

4 "Employee." As follows:

5 (1) An individual employed by an employer.

6 (2) The term includes a sole proprietor to the extent
7 permitted under regulations of the United States Department
8 of Labor in relation to ERISA.

9 "Employer." As follows:

10 (1) As defined in section 29 U.S.C. § 1002(5) (relating
11 to definitions).

12 (2) The term includes a sole proprietor to the extent
13 permitted under regulations of the United States Department
14 of Labor in relation to ERISA.

15 "Employer member." An employer that is a member of an
16 association.

17 "ERISA." 29 U.S.C. § 1001 et seq. (The Employee Retirement
18 Income Security Act of 1974).

19 "Health care service." A covered treatment, admission,
20 procedure, medical supply or equipment or other service,
21 including behavioral health, prescribed or otherwise provided or
22 proposed to be provided by a health care provider to a covered
23 individual under a health insurance policy.

24 "Health factor." An element related to an individual's
25 physical or mental make-up, including:

26 (1) Health status.

27 (2) Medical condition.

28 (3) Claims experience.

29 (4) Receipt of health care.

30 (5) Medical history.

1 (6) Genetic information.

2 (7) Evidence of insurability, including conditions
3 arising out of acts of domestic violence.

4 (8) Disability.

5 "Health insurance policy." As follows:

6 (1) An insurance policy, subscriber contract,
7 certificate or plan issued by a health insurer that provides
8 medical or health care coverage, including emergency
9 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 hospital indemnity policy.

21 (ix) A dental only policy.

22 (x) A vision only policy.

23 (xi) A workers' compensation policy.

24 (xii) An automobile medical payment policy.

25 (xiii) A homeowners insurance policy.

26 (xiv) A short-term limited duration policy.

27 (xv) Any other similar policy providing for limited
28 benefits.

29 "Health insurer." An entity licensed by the department with
30 accident and health authority to issue a health insurance policy

1 that is offered or governed under any of the following:

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

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

7 (3) Chapter 61 (relating to hospital plan corporations)
8 or 63 (relating to professional health services plan
9 corporations).

10 "Sole proprietor." An individual that:

11 (1) has an ownership right in a trade or business,
12 regardless of whether the trade or business is incorporated
13 or unincorporated;

14 (2) earns wages or self-employment income from the trade
15 or business; and

16 (3) works at least 20 hours a week or 80 hours a month
17 providing personal services to the trade or business or earns
18 income from the trade or business that at least equals the
19 cost of the health insurance policy issued to an association.

20 § 4102. Association requirements.

21 (a) Sponsor.--An association may not sponsor an association
22 health plan in this Commonwealth unless the association:

23 (1) Has been actively in existence for at least two
24 years.

25 (2) Was formed and is maintained in good faith for
26 purposes other than obtaining insurance.

27 (3) Has a constitution and bylaws that provide the
28 following:

29 (i) Regular meetings not less than annually to
30 further purposes of the employer members of the

1 association.

2 (ii) The collection of dues or solicitation of
3 contributions from employer members of the association.

4 (iii) Voting privileges and representation on the
5 board governing the association by employer members of
6 the association.

7 (4) Is not organized by an insurer or a parent or
8 subsidiary or affiliate of an insurer.

9 (5) Does not operate from offices of, and is not
10 controlled by, an insurer or a parent or subsidiary or
11 affiliate of an insurer.

12 (6) Does not condition membership in the association on
13 any health factor relating to an individual or a dependent of
14 an individual.

15 (7) Has a governing board to manage the association's
16 offering of health care coverage. The following shall apply:

17 (i) At least 75% of the governing board shall be
18 comprised of employees of employer members of the
19 association participating in the association health plan,
20 with the remaining representatives designated by the
21 association.

22 (ii) The employees of employer members of the
23 association participating in the association health plan
24 shall nominate and, through an election where each
25 employee is given a vote, elect members to serve on the
26 governing board.

27 (iii) The governing board shall act in a fiduciary
28 capacity with respect to the association health plan
29 managing it:

30 (A) For the exclusive purpose of all of the

1 following:

2 (I) Providing health care coverage to
3 individuals enrolled in coverage under the
4 association health plan.

5 (II) Defraying expenses relating to
6 administration of the association health plan.

7 (B) With the care, skill, prudence and diligence
8 under the circumstances then prevailing that a
9 prudent person in a similar capacity and familiar
10 with such matters would use in the conduct of an
11 enterprise of a similar character and with similar
12 aims.

13 (8) Complies with all applicable requirements of ERISA,
14 including the requirements applicable to a plan sponsor, as
15 that term is defined in 29 U.S.C. § 1002(16)(B) (relating to
16 definitions).

17 (b) Availability of association health plan coverage.--

18 (1) An association may not make association health plan
19 coverage available unless the coverage:

20 (i) Is through a fully insured health insurance
21 policy issued by a health insurer to the association.

22 (ii) Covers at least 51 lives of employees of
23 employer members.

24 (iii) Is available to all employees of employer
25 members of the association regardless of any health
26 factor relating to an employee of an employer member or a
27 dependent of an employee.

28 (iv) Is not available other than in connection with
29 an employer member of the association.

30 (2) Coverage under an association health plan may be

1 available to a dependent of an employee of an employer member
2 at the option of the employer member.

3 (3) At the employee's option, an employee of an employer
4 member of the association with coverage under an association
5 health plan who terminates employment with that employer
6 member, and within 63 days is employed by another employer
7 member of the association, may remain covered under the
8 association health plan.

9 § 4103. Association health plan coverage requirements.

10 Association health plan coverage shall:

11 (1) Be guaranteed issue and guaranteed renewable.

12 (2) Be subject to the group market coverage requirements
13 under the Affordable Care Act, including the prohibition
14 against denying coverage based on a preexisting condition.

15 (3) Comply with all coverage requirements applicable to
16 a health insurance policy offered, issued or renewed to a
17 group of 51 or more employees in this Commonwealth.

18 (4) Provide essential health benefits, as specified in
19 42 U.S.C. § 18022 (relating to essential health benefits
20 requirements), as contained in the benchmark plan currently
21 in use in the Pennsylvania small group market as of the
22 effective date of this section.

23 (5) Provide a level of coverage that is designed to
24 provide benefits that are actuarially equivalent to or
25 greater than 60% of the full actuarial value of the benefits
26 provided under the policy, as calculated in accordance with
27 the requirements of the Affordable Care Act.

28 § 4104. Association health plan rate and premium requirements.

29 (a) Calculation.--A health insurer shall calculate rates for
30 an association health plan based on all of the employees who are

1 enrolled in coverage under the policy as a single risk pool.

2 (b) Same industry, trade or profession.--In the case of an
3 association composed of employers in the same industry, trade or
4 profession that does not include sole proprietors:

5 (1) A health insurer shall calculate premiums for
6 coverage under an association health plan based on the
7 collective group experience of the employees who are enrolled
8 in coverage under the policy.

9 (2) At the health insurer's election, the health insurer
10 may vary premiums developed in accordance with paragraph (1)
11 for each employer member by the collective group experience
12 of the employees who are employed by that employer member.

13 (c) Sole proprietors or not sharing same industry, trade or
14 profession.--In the case of an association that includes sole
15 proprietors or is composed solely of employers that do not share
16 the same industry, trade or profession to the extent permitted
17 under regulations of the United States Department of Labor in
18 relation to ERISA:

19 (1) A health insurer shall calculate premiums for
20 coverage under an association health plan based on the
21 collective group experience of the employees who are enrolled
22 in coverage under the policy.

23 (2) (Reserved).

24 § 4105. Health insurer association health plan filing
25 requirements.

26 (a) Form filing requirements.--A health insurer may not
27 offer, issue or renew a health insurance policy to an
28 association unless the health insurer files with the department:

29 (1) Association documentation demonstrating the
30 association's compliance with section 4102 (relating to

1 association requirements).

2 (2) For approval in accordance with the provisions of
3 the act of December 18, 1996 (P.L.1066, No.159), known as the
4 Accident and Health Filing Reform Act, the policy form, which
5 must comply with the requirements of section 4103 (relating
6 to association health plan coverage requirements).

7 (b) Rate-filing requirement.--Notwithstanding the provisions
8 of the Accident and Health Filing Reform Act, the rates for a
9 policy issued to an association shall be filed with the
10 department prior to use.

11 (c) Exemptions.--The commissioner may exempt the association
12 policy form or rate filings from the requirements of this
13 section by transmitting notice to the Legislative Reference
14 Bureau for publication in the Pennsylvania Bulletin.
15 Notwithstanding this subsection, the rate filing requirement
16 under subsection (b) shall expire June 30, 2025.

17 § 4106. Regulations.

18 The department may promulgate regulations as necessary or
19 appropriate to carry out this chapter.

20 § 4107. Enforcement.

21 (a) General rule.--Upon satisfactory evidence of the
22 violation of any section of this chapter by an insurer or any
23 other person, one or more of the following penalties may be
24 imposed at the commissioner's discretion:

25 (1) Suspension or revocation of the license of the
26 offending insurer or other person.

27 (2) Refusal, for a period not to exceed one year, to
28 issue a new license to the offending insurer or other person.

29 (3) A fine of not more than \$5,000 for each violation of
30 this chapter.

1 (4) A fine of not more than \$10,000 for each willful
2 violation of this chapter.

3 (b) Limitation.--

4 (1) Fines imposed against an individual insurer under
5 this chapter may not exceed \$500,000 in the aggregate during
6 a single calendar year.

7 (2) Fines imposed against any other person under this
8 chapter may not exceed \$100,000 in the aggregate during a
9 single calendar year.

10 (c) Additional remedies.--The enforcement remedies imposed
11 under this subsection are in addition to any other remedies or
12 penalties that may be imposed under any other applicable law of
13 this Commonwealth, including:

14 (1) The act of July 22, 1974 (P.L.589, No.205), known as
15 the Unfair Insurance Practices Act. Violations of this
16 chapter shall be deemed to be an unfair method of competition
17 and an unfair or deceptive act or practice under the Unfair
18 Insurance Practices Act.

19 (2) The act of December 18, 1996 (P.L.1066, No.159),
20 known as the Accident and Health Filing Reform Act.

21 (3) The act of June 25, 1997 (P.L.295, No.29), known as
22 the Pennsylvania Health Care Insurance Portability Act.

23 (d) Administrative procedure.--The administrative provisions
24 of this section shall be subject to 2 Pa.C.S. Ch. 5 Subch. A
25 (relating to practice and procedure of Commonwealth agencies). A
26 party against whom penalties are assessed in an administrative
27 action may appeal to Commonwealth Court as provided in 2 Pa.C.S.
28 Ch. 7 Subch. A (relating to judicial review of Commonwealth
29 agency action).

30 Section 2. Repeals are as follows:

1 (1) The General Assembly declares that the repeals under
2 paragraph (2) are necessary to effectuate the addition of 40
3 Pa.C.S. Ch. 41.

4 (2) The following are repealed:

5 (i) Section 621.2(a)(2) and (f)(3) of the act of May
6 17, 1921 (P.L.682, No.284), known as The Insurance
7 Company Law of 1921.

8 (ii) All other acts and parts of acts insofar as
9 they are inconsistent with the addition of 40 Pa.C.S. Ch.
10 41.

11 Section 3. This act shall take effect in 60 days.