

ConsumersUnion®

POLICY & ACTION FROM CONSUMER REPORTS

U.S. House of Representatives
Washington, D.C. 20515

March 21, 2017

Dear Representative,

We are writing today to oppose the Small Business Health Fairness Act (H.R. 1101) and the proposed rules for Association Health Plans.

Today, small businesses are already able to join together to purchase coverage through association health plans (AHP). These AHPs are currently regulated by the states, just like other insurance in the small group market. HR 1101 would allow an AHP to be entirely exempt from state regulation by being self-insured or following the rules of a single state nationwide.

Consumers Union has long raised the inadequacies of AHPs as a solution to improving access and strengthening the health of insurance markets, and urges Congress to reject them as likely to fragment the insurance risk pool and to provide minimal and non-uniform benefits exempt from state benefit mandates. These plans would split the healthy from the sick and drive up costs for those who do not enroll in them.¹

As a non-partisan, independent organization that has advocated for the best consumer products and policies for more than 80 years, we believe that altering the rules for AHPs as proposed in this bill would undermine consumers' access to fairly priced, quality health coverage.

Our objections are that:

- AHPs would be offered alongside other small group and individual market plans. However, they would operate under different rules. Past experience shows this is likely to lead to cherry-picking, adverse selection, and increased costs for sicker individuals and small businesses.² Put another way, this would lead to **health risk being segmented** with the less healthy consumers excluded from the AHP risk pool. A core, long-held Consumers Union principle is to support broad pooling of risk as fairer and more cost-effective for consumers.³ We do not support lower rates for healthiest consumers at the expense of older or sicker consumers.

¹ See, e.g., our report from 2000, "The Health Care Divide: Unfair Financial Burdens", p. 5.

<http://www.consumersunion.org/pdf/divide.pdf>

² In 2003, the CBO concluded "As relatively low-cost firms are attracted to the new AHP market, the average costs and thus the premiums facing firms in the state-regulated market would increase." Congressional Budget Office Cost Estimate, H.R. 660 Small Business Health Fairness Act of 2003, July 11, 2003. This finding was issued again two years later, in the CBO score for H.R. 525 Small Business Health Fairness Act of 2005.

³ Consumers Union Principles, <http://consumersunion.org/wp-content/uploads/2017/02/CU-One-Page-Principles-Doc-2-2-17-UPDATE.pdf>

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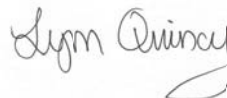
- This Act would **undermine state consumer protection laws** by restricting the ability of states to regulate AHPs. This loss of protections could lead to increased fraud, inadequate coverage and consumer-unfriendly benefit designs. In July 2003, Consumer Reports profiled similar plans in a story entitled *Phony Health Insurance*. The story noted that fraudulent sales and financial instability stiffed consumers for \$65 million in unpaid medical bills.
- This Act would give AHPs sole discretion to select what type of care they will and will not include in their products; this is a departure from current policy, which only permits AHPs that meet insurance standards set for the individual and small group market. Consumers who buy into these plans will lose the guarantees of care created by the ACA's essential health benefits and actuarial value requirements---likely unknowingly-- and will have difficulty knowing what AHPs cover.
- It is unlikely that these AHPs will be able to attract enough members to be able to negotiate more effectively with providers, compared to large insurers already operating in these states. Consequently, **we do not believe that these designs will lower costs** for consumers.
- Multiple employer welfare arrangements (MEWAs) once operated in a regulatory vacuum similar to the one proposed through H.R. 1101. Self-funded MEWAs had no clear regulatory authority, as initially it appeared that ERISA exempted them from state-level regulatory oversight. Multiple MEWA bankruptcies resulted, and consumers had limited avenue for redress. In the **absence of clear regulatory authority** over AHPs, insolvencies could leave millions of small employers and workers without health coverage or redress. Current state solvency standards have a 150 year track record of protecting consumers and should not be undermined.

We believe there are much better, time-tested ways to increase the availability, affordability, and accessibility of health insurance for consumers--approaches that rely on the wise and accepted insurance principles of broad pooling of risks and avoidance of risk selection--without resorting to the detrimental effects of H.R. 1101. We note that the National Association of Insurance Commissioners, as well as the American Academy of Actuaries, has similar, grave concerns about this Act.

Sincerely,



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