
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 235 Session of
2021

INTRODUCED BY BROOKS, STEFANO, ROBINSON, J. WARD, HUTCHINSON,
PHILLIPS-HILL, COLLETT, YUDICHAK, AUMENT AND MENSCH,
FEBRUARY 16, 2021

REFERRED TO BANKING AND INSURANCE, FEBRUARY 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. 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 section 3(1) of ERISA (29 U.S.C. § 1002(1)).

16 "Employer." As follows:

17 (1) As the term is defined in section 3(5) of ERISA (29
18 U.S.C. § 1002(5)).

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

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

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

1 otherwise.

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

7 "Health insurance policy." As follows:

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

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

12 (i) An accident only policy.

13 (ii) A credit only policy.

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

15 (iv) A specified disease policy.

16 (v) A Medicare supplement policy.

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

20 (vii) A fixed indemnity policy.

21 (viii) A dental only policy.

22 (ix) A vision only policy.

23 (x) A workers' compensation policy.

24 (xi) An automobile medical payment policy.

25 (xii) A homeowners insurance policy.

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

28 "Insured." As follows:

29 (1) A person on whose behalf an insurer is obligated to
30 pay covered health care expense benefits or provide health

1 care services under a health insurance policy.

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

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

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

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

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

17 "Large employer." As follows:

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

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

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

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

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

1 dependents through a group health plan maintained by a large
2 employer.

3 "Small employer." As follows:

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

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

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

12 (2) The term shall include:

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

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

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

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

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

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

30 § 4102. Policy requirements.

1 (a) Association policies.--A policy may be issued to an
2 association, in which the association shall be deemed the
3 policyholder, if all of the following requirements are
4 satisfied:

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

9 (2) The association:

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

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

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

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

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

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

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

28 (v) Makes health insurance coverage offered through
29 the association available to all members of the
30 association regardless of any health-status-related

1 factor relating to the members or their dependents.

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

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

8 (1) Be treated as a large group market plan subject to
9 the large group market insurance regulations under the Public
10 Health Service Act (58 Stat. 682, 42 U.S.C. § 201 et seq.).
11 The policy shall be guaranteed issue and guaranteed
12 renewable.

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

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

20 (4) Provide a level of coverage that equals the
21 actuarial value for a platinum, gold, silver or bronze plan
22 as specified under section 1302(d) of the Patient Protection
23 and Affordable Care Act. The level of coverage under this
24 paragraph shall not have an actuarial value below 60%.

25 (c) Issuer requirements.--

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

1 issuer under subsection (a)(1) shall:

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

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

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

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

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

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

22 (d) Compliance and administration.--

23 (1) The association shall comply with the requirements
24 applicable to a plan sponsor, as that term is defined in
25 section 3(16)(B) of ERISA (29 U.S.C. § 1002(16)(B)).

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

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

1 following shall apply:

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

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

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

15 (i) For the exclusive purpose of all of the
16 following:

17 (A) Providing health benefits to employees
18 enrolled in coverage under the health plan.

19 (B) Defraying expenses relating to
20 administration of the health plan.

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

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

1 § 4103. Applicability.

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

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