March 8, 2017

The Honorable Virginia Foxx, Chairwoman
Committee on Education & the Workforce
2176 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Bobby Scott, Ranking Member
Committee on Education & the Workforce
2101 Rayburn House Office Building
Washington, D.C. 20515

Re: Markup of H.R. 1101, the *Small Business Health Fairness Act of 2017*

Dear Chairwoman Foxx and Ranking Member Scott:

On behalf of the Individual and Small Group Markets Committee of the American Academy of Actuaries,[1] we appreciate the opportunity to offer comments to the U.S. House Committee on Education & the Workforce regarding association health plans (AHPs) and H.R. 1101, the *Small Business Health Fairness Act of 2017*.

H.R. 1101 is designed to expand access to affordable health insurance by promoting the use of AHPs. While we support efforts to increase the availability, affordability, and accessibility of health insurance, the bill as currently written will likely have unintended consequences that would hinder the intent of the legislation.

AHPs could create adverse selection concerns if they operate under different rules.
A key to the sustainability of the health insurance markets is that health plans competing to enroll the same participants must operate under the same rules. If one set of plans operates under rules that are more advantageous to healthy individuals, then those individuals will migrate to those plans; less healthy individuals will migrate to the plans more advantageous to them. In other words, the plans that have rules more amenable to high-risk individuals will suffer from adverse selection.

Although AHPs would be offered in competition with other small group and individual market plans, they could operate under different rules. The consequence of different rules for AHPs versus state-regulated insured plans is a fragmentation of the market resulting from an unlevel playing field. This is likely to lead to cherry-picking, adverse selection, and increased costs for sicker individuals. If an AHP is allowed to follow the issue, rating, and benefit rules of a single state nationwide, or be pre-empted from state regulation by being self-insured, it would impose different rules on insurance providers offering coverage in the same market. The viability of many state-based markets would be challenged as a result. If the rules governing AHPs were consistent with those governing non-AHPs, there would be fewer concerns about market fragmentation.

AHPs face increased insolvency risk without clearly defined regulatory authority.
Governmental authority for regulating AHPs would need to be clearly defined. Absent this clarification, it is likely that no entity will bear the sole responsibility for regulating AHPs, or that there will be

[1] The American Academy of Actuaries is a 19,000-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

conflicting regulation. The history of multiple employer welfare arrangements (MEWAs) is instructive. Self-funded MEWAs had no clear regulatory authority, as initially it appeared that ERISA exempted them from state-level regulatory oversight. Multiple MEWA bankruptcies resulted, and consumers had limited avenue for redress. Eventually, the federal government issued a written clarification of earlier amendments to ERISA that made it clear that states do have regulatory authority over MEWAs. If regulatory authority for AHPs is not clearly specified, they could suffer the same fate as MEWAs, leaving millions without health coverage due to insolvencies. Surplus requirements for self-funded AHPs should be similar to the minimum requirements for health risk-based capital developed by the National Association of Insurance Commissioners.

AHPs would need to be subject to state-level consumer protection laws.
It is important to recognize the need for AHPs to abide by state-level consumer protection laws, which vary from requiring network adequacy to appeal processes for denied services. While AHPs may save money if they do not have to bear the costs of these consumer protections, AHP enrollees may not realize they lack these protections until the time of claim, when it is often too late for recourse.

AHPs would be unlikely to obtain lower provider payment rates than larger insurance companies.
It is unlikely that any AHP would be able to achieve the critical mass of enrollees needed to negotiate the deep provider discounts that large health maintenance organizations (HMOs) and insurance companies currently obtain. A more realistic scenario is one in which AHPs "rent" provider networks and pay access fees that depend in part on market leverage and savings. Some of these networks are owned by HMOs and insurance companies that rent out their networks to smaller competitors.

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As high health care costs persist, insurance affordability remains a challenge for many employers and individuals. However, AHPs could result in unintended consequences such as market segmentation that could threaten non-AHP viability and make it more difficult for high-cost individuals and groups to obtain coverage, AHP insolvencies if they are not subject to clear regulatory authority and solvency requirements, and lack of consumer protections if AHPs are not subject to state-level protections.

We appreciate the opportunity to provide these comments. If you have any questions or would like to discuss further, please contact David Linn, the Academy's health policy analyst, at 202-785-6931 or linn@actuary.org.

Sincerely,

Karen Bender, MAAA, FSA
Chairperson, Individual and Small Group Markets Committee
American Academy of Actuaries

cc: Members of the U.S. House Committee on Education & the Workforce