



# THE FAILING HEALTH OF SMALL BUSINESS

## COULD ASSOCIATION BASED PLANS BE THE CURE?

*Small businesses in America are a pillar to our economy. Unfortunately, they are often plagued by the dilemma of how to efficiently and cost effectively offer healthcare to their employees. In the 109<sup>th</sup>, as well as, in previous Congress legislation regarding Association Based Plans, such as Association Health Plans (AHPs,) has been proposed to alleviate this stress on the American small business. This paper will provide some background to this problem for small business, a description and analysis of Association Health Plans, as well as, present the relevant legislative proposals in the 109<sup>th</sup> Congress.*

### **Background**

The majority of employees in America obtain health insurance through their employer. In a 2003 study conducted by the Employee Benefits Research Institute (EBRI), 100 million employees, or 74 percent of the American workforce receive health insurance through their employer and a total of 162 million individuals obtain health coverage through an employee-based system – such as a family member’s employment.<sup>1</sup> As the most common source of health insurance, it is important for small business to have the ability to offer health coverage to their employees.

### *The Significance of Employer Offered Health Coverage*

There are 46 million individuals who lack health insurance, over half of which work for small businesses who lack the ability to offer affordable quality health insurance benefits to their workers.<sup>2</sup> The importance of providing health benefits is magnified by the results of a 2002 survey which concluded that 60 percent of works rank health benefits as the most important factor when looking at potential employers<sup>3</sup> Therefore, the majority of small businesses recognize the value of offering employer based health insurance as a smart business priority. Employers offering health coverage report that it helps with employee recruitment and retention of qualified worker, as well as, increasing overall productivity.<sup>4</sup> In addition, three-quarters of the small businesses offering health benefits believe it is "the

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<sup>1</sup> Fronstin, Paul, Ruth Helman, Mathew Greenwald, and Associates. “Small Employers and Health Benefits: Findings from the 2002 Small Employer Health Benefits Survey”. *Employee Benefits Research Institute (EBRI)*. 1/2003

<sup>2</sup> The National Association of Realtors.

<http://www.realtor.org/PublicAffairsWeb.nsf/Pages/EnziSBHPBattleCanBeWon06?OpenDocument>

<sup>3</sup> Fronstin, Paul, Ruth Helman, Mathew Greenwald, and Associates. “Small Employers and Health Benefits: Findings from the 2002 Small Employer Health Benefits Survey”. *Employee Benefits Research Institute (EBRI)*. 1/2003

<sup>4</sup> *Ibid.*

right thing to do, therefore making it a moral decision as well as a business one.”<sup>5</sup> Small business that do not offer health benefits, tend to have difficulty retaining workers and report a higher rate of employee turnover.<sup>6</sup>

### *The Struggle to Offer Health Insurance*

Unfortunately, small businesses struggle financially to offer healthcare to their employees for several reasons. First, the overall cost of health insurance is on the rise, and in 2004 insurance costs increases by 11.2 percent.<sup>7</sup> This is the fourth consecutive year where there has been a double digit increase in the employer-sponsored health plan premiums.<sup>8</sup> Secondly, due to their size, small businesses have less leverage when it comes to negotiations of benefits and prices, which larger companies have the ability to do. Additionally, insurance companies find it more economically advantageous to enroll larger, more stable employers, rather than take risks with smaller employers. Also, since small businesses tend to employ lower-wage workers that may move among firms more often than employees of large firms, it affects the coverage rates in the small group markets for insurance.<sup>9</sup> Also, businesses do not have the advantage that larger corporations do, because they do not have the option of self insuring their own health coverage as opposed to buying insurance from traditional insurance carriers or health maintenance organizations (HMOs).<sup>10</sup> Further, since small business do not self insure they must comply with all state benefit mandates, which are expensive. Therefore, there are several factors contributing to the struggle that small business face when attempting to offer health insurance.

### **What are Association Based Health Plans?**

Association-based health plans refer to health plans sponsored by “trade and professional associations, and business coalitions under existing law.”<sup>11</sup> Essentially in these plans small businesses are pooled, and firms are able offer coverage to the businesses employees. Association-based plans provide relief from administrative costs, and rigorous government mandates. The main goal of association-based plans is to create an opportunity for small firms to band together and offer health coverage giving them a sense of strength in numbers.<sup>12</sup> However, some businesses with a workforce that has below-average risk do have the goal to buy coverage at a lower price.<sup>13</sup>

Under current law, association-based plans are regulated by the state and federal government because they are considered to be a Multiple Welfare Arrangement

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<sup>5</sup> Fronstin, Paul, Ruth Helman, Mathew Greenwald, and Associates. “Small Employers and Health Benefits: Findings from the 2002 Small Employer Health Benefits Survey”. *Employee Benefits Research Institute (EBRI)*. 1/2003

<sup>6</sup> *Ibid.*

<sup>7</sup> Committee on Education and the Workforce. “Full Committee Markup of H.R. 525, the Small Business Health Fairness Act.” 3/11/2005

<sup>8</sup> *Ibid.*

<sup>9</sup> Hearne, Jean. “Side-by-Side Description of Small Business Health Insurance Proposals.” Congressional Research Service (CRS). 5/1/2006

<sup>10</sup> *Ibid.*

<sup>11</sup> Hearne, Jean. “RL31963 -- Association Sponsored Health Plans: Legislation in the 109th Congress”. Congressional Research Service (CRS). 3/21/2006

<sup>12</sup> Hearne, Jean. “RL31963 -- Association Sponsored Health Plans: Legislation in the 109th Congress”. Congressional Research Service (CRS). 3/21/2006

<sup>13</sup> *Ibid.*

(MEWA).<sup>14</sup> A provision of the Employee Retirement and Income Security Act of 1974 (ERISA), MEWAs refer to “all group purchasing arrangements through which two or more employers purchase insurance or benefits together.”<sup>15</sup> The rationale for including MEWAs in ERISA was to ensure that states have regulatory authority over such plans, even if the plans are self-funded by the associations.<sup>16</sup> Presently, associations with members in multiple states encounter problems because they are subject to various states insurance laws and regulations, such as solvency, funding requirements, and consumer protections.<sup>17</sup>

Generally, employers find that offering association-based plans is an advantageous option. By employers banding together, they represent a larger unit and therefore increase their bargaining power with carriers and share “administrative functions,” which results in lower premiums.<sup>18</sup> Also, as previously mentioned, offering health insurance to employees results in a workforce that is more satisfied and productive,<sup>19</sup> therefore reducing sick days, increasing motivation and elevating loyalty among employees.

## Legislation

The concept of association-based plans, where employers band together to obtain health insurance for their employees is not new and there are several in existence today; varying from publicly sponsored purchasing groups to private purchasing groups, as well as, those that self-insure or have plans that bargain with different carriers.<sup>20</sup>

### *Legislation in Previous Congresses*

#### 107<sup>th</sup>-

- “Small Business Health Fairness Act of 2001” HR 1774 (Fletcher, KY-06)-- 6/27/2001 Referred to House Education and Workforce Committee, Subcommittee on Employer-Employee Relations

#### 108<sup>th</sup> –

- “Small Business Health Fairness Act of 2003” HR 660 (Fletcher, KY-06)-- 6/19/2003 Passed in the House by recorded vote of 262 - 162 (Roll no. 296), Received in the Senate and Read twice and referred to the Committee on Health, Education, Labor, and Pensions
- “Small Business Health Fairness Act of 2004” HR 4821 (Johnson, S TX-03)-- 5/13/2004, H.R. 4281 was laid on the table and its text appended to H.R. 4279 and Passed in the House by a recorded vote of 252 - 162, 1 Present (Roll no. 174), 5/21/2004 Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 539

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<sup>14</sup> Hearne, Jean. “RL31963 -- Association Sponsored Health Plans: Legislation in the 109th Congress”. Congressional Research Service (CRS). 3/21/2006

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Fronstin, Paul, Ruth Helman, Mathew Greenwald, and Associates. “Small Employers and Health Benefits: Findings from the 2002 Small Employer Health Benefits Survey”. *Employee Benefits Research Institute (EBRI)*. 1/2003

<sup>20</sup> Hearne, Jean. “RL31963 -- Association Sponsored Health Plans: Legislation in the 109th Congress”. Congressional Research Service (CRS). 3/21/2006

### *Current Legislation*

In the 109<sup>th</sup> Congress specific legislation regarding association-based plans has been introduced, this legislation would establish Association Health Plans (AHPs).

### **Association Health Plans – Small Business Health Fairness Act of 2005 (HR 525/S406)**

Sponsored by Representative Sam Johnson (HR 525) and Senator Olympia Snowe (S 406), this act outlines several standards and regulations for AHPs:

- 1) Establishes a certification process with the Department of Labor (DOL) for associations offering AHPs. This certification process includes various requirements, such as a board of trustees that has complete fiscal control, in addition AHPs that offer one or more self-funded coverage option must have at least 1,000 employees, and it prohibits employer premiums from being based on health status.<sup>21</sup>
- 2) Makes the federal government responsible for the majority of the regulation of AHPs, as opposed to subjecting them to various state regulations;<sup>22</sup>
- 3) Establishes non-discrimination provisions which prohibit any certified AHP from rejecting less healthy applicants from coverage or targeting those individuals for higher premiums;
- 4) Subjects AHPs offering one or more self-funded options to federal reserve and solvency requirements that would replace those that exist in state statutes;
- 5) Outlines specific standards for the board of trustees. For example, the board must include owners, officers, directors, or employees of the participating employers or partners with the participating employer who actively participate in the business;<sup>23</sup>
- 6) Establishes an "Association Health Plan Fund" from which the Secretary of Labor would make payments to ensure continued benefits on behalf of AHPs in distress. The fund's activities would be financed by annual payments made by AHPs.<sup>24</sup>

### **Current Status:**

- 7/26/2005-Passed the House by a vote of 263 - 165<sup>25</sup>
- 7/27/2005-Referred to Senate Committee on Health, Education, Labor, and Pensions.

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<sup>21</sup> Hearne, Jean. "RL31963 -- Association Sponsored Health Plans: Legislation in the 109th Congress". Congressional Research Service (CRS). 3/21/2006

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> Hearne, Jean. "RL31963 -- Association Sponsored Health Plans: Legislation in the 109th Congress". Congressional Research Service (CRS). 3/21/2006

<sup>25</sup> Roll Call Vote 426

## Opposition

### *Association Health Plans Offer Scaled Down Benefits*

It has been argued that AHPs will provide employees with fewer benefits than they need. However, members of AHPs have the freedom to choose the best plan at the best price, and, associations offering health plans must compete within the market. Therefore, those offering plans are likely to provide good benefits in order to gain membership.<sup>26</sup>

### *Association Health Plans are not Subject to State Insurance Commissioners*

Opponents of AHPs claim that since association health plans remove state commissioners from having oversight, that these plans will not be regulated. However, legislative proposals such as HR 525 include provisions for a certification process with the Department of Labor (DOL), where DOL administrators will ensure that each AHP is qualified.<sup>27</sup>

### *Association Health Plans Only Benefit Healthy Workers*

Some dispute that AHPs are slanted to only benefit employees with good health. However, AHP legislation, such as HR 525, establishes non-discrimination provisions prohibiting all certified AHPs from rejecting less healthy applicants from coverage or targeting those individuals for higher premiums.

### *Association Health Plans Do Not Meet Solvency Standards*

Many argue that AHPs will not have the stability and security needed in order to offer health coverage to employees. However, according to HR 525 AHPs offering one or more self-funded options are subject to solvency requirements by the federal government (which would replace those in state statutes). These solvency standards include stop-loss and indemnification insurance, and heightened sanctions and penalties for violators of the AHP standards. Currently, under MEWAs there are no such protections.

## Conclusion

Small businesses are the cornerstone options when it comes to American culture and economy. However, many continue to be plagued by the lack of affordable health insurance. According to statistics, out of the 46 million Americans who are uninsured, approximately 60% are employed by small businesses.<sup>28</sup> Numerous studies have concluded that offering health insurance to employees is crucial to the operation and financial success of a business. However, due to the size of small businesses, often it is difficult to offer health coverage. Under current law, small business can band together to offer health insurance, however they are known as MEWAs and it is a highly complex and government regulated system. The purpose of the proposed association-based plans, such as Association Health Plans and the Small Business Health Fairness Act of 2005 (HR 525) is to clarify regulatory authority and offer much needed relief to America's smaller

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<sup>26</sup> National Association of Realtors. "Small Business Health Plans, Summary".

<http://www.realtor.org/GAPublic.nsf/Pages/ahpibp?OpenDocument#opp>

<sup>27</sup> *Ibid.*

<sup>28</sup> The US Chamber of Commerce. "Small Business Health Plans."

<http://www.uschamber.com/issues/index/health/ahps.htm>

employers. By allowing firms to pool resources and band together with less involvement from government regulations, small businesses are able to negotiate better health care prices, which allow them to ensure coverage for all their employees, all while protecting the consumer with higher solvency standards.

Both Republican and Democratic pollsters have reported that the issue of health insurance is crucial to the American public. Specifically, surveys have found that an average of 89 percent of all voters (93 percent republican and 86 percent democrat) are in favor of legislation that would enable small businesses to band together through an association to bargain for lower priced health insurance.<sup>29</sup> Despite this overwhelming support for AHP type legislation, Democrats continue to oppose such efforts. Congressman George Miller (CA-07) ranking minority member of the Education and Workforce Committee released a statement claiming that "... the minority believes that HR 525 is fatally flawed and will reduce rather than improve health care coverage and benefits for American workers and their families."<sup>30</sup> In addition, 164 democrats voted against HR 525 when it came to the floor for a vote.<sup>31</sup> However, the Congressional Budget Office has concluded that AHPs will not only reduce healthcare premiums for small businesses by up to 25 percent,<sup>32</sup> but an additional 333,000 employees would be able to obtain coverage through association health plans.<sup>33</sup>

Ultimately, association health plans and HR 525 is overwhelmingly supported by the American public and is the medicine that small businesses are in desperate need of, opening the door for accessible health insurance for both the employer and their employees.

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<sup>29</sup> National Association of Realtors. "2006 NAR Midyear Legislative Meetings on Capitol Hill Visits Talking Points, Small Business Health Plans." <http://www.realtor.org/fedistrk.nsf/pages/sbhp2006talkingpoints>

<sup>30</sup> Congressman George Miller (D-CA-07). "Minority Views on HR 525." 4/12/2005. <http://edworkforce.house.gov/democrats/hr525views.html>

<sup>31</sup> Roll Call Vote 425. 7/26/2005

<sup>32</sup> National Association of Realtors. "Small Business Health Plans, Background." <http://www.realtor.org/GAPublic.nsf/Pages/ahpibp?OpenDocument#opp>

<sup>33</sup> *Ibid.*