‘Association’ health plans may provide more choice, but critics fear consumer harm
Stephanie Innes, Arizona Republic | April 1, 2019

Lauren Klinkhamer of Tucson speaks during a protest in Sen. Jeff Flake’s Capitol Hill office. Klinkhamer said she has 16 chronic medical conditions, but fears the current Senate plan to replace Obamacare will cost her health insurance. (Photo: Ben Moffat/Cronkite News)

A bill that would expand access to “association” health-insurance plans in Arizona would put into state law elements of a Trump administration rule that was just rejected by a federal judge.

**Senate Bill 1085**, which is moving through the Arizona Legislature, expands the ability for small businesses, including sole proprietors, to band together and purchase health insurance as an “association.”

The bill codifies into state law elements in a [final rule](https://www.azcentral.com/story/news/local/arizona-health/2019/04/01/kate-brophy-mcgees-arizona-association-health-insurance-bill-dangerous-critics-say/3251564002/) issued by the U.S. Department of Labor in June that loosened some of the regulations on association health plans to make them more attractive to businesses that have not previously used them. It also added sole proprietors into the category of people who could join associations and buy health insurance.

The federal judge’s ruling Thursday casts some uncertainty on the proposed Arizona legislation. The judge's opinion says the Trump administration's final rule is an intentional “end-run” around the federal Affordable Care Act.

“I would think associations looking to form plans would need to think twice about doing so, given this uncertainty,” said Larry Levitt, vice president of the Kaiser Family Foundation. “If this ruling stands, it would limit states’ ability to open the door to more association health plans.”

Debbie Hann, chief operating officer for the Arizona Small Business Association, said her organization remains positive, in spite of the ruling, and is moving forward with plans to offer health insurance to members.

Hann said her association began taking steps to offer health insurance after Trump issued an [executive order](https://www.azcentral.com/story/news/local/arizona-health/2019/04/01/kate-brophy-mcgees-arizona-association-health-insurance-bill-dangerous-critics-say/3251564002/) in October 2017, calling for expanded access to association health plans.

**What is an association health plan?**

Under SB 1085 and the federal rule, an association of people working in a similar trade, for example, would have negotiating power to get its members cheaper insurance options. Associations could purchase insurance as a large-group employer, and some may choose to self-insure, which critics fear will increase the risk for insolvency. The Arizona Department of Insurance did not take a position on SB 1085.

Proponents say broadening access to the plans will allow everyone from self-employed millennials in the tech industry to small-business owners access to insurance that is otherwise unaffordable for them. Association plans may charge higher rates based on factors such as age and gender, but the association cannot use health status to determine eligibility, premiums, or benefits.
“This is going to be a game-changer for our members. It will level the playing field for recruitment and retention,” said Hann of the Arizona Small Business Association.

Supporters include Blue Cross and Blue Shield of Arizona, the Arizona Association of Health Underwriters, and the Arizona Technology Council.

Trump has called association health plans “tremendous insurance at a very low cost.”

“I think we are all supportive of things that are more affordable for consumers and choice is always great. But you have to read the fine print,” said Swapna Reddy, a clinical assistant professor at Arizona State University’s College of Health Solutions.

**More options for consumers**

Bill sponsor Sen. Kate Brophy McGee, R-Phoenix, says the bill is a sensible solution for small businesses, including sole proprietors, who are currently priced out of the individual ACA marketplace.

Brophy McGee said she's puzzled by the criticism. She believes association plans are being unfairly grouped with short-term health insurance plans, which are allowed to exclude people with pre-existing conditions.

Bill sponsor Sen. Kate Brophy McGee says the bill is a sensible solution for small businesses. *(Photo: Nick Oza/The Republic)*

Detractors worry that expanding access to association plans could damage the risk pool of the individual insurance market in Arizona, drive up costs for those who remain, and hit some consumers with large, unexpected medical bills for services the association plans don't cover.

If young sole proprietors working in the tech industry joined together as an association and purchased health insurance, they could probably get good rates as a young, healthy group. But they’d also be siphoning much-needed young, healthy people from the individual insurance market, critics say.

Opponents to SB 1085 include the Arizona Public Health Association, the Arizona Lung Association, and the Phoenix-based Children’s Action Alliance.

“We actually have no idea what the scope of these plans is going to be,” said Rep. Kelli Butler, D-Phoenix, who cast one of the two “no” votes when the House Health and Human Services Committee passed SB 1085 on March 14. “I don't know that anyone has figured out what kind of demand there is going to be for these things, which is definitely a step that should have been taken.”

Butler said Brophy McGee’s bill needs to ensure consumer protections for Arizonans, and it doesn’t do that.

One key concern is that association health plans with more than 50 members, like other large employers, wouldn’t need to cover the “10 essential health benefits” — which are core protections like hospitalization, as well as pregnancy, maternity, and newborn care that are required to be covered by ACA plans.
“Having bare-bones coverage might be just fine if that's all you'll need,” ASU's Reddy said. “But things can change very quickly. ... It’s not a mystery what happens when people are underinsured and need coverage.”

A Congressional Budget Office report issued in January offers a counterpoint to some of the worries. Even though it’s not required, association health plans “tend to cover” most essential health benefits, the report says.

The report suggests that association health plans could result in more insurance coverage for Americans. The researchers estimate that on average, 400,000 people who would have otherwise gone uninsured will have new U.S. association health plan coverage via small employers between 2019 and 2028.

**Increased risk of ‘fraud and harm’?**

Opponents point to a recent law signed by Arizona Gov. Doug Ducey that expands the length of time consumers can be enrolled in short-term health insurance plans from one year to three. Critics dubbed it the “junk insurance law” and said it was an effort to weaken the ACA. Passing the association health plan law would be yet another move in that direction, they say, though backers stress that short-term and association plans are not the same.

Some states have reacted to the final federal rule by passing laws that place stricter regulations on association health plans. In the lawsuit that was ruled on Thursday, 11 states — plus the District of Columbia — argued that the final rule would increase the risk of “fraud and harm to consumers.” Arizona is not one of the plaintiff states.

The rate of uninsured Americans has dropped since the ACA passed, the lawsuit says, but that progress is now being threatened by the rule.

Thursday’s ruling could be a problem for entities like chambers of commerce that want to form associations to purchase health insurance, Levitt of the Kaiser Family Foundation said. Several Arizona chambers of commerce are supporting SB 1085.

“I would think association health plans from a chamber of commerce would be particularly vulnerable,” Levitt said. “If it were an association tied to a particular industry, it would have some chance of surviving. But a chamber of commerce, where the only thing tying the employers together is that they are in the same geographic area — that is something the judge focused on.”

Association health plans have existed since the 1970s, and have a history of fraud and insolvency, ASU’s Reddy said. The ACA addressed some of those historical problems by adding protections, she said. Now, under the Trump final rule, protections are getting rolled back, Reddy said.

Association health plans have failed in the past and left consumers at risk, Brophy McGee acknowledged. But her bill was crafted to guard consumers and provide options, she said.

The biggest change from current state law is that Brophy McGee’s bill allows sole proprietors to be a part of associations that purchase health insurance, said Marc Osborn of the Arizona Association of Health Underwriters, emphasizing that association health plans are already permitted under Arizona law.
The addition of sole proprietors is in line with the Trump administration’s final rule, and it was also one of the issues Thursday’s ruling, Levitt said.

“That historically has not been permitted. The Department of Labor opened these association health plans to sole proprietors, and that was one of the provisions the judge threw out,” Levitt said.

Brophy McGee told The Republic that associations will want their plans to be competitive, and there’s no reason to believe they are going to offer bare-bones insurance. She told the house health committee that she introduced the bill after complaints from constituents about the high cost of Arizona’s ACA marketplace insurance.

Most of the 160,000 Arizonans who purchased insurance on the 2019 marketplace qualified for federal subsidies to help pay for it. For those who didn’t qualify, the premiums can be costly. (Photo: Alejandra Armstrong/Cronkite News)

Most of the 160,000 Arizonans who purchased insurance on the 2019 marketplace qualified for federal subsidies to help pay for it. For the small number who didn’t — generally those earning 400 percent or more of the federal poverty level — the premiums can be costly.

A 56-year-old single female living in Maricopa County earning $65,000 per year, for example, would have to pay premiums of $758-$987 per month for a silver level plan, according to what’s available on the 2019 marketplace. Annual deductibles for those plans range from $4,000 to $7,900.

“The group that really has no market clout, and does not have a lot of options is the individuals making more than 400 percent of the federal poverty level. This is a real problem,” said Dr. Dan Derksen, health policy expert and University of Arizona professor.

“This might give that group more affordable choices, so that at least they have some form of coverage. But the individuals that are covered by those plans really have to be careful about reading the fine print of which benefits are included and which are excluded.”

Questions about health insurance?

Arizonans who have questions or problems with how their health insurance is being administered may call or email the Department of Insurance's consumer assistance section at 602-364-2499 or consumers@insurance.gov

Consumers may also file a complaint at insurance.az.gov/complaint or go insurance.az.gov/consumers for more information.

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