

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 666 (Delegate Reznik)  
Health and Government Operations

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Health Insurance - Associations - Definitions

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This bill expands the definition of “association” or “bona fide association” to include an association that has been formed and maintained *for the purpose of obtaining insurance*.

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Fiscal Summary

**State Effect:** Special fund revenues for the Maryland Insurance Administration (MIA) increase by a minimal amount beginning in FY 2019 from the \$125 rate and form filing fee. MIA expenditures may increase to the extent a large number of associations form solely for the purpose of offering insurance in Maryland.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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Analysis

**Current Law:** “Association” or “*bona fide* association” means an association that:

- has been actively in existence for at least five years;
- has been formed and maintained in good faith for purposes *other than obtaining insurance* and does not condition membership on the purchase of association-sponsored insurance;
- does not condition membership in the association on any health status-related factor relating to an individual, and states so clearly in all membership and application materials;

- makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to the members or individuals eligible for coverage, and states so clearly in all membership and application materials;
- does not make health insurance coverage offered through the association available other than in connection with membership in the association, and states so clearly in all marketing and application materials; and
- provides and annually updates information necessary for the Insurance Commissioner to determine whether or not the association meets the definition of *bona fide* association before qualifying as an association.

Generally, under federal law, health insurance policies sold through an association to individuals and small employers are regulated under the same federal and state standards that apply to the individual market or the small-group market, respectively. This includes requirements of the federal Patient Protection and Affordable Care Act (ACA), such as guaranteed issue, essential health benefits, and rating rules, as well as any state rules. Under the federal Employee Retirement Income Security Act (ERISA), for an association to be considered a *bona fide* association, it must be formed for a legitimate purpose *other than* procuring health insurance.

In Maryland, an association must submit forms and rates to MIA for approval and, as under federal law, is subject to the rules of the individual or small-group market, including all ACA requirements. A group of small employers cannot form an association for purposes of obtaining a large group policy, as an insurer is prohibited from selling such a policy to a small employer. If an association elects to self-insure, it must seek a certificate of authority to operate as an insurer from MIA.

**Background:** In October 2017, President Donald J. Trump issued an executive order to, among other things, expand access to association health plans by allowing more employers to form such plans. In January 2018, the U.S. Department of Labor’s Employee Benefits Security Administration issued a proposed [regulation](#) that broadens the criteria under ERISA for determining when employers may join together in a group or association. The regulation establishes a more flexible “commonality of interest” test for employer members and permits specified businesses to elect to act as employers for purposes of participating in an employer group or association sponsoring a health plan. The comment period of these regulations ends March 6, 2018.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** U.S. Department of Labor Employee Benefits Security Administration; The Commonwealth Fund; Maryland Insurance Administration; Department of Legislative Services

**Fiscal Note History:** First Reader - February 13, 2018  
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