

March 7, 2019

Association Health Plan Expansion Likely to Hurt Consumers, State Insurance Markets

By Sarah Lueck

In response to recent Trump Administration rule changes that will allow for far broader enrollment in association health plans (AHPs), consumer advocates, patient groups, insurers, and many policy experts have raised concerns that expanding the plans will negatively affect consumers and the state insurance markets that serve small businesses and individuals.¹ While supporters of AHPs focus on their ability to reduce premium costs for some small businesses and self-employed individuals, the plans likely achieve such savings primarily by segmenting the market.²

AHPs — health plans that a trade association, professional group, or other organization offers to its members — provide health coverage to small businesses and individuals but, under federal rules finalized last summer, can provide weaker cost and coverage protections to small businesses and individuals than plans sold under Affordable Care Act (ACA) rules in the small-group and individual insurance markets. This means AHPs can attract healthier consumers and leave behind sicker and costlier risk pools in the markets that would otherwise serve them. Thus, any savings that AHPs offer to healthier-than-average firms and workers likely come at the expense of higher costs for sicker-than-average firms and workers who remain in the ACA small-group and individual markets.

AHPs Operate Outside ACA Rules, Protections

Prior to the ACA, millions of people bought health coverage through associations and other group-purchasing arrangements.³ The ACA made a number of reforms to commercial insurance

¹ Sabrina Corlette, “The Future of the Affordable Care Act under President Trump: Stakeholders Respond to the Proposed Association Health Plan Rule. Part II: Consumer Advocates,” Georgetown University Health Policy Institute Center on Health Insurance Reforms, March 19, 2018, <http://chirblog.org/stakeholders-respond-to-proposed-ahp-rule-consumers/>.

² “Issue Brief, Association Health Plans,” American Academy of Actuaries, February 2017, <https://www.actuary.org/content/association-health-plans-0>; Mark A. Hall, Comment Letter to the Department of Labor, February 2018, <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB85/00146.pdf>; and Kevin Lucia and Sabrina Corlette, “It’s All About the Rating: Touted ‘Benefits’ of Association Health Plans Ignore Key Facts,” Georgetown University Health Policy Institute Center on Health Insurance Reforms, February 4, 2019, <http://chirblog.org/its-all-about-the-rating/>.

³ Mila Kofman *et al.*, “Association Health Plans: What’s All the Fuss About?” Health Affairs, Vol. 25, No. 6, November/December 2006, <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.25.6.1591>.

markets, including a requirement that plans in the individual and small-group markets cover essential health benefits such as maternity care and prescription drugs, avoid charging higher rates based on health status, and limit the premium amount that older people could be charged compared to younger people. In 2011, the Obama Administration required that health insurance sold through associations meet small-group rules when sold to small groups and meet individual-market rules when sold to individuals. After these changes, research suggests that many AHPs disbanded.⁴

The Trump Administration's AHP changes, finalized in June 2018, make it easier to form an AHP, to expand AHPs to cover more people (including self-employed individuals), and to offer health coverage to small businesses and self-employed individuals while being considered a large-group plan not subject to small-group or individual-market rules.⁵ This allows AHPs to segment insurance markets by offering lower premiums to lower-cost small groups and individuals, more limited benefits than would otherwise be required, or a combination of both.

Some key differences in the rules for AHPs include:

- **AHPs don't have to provide the ACA's "essential health benefits."** While some AHP entities have chosen to offer plans that include a traditional set of benefits — such as hospital and outpatient care, prescription drugs, and mental health services — this is not a requirement. Details of the covered benefits that AHPs offer to individuals and small businesses may differ in important ways from the benefits required in a state's individual and small-group markets, meaning that people can't assume that basic benefits will be covered if they enroll in a plan that's exempt from the ACA's essential health benefits guarantee. And even if an AHP has opted to cover comprehensive benefits for now, it won't necessarily continue to do so.
- **AHPs can set premiums for small groups and individual self-employed people in ways that are not permitted in the ACA's small-group and individual markets.** They can set premiums based on gender, occupation, and other factors that insurers can't consider when setting premiums for individual and small-group plans. They can charge small businesses with older workers far more compared to those with younger workers than ACA plans allow, and AHPs have more ability to vary rates based on geography.

While a new type of AHP created by the recent federal changes is not permitted to set premiums directly based on health-related factors, many of the other non-health factors (such as occupation and age) that they *can* use to determine premiums are closely correlated to health status, potentially leaving people with pre-existing conditions or who are older exposed to much higher premiums.

- **Some AHPs can directly set higher premiums for small groups whose workers have pre-existing conditions or offer firms with healthier workers a premium reduction.** Some AHPs can consider the pre-existing conditions and the past medical claims of small

⁴ Sabrina Corlette, Josh Hammerquist, and Pete Nakahata, "New Rules to Expand Association Health Plans," *The Actuary*, May 2018, <https://theactuarmagazine.org/new-rules-to-expand-association-health-plans/#en-4464-10>.

⁵ 29 C.F.R. Part 2510 (2018), <https://www.govinfo.gov/content/pkg/FR-2018-06-21/pdf/2018-12992.pdf>.

business workers when setting premiums (known as “medical underwriting”).⁶ An example is the AHP formed by the National Restaurant Association, the Restaurant & Hospitality Association Benefit Trust. As the restaurant association’s Clinton Wolf said last summer: “We do health underwrite. We built this to last 50 years and we see health underwriting as allowing for long-term sustainability. It’s a critical piece to making sure you don’t end up in a death spiral.”⁷ The recent federal rule changes open the door to insurers and associations that want to offer the old-style AHPs to small businesses, and some are lobbying for changes to let them do so, in cases where state laws are more stringent than federal rules.⁸

- **AHPs are not subject to the ACA’s “single risk pool” requirement.** This means the companies that offer them do not have to pool together all their enrollees in the small-group or individual market (respectively) when setting premiums. This gives entities offering AHPs greater ability to set premiums in ways that reflect the health status of AHP enrollees only, separate from the broader market.
- **AHPs don’t participate in risk adjustment, which helps protect against risk segmentation.** Risk adjustment, which the ACA applied to plans in the individual and small-group markets, transfers revenues from insurers that enroll a healthier-than-average group of consumers to those that enroll a sicker-than-average group, compensating the latter for the extra health care costs they incur. It helps reduce the financial incentives for insurers to try to avoid enrollees (such as those with medical conditions) who cost more to cover, but it doesn’t apply to AHPs.

Weaker AHP Rules Let Plans Peel Off Healthier, Less-Expensive Enrollees

These weaker rules enable some recently formed AHPs to offer lower premiums by segmenting the market. For example, the Nebraska Farm Bureau set up an AHP for its members in partnership with insurer Medica with premiums for a self-employed individual that are about 25 percent lower than unsubsidized ACA marketplace plans. The AHP has lower premiums because it’s expected to attract a healthier group with lower costs compared to the regular individual market, said Geoff Bartsh of Medica. “It’s a matter of looking at the potential claims that are going to come through this association membership versus the claims we’re seeing in the larger individual market. . . . We

⁶ The federal rules set up a new option for AHPs to form (and to offer coverage to self-employed individuals as well as to small businesses), under which a nondiscrimination provision prohibits them from denying coverage or setting premiums based on health status. But the final rule also maintained an earlier option to which this nondiscrimination provision does not apply. AHPs formed under this option can be sold to small businesses (but not to individual self-employed people) and are not required to meet small-group standards.

⁷ Comments by Clinton Wolf, Restaurant & Hospitality Benefit Trust, at the Health Insurance and Managed Care (B) Committee of the National Association of Insurance Commissioners (NAIC) Fall National Meeting, November 16, 2018, https://www.naic.org/meetings1811/cmte_b_2018_fall_nm_materials2.pdf.

⁸ See, for example, Renée Shreve, “Hearings scheduled for group health insurance bills,” *The Garrett County Republican*, February 28, 2019, https://www.wvnews.com/garrettrepublican/news/hearings-scheduled-for-group-health-insurance-bills/article_bf15ebc6-0e26-5aa9-bf7f-dcddc3835a80.html and Rose Hoban, “Legislature makes another attempt at creating association health plans,” *North Carolina Health News*, February 25, 2019, <https://www.northcarolinahealthnews.org/2019/02/25/legislature-makes-another-attempt-at-creating-association-health-plans/>.

had an opportunity to just assess who the potential association members would be and their health risk is lower than the remaining individual market,” he said.⁹

AHPs pose risks to insurance markets (especially the small-group market) that are similar to the risks posed by other non-ACA coverage options. AHPs’ weaker standards give them more leeway to structure their benefits and premiums in ways that attract firms with younger or healthier-than-average workforces (or healthier self-employed individuals), pulling people who are less costly to cover out of the ACA-compliant small-group (or individual) market. Enrollees who need comprehensive coverage, or those with pre-existing conditions and with incomes too high to qualify for subsidies, would face rising premiums. Short-term plans, which are likely to expand after federal rule changes that took effect in October, raise similar risks of adverse selection — separating insurance markets into healthy and unhealthy risk pools, which reduces affordability and access to comprehensive coverage.¹⁰

In addition, AHPs have a history of financial instability and fraud. By weakening limits on AHPs, recent federal rule changes (and changes that some states are contemplating as well) could make it easier for unscrupulous or poorly managed AHPs to set up shop. If an AHP goes insolvent, as has happened in the past, it could leave people with unpaid medical claims and state regulators trying to clean up the mess. The AHPs currently getting the most attention are operated by prominent trade organizations and large, established insurers. These entities may be able to avoid some of the worst AHP pitfalls of the past. But weaker rules also help open the door to less well-known entities, and encouraging more AHPs to form makes state and federal enforcement more challenging.

⁹ Joseph Morton, “Nebraska Farm Bureau’s health insurance program off to solid start,” *Norfolk Daily News*, December 23, 2018, http://norfolkdailynews.com/news/nebraska-farm-bureau-s-health-insurance-program-off-to-solid/article_a4adcd80-06e6-11e9-8dad-c3ff4c9ff766.html.

¹⁰ Sarah Lueck, “Key Flaws of Short-Term Health Plans Pose Risks to Consumers,” Center on Budget and Policy Priorities, September 20, 2018, <https://www.cbpp.org/research/health/key-flaws-of-short-term-health-plans-pose-risks-to-consumers>.