

Republican Senators announced bill to expand Association Health Care Plans for small businesses that could exclude full coverage protections for workers.

➤ **NOTE:** S86, filed [2/19/19](#)

Summary: Senate Bill 86 creates opportunities for small businesses to provide health care for employees using Association Health Plans (AHPs) authorized under federal guidelines. The Trump administration rolled out AHPs in June 2018, claiming they would result in lower prices and more choices for employers and employees. S86 would require coverage for people with preexisting conditions and allow parents to keep children on up to age 26.

AHPs don't have as many consumer protections as other health plans. Due to this, economists and experts say AHPs are risky and likened them to "running with scissors." AHPs do not have to cover the ten "essential health benefits" required under the ACA and could exclude coverage for prescription drugs, for example, and smaller employers could skip maternity coverage requirements. **Protections written into AHPs for people with preexisting conditions would be weakened by plans that make chronic care patients jump through more hoops or pay high deductibles.** AHPs cannot discriminate against sick individuals, but do not offer complete protections for people with preexisting conditions who could face "roadblocks in finding affordable, comprehensive coverage."

S86 isn't likely to lower prices in NC's individual market where costs are among the highest in the nation and could get more expensive for beneficiaries over time. Critics also said AHPs could drive up costs in the individual and small-group markets where people who need comprehensive coverage would be forced to seek insurance. AHPs only really help people who are relatively healthy, and get more expensive over time for older workers more likely to have chronic health conditions.

This is similar to a plan Republicans attempted to enact in 2018 that would have allowed insurers to be exempt from ACA requirements, allowing them to "cherry-pick" healthy enrollees. Critics drew comparisons between this plan and a loophole written by Tennessee legislators that has driven up premiums exponentially in that state.

S86 creates opportunities for small businesses to provide health care for employees using controversial Association Health Plans.

Senate Bill 86 creates opportunities for small businesses to provide health care for employees using Association Health Plans (AHPs) authorized under federal guidelines. "Whereas, new federal Department of Labor regulations regarding Association Health Plans allow for states to provide greater opportunities for small businesses and self-employed individuals to access health benefit plans, while still providing health insurance consumers with the coverage protections established by the foregoing legislation and other provisions of federal law;" (S86, filed [2/19/19](#))

The Trump administration rolled out AHPs in June 2018, claiming they would result in lower prices and more choices for employers and employees. "Federal officials [say the new rule](#) would help level the playing field for these businesses, giving the kind of flexibility on benefits and leverage to negotiate with [providers that large companies may have](#). When [announcing the policy on June 19](#), President Donald Trump said it would "result in very low prices, much more choice, much more freedom, including in many cases new opportunities to purchase health insurance. You'll be able to do this across state lines." (NPR, [6/27/18](#))

S86 would require coverage for people with preexisting conditions and allow parents to keep children on up to age 26. "Initially, when Trump proposed creating the AHPs, [advocates worried](#) that the new federal rules would allow for so-called "skinny" plans that covered catastrophic coverage and little else. The rules released by the U.S. Department of Labor last fall called for plans that were a little more robust and also tightened rules to avoid solvency problems of AHPs of the past. For example, the

new North Carolina bill calls for AHPs to keep some of the protections of the Affordable Care Act, such as requiring coverage for people with pre-existing conditions and allowing parents to keep their children on their plans up to age 26.” (S86, filed [2/19/19](#); NC Health News, [2/25/19](#))

Though they must meet some ACA requirements, AHPs may not provide full coverage protections to workers which experts liken to “running with scissors.”

AHPs don’t have as many consumer protections as other health plans, so groups that have members with preexisting conditions would have higher premiums than healthier workplaces. “There are lots of questions about AHPs, in large part because in the past they’ve had problems with solvency and because they [don’t have as many consumer protections](#). Groups that have members with pre-existing conditions would have higher premiums than those workplaces with younger and healthier members.” (NC Health News, [2/25/19](#))

Economists and experts say AHPs are risky, likened them to “running with scissors.” “Krause’s colleague David McFarlane said AHPs could work for some people, but they are also risky. Many states, he said, might rush into allowing these without enough guardrails in place and without creating rules to guarantee transparency for people who buy the plans. He likened it to [“running with scissors.”](#)” (NC Health News, [2/25/19](#))

Detractors said the plans may not provide full coverage protections to workers. “But detractors say the plans may not provide the full protection that workers need, plus the changes likely will drive up costs in the regular individual and small-group markets, where people who need comprehensive coverage would be forced to seek insurance.” (NPR, [6/27/18](#))

AHPs do not have to cover the ten “essential health benefits” required under the ACA and could exclude coverage for prescription drugs, for example. “Association health plans are intended to make health insurance more affordable for small businesses in part by [giving them the same kind of flexibility that large companies have](#) in choosing which benefits they offer. Flexibility may have a downside, though. AHP insurers don’t have to include the 10 “essential health benefits” that are required under the health law for plans in the individual and small-group market, typically companies with fewer than 50 employees. They might exclude coverage for prescription drugs or rehab services, for example.” (NPR, [6/27/18](#))

Smaller employers could skip maternity coverage requirements. “Association health plans that cover employers with at least 15 employees will have to offer maternity coverage — one of the ACA’s essential health benefits — under the new rule. But smaller employers [could skip that requirement.](#)” (NPR, [6/27/18](#))

Protections written into AHPs for people with preexisting conditions would be weakened by plans that make chronic care patients jump through more hoops or pay high deductibles.

AHPs cannot discriminate against sick individuals, but do not offer complete protections for people with preexisting conditions who could face “roadblocks in finding affordable, comprehensive coverage.” “Association health plans that are established under the new rule won’t be allowed to discriminate against individuals if they’re sick. But that doesn’t necessarily mean that people with preexisting medical conditions won’t encounter roadblocks in finding affordable, comprehensive coverage. In the final rule, the administration lays out a variety of circumstances that could affect affordability. For example, an association plan could charge companies that employ construction workers higher premiums than firms that are in the hospitality business. The rule also allows plans to charge different rates based on gender, age, and location.” (NPR, [6/27/18](#))

Protections for people with preexisting conditions written into S86 would be weakened by plans that make chronic care patients jump through more hoops or charge high deductibles. “He said protections for people with pre-existing conditions written into the law could also be weakened by plans that make chronic care patients jump through more hoops to get services or by charging high annual deductibles.” (NC Health News, [2/25/19](#))

S86 isn't likely to lower prices in NC's individual market where costs are among the highest in the nation and could get more expensive for beneficiaries over time.

S86 would have limited impact on prices in NC's individual market for health care where costs are among the highest in the nation. “And health economists have doubts, too. Anderson, the Duke economist, said the plans will likely have a limited effect on North Carolina's individual market, a sector of the health insurance market where costs are among the highest.” (NC Health News, [2/25/19](#))

Critics also said AHPs could drive up costs in the individual and small-group markets where people who need comprehensive coverage would be forced to seek insurance. “But detractors say the plans may not provide the full protection that workers need, plus the changes likely will drive up costs in the regular individual and small-group markets, where people who need comprehensive coverage would be forced to seek insurance.” (NPR, [6/27/18](#))

AHPs only really help people who are relatively healthy and get more expensive over time for older workers more likely to have chronic health conditions. “An AHP's benefit would only really help people who are relatively healthy, Anderson argued, as, over time, plans would likely get more expensive for older workers who are more likely to have chronic health conditions. As plans get more expensive, he said, younger, healthier workers would go looking for cheaper options and leave behind their unhealthier colleagues who'd have little choice but to pay more.” (NC Health News, [2/25/19](#))

In June 2018 Senate Republicans amended H933 to include provisions that would have allowed insurers to be exempt from ACA requirements, allowing them to “cherry-pick” healthy enrollees.

The Senate Health Care Committee amended H933, a school psychologist licensure bill, to include health insurance provisions. “Senate Republicans unveiled the new portions of House Bill 933 at a committee meeting Thursday morning, potentially clearing surprise provisions aimed purportedly at lowering the threshold for small employers to offer self-funded health plans and, perhaps most importantly, clearing less-regulated association health plans for membership organizations like the [N.C. Farm Bureau](#).” (Progressive Pulse, [6/7/18](#); H933, House failed to concur [6/14/18](#))

Sen. Ralph Hise pitched the amendments as a means of expanding health care options for North Carolinians facing expensive health care premiums. “Wooten and Sen. Ralph Hise, a western North Carolina Republican who co-chairs the Senate Health Care Committee, pitched the revisions to the school safety bill as a means of expanding health insurance options for residents complaining of soaring healthcare premiums. The revisions come with federal officials considering new rules for skimpy short-term plans and association health plans. If approved by state lawmakers, the new rules would allow groups like Farm Bureau to offer health plans exempted from state oversight and from ACA regulations that protect individuals with pre-existing conditions from being excluded or facing higher premiums.” (Progressive Pulse, [6/7/18](#); H933, House failed to concur [6/14/18](#))

The legislation would allow nonprofits to offer “health benefit plans” exempt of state and federal regulation. “Legislation poised for passage in the N.C. Senate would allow nonprofits to offer “health benefit plans” that would be exempt from nearly all state and federal regulations that govern health insurance. Supporters say the measure would allow nonprofits to offer health benefit plans that would be similar to health insurance, but could be cheaper than health insurance purchased on the Affordable Care Act exchange as well as other forms of insurance. But critics worry the legislation would open the

door for products that would discriminate against those with pre-existing health conditions, offer skimpy benefits, and come with few or no consumer protections. The plans would be similar to those offered in Tennessee, where premiums on the ACA exchanges have climbed precipitously, in part because of the impact of these unregulated plans.” (North Carolina Health News, [6/14/18](#); H933, House failed to concur [6/14/18](#))

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These plans would not require employers to cover a minimum set of services and allow them price-out certain preexisting conditions. “The legislation would allow nonprofit organizations that have existed for at least 10 years, and which offer membership in all 100 counties, to offer their members health benefit plans. Unlike other health insurance plans and coverage offered by employers, these benefit plans wouldn’t be required to cover a minimum set of health care services. And plans could be priced at different levels so that people with pre-existing health conditions would be charged more or else not have their pre-existing conditions covered.” (North Carolina Health News, [6/14/18](#); H933, House failed to concur [6/14/18](#))

According to the NC Justice Center, these new plans cherry-pick young, healthy enrollees and leave a sicker risk pool in the individual market, causing premiums to skyrocket. “Under the guise of improving affordability, the bill would allow for the creation of new health insurance plans that would not be subject to state and federal insurance rules. That means that these plans would be able to discriminate against North Carolinians with pre-existing conditions by either refusing to cover them or charging them higher premiums based on their medical history. Even those who are able to ‘pass’ the medical underwriting test may end up in plans that do not provide coverage for essential health care services they need, as these plans are completely exempt from existing insurance law. By cherry picking young and healthy enrollees, these new plans would leave a sicker risk pool in the individual market, destabilizing the insurance market and causing premiums to skyrocket for those in need of comprehensive coverage.” (Progressive Pulse, [6/7/18](#); H933, House failed to concur [6/14/18](#))

Critics drew comparisons between Hise’s amendments and a loophole written by Tennessee legislators that has driven up premiums exponentially.

These provisions mirror a loophole created by Tennessee legislators who explicitly said Farm Bureau health plans were not insurance under state law. “The Tennessee Farm Bureau plans don’t have to follow ACA regulations thanks to a loophole created by Tennessee legislators in the early 1990s, when lawmakers explicitly said Farm Bureau health plans weren’t health insurance under state law. HB 933 would perform a similar legislative maneuver, exempting association health plans from most of the state’s health insurance regulations. Many health policy experts think the Tennessee Farm Bureau plans are hurting that state’s ACA exchanges, driving up premiums and making them less stable, said [Zack Buck](#), a law professor at the University of Tennessee-Knoxville College of Law who focuses on health law.” (North Carolina Health News, [6/14/18](#); H933, House failed to concur [6/14/18](#))

Tennessee is “a terrible ACA exchange marketplace.” “Healthier people are able to get cheaper policies from the Farm Bureau, so they buy those, Buck said, making the pool of people covered in exchange plans less healthy overall, and driving up premiums. Since most people who are covered under ACA exchanges receive subsidies, this could also increase government spending on exchange plans. ‘Tennessee is a terrible ACA exchange marketplace,’ Buck said. ‘Nashville has tremendously high premiums compared to lots of other cities of similar size.’ For a few months last year, he said, east Tennessee didn’t have any insurers offering plans on the exchange. Tennessee’s exchange ‘is probably one of the worst five or 10 in the country,’ he said.” (North Carolina Health News, [6/14/18](#))

The NC Justice Center called the changes to H933 “dangerous new provisions that would endanger critical protections for North Carolinians with pre-existing conditions.” “Opponents say the state Senate measure coincides with a GOP push to allow for slim plans in alternative marketplaces catered to ‘healthy’ individuals, a push that threatens to weaken the ACA marketplace and drive up costs for sick individuals. Critics quickly pounced on the proposal Thursday. The progressive N.C. Justice Center issued a statement calling the reforms ‘dangerous new provisions that would endanger critical protections for North Carolinians with pre-existing conditions.’ (Progressive Pulse, [6/7/18](#); H933, House failed to concur [6/14/18](#))

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