

**Suggested Amendments to State Law To Allow a Fully-Insured AHP
To Cover Self-Employed Individuals and Employers In Different Industries**

**Amendments to the Rules Applicable to a Group Accident and Sickness Insurance Policy
Issued to an Association**

Section I:

- (a) A policy may be issued to an association of employers or self-employed individuals (or both), which the association shall be deemed the policyholder, provided the following requirements are satisfied:
 - (1) The policy is issued by a health insurance issuer that is duly licensed in this State in accordance with XXX of the Code, [or is a foreign issuer that is duly licensed in the State in which the issuer is domiciled as permitted under XXX of the Code].
 - (2) The association:
 - (i) Has been actively in existence for at least two years.
 - (ii) Has been formed and maintained in good faith for purposes other than obtaining insurance.
 - (iii) Has a constitution and bylaws which provide that the association hold regular meetings not less than annually to further purposes of the members, the association collects dues or solicits contributions from members, and the members have voting privileges and representation on the board governing the association.
 - (iv) Does not condition membership in the association on any health status-related factor relating to an individual or their dependents.
 - (v) Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to such members or their dependents.
 - (vi) Does not make health insurance coverage offered through the association available other than in connection with a member of the association.
- (b) If the association described in subsection (a) includes 51 or more employees or self-employed individuals (or both), the policy issued to the association shall:
 - (1) Be treated as a large group market plan subject to the large group market insurance regulations under the Public Health Service Act, and such policy shall be guaranteed issue and guaranteed renewable.

- (2) Be subject to the “group health plan” coverage requirements under the Affordable Care Act, including but not limited to the prohibition against denying coverage based on a pre-existing condition.
 - (3) Comply with all coverage mandates applicable to a large group market plan offered in this State.
 - (4) Provide a level of coverage equal to or greater than sixty percent.
 - (5) [Provide coverage for the “essential health benefits” as defined under section 1301(b) of the Affordable Care Act, except pediatric dental and vision coverage may be offered outside of the policy under a stand-alone arrangement.]
 - (6) Be subject to other insurance requirements as the Insurance Commissioner may deem appropriate.
- (c) The health insurance issuer issuing the policy to the association described in subsection (a) shall:
- (1) Treat all of the employees or self-employed individuals (or both) who are enrolled in coverage under the policy as a single risk pool.
 - (2) Set premiums based on the collective group experience of the employees or self-employed individuals (or both) who are enrolled in coverage under the policy.
 - (3) Vary premiums by age, except that such rate shall not vary by more than 5 to 1.
 - (4) Be prohibited from varying premiums based on gender.
 - (5) Be prohibited from varying premiums based on the health-status of an employer member, an individual employee of an employer member, or a self-employed individual, except as provided in subparagraph (2).
 - (6) Be prohibited from establishing discriminatory rules based on the health-status of an employer member, an individual employee of an employer member, or a self-employed individual for eligibility or contribution requirements.
- (d) The association shall comply with the requirements applicable to a “plan sponsor” as defined under section 3(16) of the Employee Retirement Income Security Act, and the health plan providing coverage under the policy to employees or self-employed individuals (or both) shall be administered in accordance with the requirements applicable to an “employee welfare benefit” as defined under section 3(1) of the Employee Retirement Income Security Act.

- (e)
 - (1) The association shall establish a governing board to manage and operate the health plan, and at least seventy-five percent of the board shall be made up of employees or self-employed individuals (or both) participating in the plan, with the remaining percentage being made up of representatives designated by the association.
 - (2) The employees or self-employed individuals (or both) participating in the health plan shall nominate, and through an election where each employee or self-employed individual (or both) are given a vote, elect members to serve on the board.
 - (3) The board shall be treated as a “fiduciary” as defined under section 3(21) Employee Retirement Income Security Act, and the board shall manage and operate the health plan for the exclusive purpose of:
 - (i) Providing health benefits to employees or self-employed individuals (or both) enrolled in coverage under the health plan;
 - (ii) Defraying expenses relating to administration of the health plan; and
 - (iii) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
- (f) If an employee of an employer member of the association terminates employment with the employer member and is subsequently re-employed by another employer member of the association, the employee shall remain covered under the policy issued to the association. If a self-employed individual that is currently covered under the policy issued to the association is employed by an employer member of the association, the self-employed individual shall remain covered under the policy issued to the association as an employee of an employer member of the association.

Amendment to the definition of “Employer”

“Employer” has the meaning given such term under section 3(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (5)). “Employer” shall also mean an association. For purposes of determining employer size of an association, all of the employees of employer members or self-employed individual members (or both) of such association shall be aggregated and treated as employed by a single employer.

Amendment to the definition of “Group Health Plan”

“Group health plan” means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (1)), to the extent that the plan provides medical care and including items and services paid for as medical care to

employees of an employer, and employees of employer members or self-employed individual members (or both) of an association directly or through insurance, reimbursement, or otherwise.

Amendment to the definition of “Large Employer”

“Large employer” means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. “Large employer” shall also mean an association that includes at least 51 employees of employer members or self-employed individual members (or both) of such association on the first day of the plan year.

Amendment to the definition of “Small Employer”

“Small employer” means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 50 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. “Small employer” includes a self-employed individual. “Small employer” shall also mean an association that includes 50 or fewer employees of employer members or self-employed individual members (or both) of such association on the first day of the plan year.

Definition of Self-Employed Individual

A self-employed individual means an individual that:

- (1) Has an ownership right in a “trade or business,” regardless of whether the “trade or business” is incorporated or unincorporated;
- (2) Earns wages or self-employment income from the “trade or business”; and
- (3) Works at least 20 hours a week (or 80 hours per month) providing personal services to the “trade or business” or earns income from the “trade or business” that at least equals the self-employed individual’s cost of the health coverage.

Definition of Association

An association means a member-based organization of employer members or self-employed individual members (or both). Such association may include employers or self-employed individuals (or both) in the same industry, trade, or profession. Such association may also include employers or self-employed individuals (or both) domiciled or residing in the State or in a metropolitan area that is at least partially within the State and partially within another contiguous State or jurisdiction.

Section 1332 Language

Within 90 days of enactment of this Section XXX, the Department of Insurance shall submit a waiver request to the United States Department of Health and Human Services in accordance with section 1332 of the Affordable Care Act to modify 42 U.S.C. § 18021(b)(3) and 42 U.S.C. §§ 18024(a) and (b) to allow (1) a self-employed individual (as defined in Section XXX) and (2) an employer with at least one employee that is (i) domiciled in the State or (ii) has a principal place of business that does not exceed the boundaries of a metropolitan area that is at least partially within the State and partially within another contiguous State or jurisdiction to participate in a group health plan that is subject to the large group market insurance requirements under the Affordable Care Act and this State, and to modify any other provisions of the Affordable Care Act as the Insurance Commissioner deems necessary.