NAR Committee: Insurance Committee

What is the fundamental issue?

Before the Affordable Care Act (ACA), NAR surveys consistently showed that 28-33 percent of REALTORS® were uninsured in any given year. Consequently, NAR has long advocated for reforms in the health insurance markets that self-employed individuals and small employers depend upon for coverage. Among the legislative approaches that NAR has supported are small business health options plans (SHOP), small business health plans (SBHPs), and association health plans (AHPs). NAR also represented the interests of the REALTOR® community during the ACA congressional debate and subsequent rulemakings.

I am a real estate professional. What does this mean for my business?

REALTORS® and other self-employed individuals can face significant financial burdens when they purchase health insurance or seek needed medical care. The ACA made significant changes to insurance company underwriting and rating practices to address access to health insurance meeting minimum benefit requirements. Rising health care costs, however, continue to create problems for those who are not able to take advantage of the ACA premium tax credits that reduce the cost of coverage for low- and moderate-income households.

NAR Policy:

NAR policy supports improving access to affordable health insurance options for self-employed individuals and small employers. NAR also supports legislative and regulatory changes allowing bona fide trade associations to offer association health plans (AHPs) to all of their members, including the working owners. NAR's health advocacy efforts are guided by the following public policy principles:

1. The Nation and its health care system are best served by having all citizens covered by health insurance.
2. Health care coverage and/or insurance should be made available to all.
3. Individuals should have health care coverage that is continuous, i.e. allows for no gaps in coverage.
4. Individuals should have the ability to choose their preferred health insurance plan from an array of policy options that offer choices in the scope of covered services and policy costs.
5. Health care coverage should enhance health and well-being by providing...
preventive health services and chronic disease management services.
6. The health care delivery system must provide cost effective, quality care in an efficient and timely manner in order to be affordable and sustainable for society. Cost containment, therefore, must be a component of any reform effort.
7. A “single payer” health care system in which the government pays for and allocates health care services should be opposed.
8. Employers should not be required to offer employee health insurance programs.

Opposition Arguments:

Opponents of federal efforts to address health insurance reforms believe that insurance is the rightful purview of state governments. Since the passage of the McCarran-Ferguson Act, state governments have had the responsibility for insurance market regulation.

Legislative/Regulatory Status/Outlook

Affordable Care Act Reform
The Affordable Care Act (ACA) generally reformed insurance company underwriting and rating practices to address access to health insurance meeting minimum benefits requirements. Of particular interest to self-employed individuals, under the ACA, insurance companies can no longer deny coverage to an applicant based on health status, preexisting conditions, past claims, age, gender, line of work or any other factors that the states had allowed. In addition, the ACA limits the factors used to price policies to an applicant’s place of residence, age, number of covered individuals, level of coverage chosen and tobacco usage.

Since its passage in 2010, lawmakers have been either defending or fighting the ACA depending largely on which party controls Congress and the White House. While the debate has continued, Congress remains divided over a way forward on most ACA reforms.

Association Health Plans (AHPs)
As part of a broad coalition, NAR continues to vigorously advocate for AHPs before Congress, federal agencies, and the Courts. Most recently, our coalition worked with Reps. Fox (R-NC) and Walberg (R-MI) to reintroduce legislation that would reinstate the 2018 U.S. Department of Labor (DOL) AHP final rule. Here is a brief chronology:

- On June 21, 2018, the DOL finalized regulations broadening the definition of “employer” so that “working owners” (i.e., self-employed individuals) and small employers can participate in Association Health Plans (AHPs) under the
Employee Retirement Income Security Act (ERISA) -- the federal law governing employee benefit and health plans. NAR strongly supports the DOL final rule.

- On March 28, 2019, the U.S. District Court for the District of Columbia ruled that several provisions in the final rule were unlawful under the Administrative Procedure Act. The ruling includes the “working owner” provision that had enabled REALTORS® and other self-employed individuals to join AHPs. The U.S. Department of Justice (representing DOL) appealed the district court decision.
- On November 14, 2019, a three-judge panel of the D.C. Circuit Court of Appeals heard oral arguments in DOL’s appeal of the district court decision. NAR filed multiple legal briefs supporting the DOL appeal while denouncing the lower court ruling as jeopardizing access to affordable AHPs for thousands of member families who signed up through their state or local REALTOR® association. A decision is still pending in the case.

NAR will continue to protect and promote the DOL AHP final rule, as well as any other legislative/regulatory proposals to improve access to affordable health care options for NAR members.

**Current Legislation/Regulation (bill number or regulation)**

HR 4547 - Association Health Plans Act of 2021
Dept. of Labor Final Rule, Definition of “Employer” Under Section 3(5) of ERISA—Association Health Plans

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