
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 555 Session of
2021

INTRODUCED BY GAYDOS, OBERLANDER, BROOKS, HILL-EVANS, KEEFER,
THOMAS, DRISCOLL, R. MACKENZIE, STRUZZI, ZIMMERMAN, CIRESI,
M. MACKENZIE, GROVE, RADER, ROAE, JAMES, MUSTELLO, BERNSTINE,
ROTHMAN, HELM, MADDEN, SANKEY, LEWIS DELROSSO, MIZGORSKI,
DOWLING, COOK, O'NEAL, TWARDZIK, N. NELSON, SHUSTERMAN AND
BOBACK, MARCH 16, 2021

REFERRED TO COMMITTEE ON INSURANCE, MARCH 16, 2021

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. 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.

1 4106. Regulations.

2 4107. Enforcement.

3 § 4101. Definitions.

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

7 "Affordable Care Act." The Patient Protection and Affordable
8 Care Act (Public Law 111-148, 124 Stat. 119), together with the
9 Health Care and Education Reconciliation Act of 2010 (Public Law
10 111-152, 124 Stat. 1029), as amended.

11 "Association." As follows:

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

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

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

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

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

25 "Covered individual." As follows:

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

29 (2) The term includes a policyholder, certificate
30 holder, subscriber, member, dependent or other individual who

1 is eligible to receive health care services under a health
2 insurance policy.

3 "Employee." As follows:

4 (1) An individual employed by an employer.

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

8 "Employer." As follows:

9 (1) As defined in section 3(5) of ERISA (29 U.S.C. §
10 1002(5)).

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

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

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

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

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

25 (1) Health status.

26 (2) Medical condition.

27 (3) Claims experience.

28 (4) Receipt of health care.

29 (5) Medical history.

30 (6) Genetic information.

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

3 (8) Disability.

4 "Health insurance policy." As follows:

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

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

10 (i) An accident only policy.

11 (ii) A credit only policy.

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

13 (iv) A specified disease policy.

14 (v) A Medicare supplement policy.

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

18 (vii) A fixed indemnity policy.

19 (viii) A dental only policy.

20 (ix) A vision only policy.

21 (x) A workers' compensation policy.

22 (xi) An automobile medical payment policy.

23 (xii) A homeowners insurance policy.

24 (xiii) A short-term limited duration policy.

25 (xiv) Any other similar policy providing for limited
26 benefits.

27 "Health insurer." An entity licensed by the department with
28 accident and health authority to issue a health insurance policy
29 that is offered or governed under any of the following:

30 (1) The act of May 17, 1921 (P.L.682, No.284), known as

1 The Insurance Company Law of 1921, including section 630 and
2 Article XXIV of that act.

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

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

8 "Sole proprietor." An individual that:

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

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

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

18 § 4102. Association requirements.

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

21 (1) Has been actively in existence for at least two
22 years.

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

25 (3) Has a constitution and bylaws that provide the
26 following:

27 (i) Regular meetings not less than annually to
28 further purposes of the employer members of the
29 association.

30 (ii) The collection of dues or solicitation of

1 contributions from employer members of the association.

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

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

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

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

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

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

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

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

28 (A) For the exclusive purpose of all of the
29 following:

30 (I) Providing health care coverage to

1 individuals enrolled in coverage under the
2 association health plan.

3 (II) Defraying expenses relating to
4 administration of the association health plan.

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

11 (8) Complies with all applicable requirements of ERISA,
12 including the requirements applicable to a plan sponsor, as
13 that term is defined in section 3(16)(B) of ERISA (29 U.S.C.
14 § 1002(16)(B)).

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

16 (1) An association may not make association health plan
17 coverage available unless the coverage:

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

20 (ii) Covers at least 51 lives of employees of
21 employer members.

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

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

28 (2) Coverage under an association health plan may be
29 available to a dependent of an employee of an employer member
30 at the option of the employer member.

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

7 § 4103. Association health plan coverage requirements.

8 Association health plan coverage shall:

9 (1) Be guarantee issued and guaranteed renewable.

10 (2) Be subject to the group market coverage requirements
11 under the Affordable Care Act, including, but not limited to,
12 the prohibition against denying coverage based on a
13 preexisting condition.

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

17 (4) Provide essential health benefits, as specified in
18 section 1302 of the Affordable Care Act (42 U.S.C. § 18022),
19 as contained in the benchmark plan then currently in use in
20 the Pennsylvania small group market.

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

26 § 4104. Association health plan rate and premium requirements.

27 (a) Calculation.--A health insurer shall calculate rates for
28 an association health plan based on all of the employees who are
29 enrolled in coverage under the policy as a single risk pool.

30 (b) Same industry, trade or profession.--In the case of an

1 association composed of employers in the same industry, trade or
2 profession that does not include sole proprietors:

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

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

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

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

21 (2) (Reserved).

22 § 4105. Health insurer association health plan filing
23 requirements.

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

27 (1) Association documentation demonstrating the
28 association's compliance with section 4102 (relating to
29 association requirements).

30 (2) For approval in accordance with the provisions of

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

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

9 (c) Exemptions.--The commissioner may exempt the association
10 policy form or rate filings from the requirements of this
11 section by transmitting notice to the Legislative Reference
12 Bureau for publication in the Pennsylvania Bulletin.

13 Notwithstanding this subsection, the rate filing requirement
14 under subsection (b) shall expire June 30, 2023.

15 § 4106. Regulations.

16 The department may promulgate regulations as necessary or
17 appropriate to carry out this chapter.

18 § 4107. Enforcement.

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

23 (1) Suspension or revocation of the license of the
24 offending insurer or other person.

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

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

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

1 (b) Limitation.--

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

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

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

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

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

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

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

28 Section 2. Repeals are as follows:

29 (1) The General Assembly declares that the repeals under
30 paragraph (2) are necessary to effectuate the addition of 40

1 Pa.C.S. Ch. 41.

2 (2) The following are repealed:

3 (i) Section 621.2(a)(2) and (f)(3) of the act of May
4 17, 1921 (P.L.682, No.284), known as The Insurance
5 Company Law of 1921.

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

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