

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2019-202
SENATE BILL 86

AN ACT TO ESTABLISH STANDARDS FOR ASSOCIATION HEALTH PLANS AND
MULTIPLE EMPLOYER WELFARE ARRANGEMENTS.

Whereas, Association Health Plans are subject to comprehensive consumer protections contained in the Employee Retirement Income Security Act (ERISA), the Health Insurance Portability and Accountability Act (HIPAA), the Mental Health Parity and Addiction Equity Act, the Newborns' and Mothers' Health Protection Act, the Women's Health and Cancer Rights Act, and the Genetic Information Nondiscrimination Act; and

Whereas, Association Health Plans are subject to the Affordable Care Act's "group health plan" requirements, which means Association Health Plans cannot deny individuals coverage if they have preexisting conditions, cannot impose annual and lifetime limits on certain benefits, and must provide free access to certain preventative services; and

Whereas, under ERISA, the State has been regulating self-insured Association Health Plans in a manner that, in addition to the federal consumer protections that apply to fully insured Association Health Plans, fully protects the citizens of this State; and

Whereas, new federal Department of Labor regulations regarding Association Health Plans allow for states to provide greater opportunities for small businesses and self-employed individuals with no employees to access health benefit plans while still providing health insurance consumers with the coverage protections established by the foregoing legislation and other provisions of federal law; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new Article to read:

"Article 50A.

"Association Health Plans and Multiple Employer Welfare Arrangements.

"§ 58-50A-1. Definitions.

The following definitions apply in this Article:

- (1) Employer member. – A person or entity acting directly as the employer of at least one employee, or a working owner, either of whom is a participant covered under a Path 2 MEWA.
- (2) Employee welfare benefit plan. – The term as defined in Section 3 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1), as amended.
- (3) Multiple employer welfare arrangement or MEWA. – The term as defined in Section 3 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(40(A)), as amended, that meets at least one of the following criteria:
 - a. Has at least one employer member of the MEWA that is either domiciled in this State or has its principal headquarters or principal administrative office in this State.



- b. Solicits an employer that is domiciled in this State or that has its principal headquarters or principal administrative office in this State.
- (4) Path 2 MEWA. – A MEWA that is established or maintained by an association of employers classified by the United States Department of Labor as a bona fide group or association under the requirements of 29 C.F.R. § 2510.3-5 and is formed by a sponsoring association that meets the following requirements:
- a. Has a constitution or bylaws that provides for all of the following:
 - 1. Regular meetings.
 - 2. Collection of dues from members.
 - 3. Operation by a board of trustees that includes an owner, partner, officer, director, or employee of at least one of the employer members of the association.
 - b. Has at least one substantial business purpose unrelated to the offering and providing of health insurance or other employee benefits to its employer members and their employees.
 - c. Has a commonality of interest shared among the employers comprising the Path 2 MEWA based on either of the following:
 - 1. Establishment by employers in the same trade, industry, line of business, or profession.
 - 2. Being a statewide organization where each employer that is a member of the organization has a principal place of business that does not exceed the boundaries of the State or a metropolitan area that is at least partially within the State, even if that metropolitan area includes portions of other states.
- (5) Sponsoring association. – An association of two or more employer members that offers an employee welfare benefit plan as a Path 2 MEWA. For purposes of this Chapter, a sponsoring association that meets the requirements of this Article shall be deemed to be a large employer.

"§ 58-50A-5. Compliance with requirements.

Regardless of the domicile of the sponsoring association receiving the policy, no group health plan shall be offered by a sponsoring association in this State unless it complies with the requirements of this Chapter. Nothing in this Article shall be interpreted to regulate or prohibit any group health insurance policy that is not offered by a sponsoring association in accordance with this Article.

"§ 58-50A-10. Sponsoring association requirements.

No insurer shall deliver or issue for delivery a group health plan to a sponsoring association or an employer member of a sponsoring association unless that sponsoring association meets the requirements of a Path 2 MEWA.

"§ 58-50A-15. Membership requirements.

(a) Group health plans offered by a sponsoring association may only provide coverage to the following:

- (1) Eligible employees of the employer member as defined in G.S. 58-51-80(c) and working owners pursuant to 29 C.F.R. § 2510.3-5.
- (2) The spouse or dependent children of any individual identified in subdivision (1) of subsection (a) of this section.

(b) In order to obtain coverage for their employees under a group health plan offered by a sponsoring association, employer members must commit to remaining members of the sponsoring association and receiving and paying for benefits under the group health plan for at least one twelve-month policy period.

"§ 58-50A-20. Health plan requirements.

Any group health plan offered by a sponsoring association must meet all of the following requirements:

- (1) Neither be offered nor advertised to the public generally.
- (2) Provides a level of coverage equal to or greater than sixty percent (60%) of the actuarial value of allowed costs for covered benefits.
- (3) Provides coverage for hospital and physician services.
- (4) Complies with the provisions of G.S. 58-3-150.

"§ 58-50A-25. Solvency requirements.

No insurer shall deliver or issue for delivery a group health plan to a sponsoring association or an employer member of a sponsoring association unless the sponsoring association meets all of the following solvency requirements:

- (1) Has been established and maintained in good faith for a period of at least three years.
- (2) Has at the outset a minimum of 500 individuals eligible for coverage pursuant to G.S. 58-50A-15(a).
- (3) Requires employer members to offer group health coverage to all individuals eligible for coverage under G.S. 58-50A-15(a) for a period of at least one year.
- (4) Maintains a minimum net worth equal to at least one month's premium, which must be held in trust and separate from the sponsoring association's operating assets. This amount shall be adjusted at the beginning of each policy period.
- (5) Maintains at all times an adequate plan for protection against insolvency that is acceptable to the Commissioner.

"§ 58-50A-30. Nondiscrimination.

(a) No sponsoring association may condition eligibility for coverage, including continuing eligibility for coverage, on any of the following health-status factors:

- (1) Health status.
- (2) Medical condition, including both physical and mental illness.
- (3) Claims experience.
- (4) Receipt of health care.
- (5) Medical history.
- (6) Genetic information.
- (7) Evidence of insurability.
- (8) Disability.

(b) An insurer or sponsoring association may make rating distinctions among its employer members based on factors other than health-status factors, such as industry, occupation, or geography, provided that the rating distinction is not directed at individual beneficiaries or based on a factor listed in subsection (a) of this section.

(c) No limitations shall be based on preexisting conditions.

(d) This section shall not be construed to require a sponsoring association or insurer to provide particular benefits other than those provided under the terms of the plan, or otherwise required by law, or to prevent the plan from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan.

"§ 58-50A-35. Premium contributions.

(a) Neither an insurer nor a sponsoring association shall require any individual, as a condition of initial enrollment or continued enrollment in the plan, to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health status-related factor in relation to the individual or to an individual enrolled in the plan as a spouse or dependent of the individual.

(b) Nothing in this section shall be construed to restrict the amount an insurer may charge for coverage under a group health plan offered to a sponsoring association under this section or

to prevent an insurer from establishing premium discounts or modifying otherwise applicable co-payments or deductibles for a group health plan offered to a sponsoring association under this section in return for adherence to programs of health promotion and disease prevention.

"§ 58-50A-40. Use of licensed agents and brokers.

Nothing in this Article shall preclude a sponsoring association from engaging a broker or agent licensed to sell insurance in this State for the purposes of reviewing and considering any group health plan offered to a sponsoring association under this section."

SECTION 2.(a) G.S. 58-49-30 is recodified as G.S. 58-50A-60.

SECTION 2.(b) G.S. 58-49-35 is recodified as G.S. 58-50A-65.

SECTION 2.(c) G.S. 58-49-40 is recodified as G.S. 58-50A-70.

SECTION 2.(d) G.S. 58-49-45 is recodified as G.S. 58-50A-75.

SECTION 2.(e) G.S. 58-49-50 is recodified as G.S. 58-50A-80.

SECTION 2.(f) G.S. 58-49-55 is recodified as G.S. 58-50A-85.

SECTION 2.(g) G.S. 58-49-60 is recodified as G.S. 58-50A-90.

SECTION 2.(h) G.S. 58-49-65 is recodified as G.S. 58-50A-95.

SECTION 3.(a) G.S. 58-50A-60, as recodified by Section 2(a), reads as rewritten:

"§ 58-50A-60. Multiple employer welfare arrangements; definition; administrators.

(a) ~~As used in this section, the term "multiple employer welfare arrangement" or "MEWA" means that term as defined in Section 3 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(40)(A), as amended, that meets either or both of the following criteria:~~

~~(1) One or more of the employer members of the MEWA is either domiciled in this State or has its principal headquarters or principal administrative office in this State.~~

~~(2) The MEWA solicits an employer that is domiciled in this State or that has its principal headquarters or principal administrative office in this State.~~

~~...."~~

SECTION 3.(b) G.S. 58-50A-70, as recodified by Section 2(c), reads as rewritten:

"§ 58-50A-70. Qualifications for licensure.

(a) To meet the requirements for issuance of a license and to maintain a MEWA, a MEWA must be:

(1) ~~Nonprofit;Nonprofit.~~

(2) Either of the following:

a. Established by a trade association, industry association, or professional association of employers or professionals that has a constitution or bylaws and that has been organized and maintained in good faith for a continuous period of ~~five~~three years for purposes other than that of obtaining or providing ~~insurance;insurance.~~

b. A Path 2 MEWA as defined in G.S. 58-50A-1.

(3) Operated pursuant to a trust agreement by a board of trustees that has complete fiscal control over the MEWA and that is responsible for all operations of the MEWA. Except as provided in this subdivision, the trustees must be owners, partners, officers, directors, or employees of one or more employers in the MEWA. With the Commissioner's approval, a person who is not such an owner, partner, officer, director, or employee may serve as a trustee if that person possesses the expertise required for such service. A trustee may not be an owner, officer or employee of the administrator or service company of the MEWA. The trustees have the authority to approve applications of association members for participation in the MEWA and to contract with an authorized administrator or service company to administer the operations of the ~~MEWA;MEWA.~~

- (4) Neither offered nor advertised to the public ~~generally; and~~ generally.
- (5) Operated in accordance with sound actuarial principles.

...."

SECTION 4.(a) G.S. 58-51-80 reads as rewritten:

"§ 58-51-80. Group accident and health insurance defined.

...

(b) No policy or contract of group accident, group health or group accident and health insurance shall be delivered or issued for delivery in this State unless the group of persons thereby insured conforms to the requirements of the following subdivisions:

...

(1c) Under a policy issued to a Path 2 MEWA pursuant to Article 50A.

...."

SECTION 4.(b) G.S. 58-50-115 reads as rewritten:

"§ 58-50-115. Health benefit plans subject to Act.

...

(c) A health benefit plan is not subject to this Act if it provides health benefits for employers who are employer members of a Path 2 MEWA pursuant Article 50A of this Chapter through a policy issued to the Path 2 MEWA."

SECTION 5.(a) G.S. 58-50-130(a)(5) reads as rewritten:

"(5) No small employer carrier, insurer, subsidiary of an insurer, or controlled individual of an insurance holding company shall provide stop loss, catastrophic, or reinsurance coverage to small employers who employ fewer than ~~26-20~~ eligible employees that does not comply with the underwriting, rating, and other applicable standards in this Act. An insurer shall not issue a stop loss health insurance policy to any person, firm, corporation, partnership, or association defined as a small employer that does any of the following:

- a. Provides direct coverage of health expenses payable to an individual.
- b. Has an annual attachment point for claims incurred per individual that is lower than twenty thousand dollars (\$20,000) for plan years beginning in 2013. For subsequent policy years, the amount shall be indexed using the Consumer Price Index for Medical Services for All Urban Consumers for the South Region and shall be rounded to the nearest whole thousand dollars. The index factor shall be the index as of July of the year preceding the change divided by the index as of July 2012.
- c. Has an annual aggregate attachment point lower than the greater of one of the following:
 - 1. One hundred twenty percent (120%) of expected claims.
 - 2. Twenty thousand dollars (\$20,000) for plan years beginning in 2013. For subsequent policy years, the amount shall be indexed using the Consumer Price Index for Medical Services for All Urban Consumers for the South Region and shall be rounded to the nearest whole thousand dollars. The index factor shall be the index as of July of the year preceding the change divided by the index as of July 2012.

Nothing in this subsection prohibits an insurer from providing additional incentives to small employers with benefits promoting a medical home or benefits that provide health care screenings, are focused on outcomes and key performance indicators, or are reimbursed on an outcomes basis rather than a fee-for-service basis."

SECTION 5.(b) This section becomes effective October 1, 2019, and applies to contracts entered into, amended, or renewed on or after that date.

SECTION 6. The Department of Insurance shall have the power to adopt temporary rules necessary to implement the provisions of this act.

SECTION 7.(a) The Department of Insurance shall conduct a study on the feasibility of submitting a 1332 waiver request to the federal Department of Health and Human Services with the goal of allowing (i) working owners and (ii) employers who have a principal place of business that does not exceed the boundaries of the State or a metropolitan area that is at least partially within the State (even if the metropolitan area includes portions of other states) to participate in a group health plan that is subject to large group market insurance requirements. The Department shall report on its findings, including any recommended legislation, to the Joint Legislative Oversight Committee on Health and Human Services no later than 90 days from the effective date of this section.

SECTION 7.(b) This section becomes effective only when a final judicial order is issued striking down the United States Department of Labor rules at issue in *State of New York, et al., v. U.S. Department of Labor, et al., 19-5152*, which is being heard by the United States Court of Appeals for the District of Columbia Circuit.

SECTION 8. The Revisor of Statutes is hereby authorized to make any changes to the General Statutes made necessary by the recodification in Section 2 of this act, including changes to the following sections of the General Statutes: G.S. 58-2-161, 58-3-122, 58-3-167, 58-3-169, 58-3-174, 58-3-176, 58-3-178, 58-3-190, 58-3-200, 58-3-215, 58-3-225, 58-3-227, 58-3-275, 58-28-35, 58-51-55, 58-65-90, 58-67-75, 58-68-25, and 90-21.50.

SECTION 9. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

SECTION 10. Except as otherwise provided, this act becomes effective October 1, 2019, and applies to contracts entered into, amended, or renewed on or after January 1, 2020.

In the General Assembly read three times and ratified this the 14th day of August, 2019.

s/ Norman Sanderson
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

This bill having been presented to the Governor for signature on the 15th day of August, 2019 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law. This 26th day of August, 2019.

s/ Karen Jenkins
Enrolling Clerk