



## H.R. 1101 – Small Business Health Fairness Act (Johnson, R-TX)

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### FLOOR SCHEDULE:

Scheduled for consideration March 22, 2017 under a [structured rule](#).

### TOPLINE SUMMARY:

[H.R. 1101](#) would allow for the establishment of Association Health Plans (AHPs), to allow small businesses to pool together to leverage lower cost health insurance on behalf of their employees. By creating larger insurance pools for small businesses, H.R. 1101 would make health insurance more accessible and affordable, and level the playing field between small businesses and large corporations.

### COST:

No Congressional Budget Office (CBO) estimate is available.

### CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** The bill would preempt state law with respect to AHPs.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

### DETAILED SUMMARY AND ANALYSIS:

The bill would amend the Employee Retiree Income Security Act of 1974 (ERISA) to allow for the establishment of Association Health Plans (AHPs), under which small businesses could pool together to leverage lower cost health insurance on behalf of their employees. The bill would also preempt state regulation of an AHP, so long as it complies with the provisions of the bill.

The bill establishes certain eligibility requirements for AHPs, including that: (1) a sponsor must be a bona fide trade, industry, or professional organization, chamber of commerce, or other organization established for purposes other than providing medical care; (2) the sponsor must have existed for a period of at least three consecutive years for purposes other than providing group health insurance coverage; and, (3) AHPs must be operated by a board of trustees that will serve as plan sponsor and fiduciary and consist of owners, officers, directors, or employees of the AHP's participating employers. The bill requires that all employers participating in the AHP are members or affiliated members of the sponsor, and that all insured individuals are active or retired employees, owners, officers, directors, partners, or their beneficiaries.

H.R. 372 prohibits discrimination by requiring that: (1) eligible individuals cannot be excluded from enrolling on the basis of health status; (2) all employers belonging to the organization are eligible to participate; and, (3) all geographically available coverage options are made available to eligible employers upon request. Moreover, the bill specifies that participating employers cannot exclude employees from the AHP based on health status by purchasing an individual policy for that employee. The bill also includes a number of provisions to ensure that self-insured AHPs are not able to cherry pick by insuring only healthy individuals, including by requiring each employer's contribution rates to comply with provisions in the Health Insurance Portability and Accountability Act (HIPAA) that prohibit group health plans from excluding individuals based on claims experience.

The bill requires the Secretary of Labor to issue regulations to certify AHPs and maintain certification, including establishing a class certification for AHPs that purchase a group health plan from an insurance company. It would establish certain capital reserve requirements for self-insured AHPs and require them to obtain stop loss coverage and solvency indemnification insurance, as well as maintain minimum surplus reserves of at least \$500,000 (this minimum could be increased to \$2 million through regulation). It would create an Association Health Plan Fund managed by DOL, and require all certified AHPs to pay \$5,000 into the fund each year to guarantee that indemnification insurance is always available. Penalties would apply if payments were not made. The bill also requires the secretary to establish a Solvency Standards Working Group to recommend initial regulations, and outlines procedures under which the secretary may become the trustee of insolvent AHPs.

Finally, the bill would allow states to assess a contribution tax on newly certified AHPs, to the same degree that they tax health insurance plans, in order to protect state financing of projects like high risk pools.

#### **AMENDMENTS:**

1. [Herrera-Beutler \(R-WA\)](#) – This amendment would clarify that nothing in the bill would require existing AHPs operating under current state regulations to become certified or otherwise comply with provisions of the bill.

#### **COMMITTEE ACTION:**

This bill was introduced by Representative Johnson (R-TX) and referred to the House Committee on Education and Workforce, where a mark-up was held and the bill was voted out by a vote of 22-17.

Read the committee report [here](#).

#### **ADMINISTRATION POSITION:**

No Statement of Administration Policy is available at this time.

#### **CONSTITUTIONAL AUTHORITY:**

According to the sponsor: Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 1, Clause 3, and Clause 18 United States Constitution.