

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 2868  
OFFERED BY MR. WALBERG OF MICHIGAN**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Association Health  
3 Plans Act”.

**4 SEC. 2. TREATMENT OF GROUP OR ASSOCIATION OF EM-  
5 PLOYERS.**

6 (a) IN GENERAL.—Section 3(5) of the Employee Re-  
7 tirement Income Security Act of 1974 (29 U.S.C.  
8 1002(5)) is amended—

9 (1) by striking “The term” and inserting “(A)  
10 The term”; and

11 (2) by adding at the end the following:

12 “(B) For purposes of subparagraph (A), a group or  
13 association of employers shall be treated as an ‘employer’,  
14 regardless of whether the employers composing such group  
15 or association are in the same industry, trade, or profes-  
16 sion, if such group or association—

1           “(i)(I) has established and maintains an em-  
2           ployee welfare benefit plan that is a group health  
3           plan (as defined in section 733(a)(1));

4           “(II) provides coverage under such plan to at  
5           least 51 employees after all of the employees em-  
6           ployed by all of the employer members of such group  
7           or association have been aggregated and counted to-  
8           gether as described in subparagraph (D);

9           “(III) has been actively in existence for at least  
10          2 years prior to establishing and maintaining an em-  
11          ployer welfare benefit plan that is a group health  
12          plan (as defined in section 733(a)(1));

13          “(IV) has been formed and maintained in good  
14          faith for purposes other than providing medical care  
15          (as defined in section 733(a)(2)) through the pur-  
16          chase of insurance or otherwise;

17          “(V) does not condition membership in the  
18          group or association on any health status-related  
19          factor (as described in section 702(a)(1)) relating to  
20          any individual;

21          “(VI) makes coverage under such plan available  
22          to all employer members of such group or associa-  
23          tion regardless of any health status-related factor  
24          (as described in section 702(a)(1)) relating to such  
25          employer members;

1           “(VII) does not provide coverage under such  
2 plan to any individual other than an employee of an  
3 employer member of such group or association;

4           “(VIII) has established a governing board with  
5 by-laws or other similar indications of formality to  
6 manage and operate such plan in both form and  
7 substance, of which at least 75 percent of the board  
8 members shall be made up of employer members of  
9 such group or association participating in the plan  
10 that are duly elected by each participating employer  
11 member casting 1 vote during a scheduled election;

12           “(IX) is not a health insurance issuer (as de-  
13 fined in section 733(b)(2)), and is not owned or con-  
14 trolled by such a health insurance issuer or by a  
15 subsidiary or affiliate of such a health insurance  
16 issuer, other than to the extent such a health insur-  
17 ance issuer—

18           “(aa) may participate in the group or asso-  
19 ciation as a member; and

20           “(bb) may provide services such as assist-  
21 ance with plan development, marketing, and ad-  
22 ministrative services to such group or associa-  
23 tion;

24           “(ii) meets any set of criteria to qualify for  
25 such treatment in an advisory opinion issued by the

1 Secretary prior to the date of enactment of the As-  
2 sociation Health Plans Act; or

3 “(iii) meets any other set of criteria to qualify  
4 for such treatment that the Secretary by regulation  
5 may provide.

6 “(C)(i) For purposes of subparagraph (B), a self-em-  
7 ployed individual shall be treated as—

8 “(I) an employer who may become a member of  
9 a group or association of employers;

10 “(II) an employee who may participate in an  
11 employee welfare benefit plan established and main-  
12 tained by such group or association; and

13 “(III) a participant of such plan subject to the  
14 eligibility determination and monitoring require-  
15 ments set forth in clause (iii).

16 “(ii) For purposes of this subparagraph, the term  
17 ‘self-employed individual’ means an individual who—

18 “(I) does not have any common law employees;

19 “(II) has an ownership right in a trade or busi-  
20 ness, regardless of whether such trade or business is  
21 incorporated or unincorporated;

22 “(III) earns wages (as defined in section  
23 3121(a) of the Internal Revenue Code of 1986) or  
24 self-employment income (as defined in section

1 1402(b) of such Code) from such trade or business;  
2 and

3 “(IV) works at least 10 hours per week or 40  
4 hours per month providing personal services to such  
5 trade or business.

6 “(iii) The board of a group or association of employ-  
7 ers shall—

8 “(I) initially determine whether an individual  
9 meets the requirements under clause (ii) to be con-  
10 sidered a self-employed individual for the purposes  
11 of being treated as an—

12 “(aa) employer member of such group or  
13 association (in accordance with clause (i)(I));  
14 and

15 “(bb) employee who may participate in the  
16 employee welfare benefit plan established and  
17 maintained by such group or association (in ac-  
18 cordance with clause (i)(II));

19 “(II) through reasonable monitoring proce-  
20 dures, periodically determine whether the individual  
21 continues to meet such requirements; and

22 “(III) if the board determines that an indi-  
23 vidual no longer meets such requirements, not make  
24 such plan coverage available to such individual (or  
25 dependents thereof) for any plan year following the

1 plan year during which the board makes such deter-  
2 mination. If, subsequent to a determination that an  
3 individual no longer meets such requirements, such  
4 individual furnishes evidence of satisfying such re-  
5 quirements, such individual (and dependents thereof)  
6 shall be eligible to receive plan coverage.

7 “(D) For purposes of subparagraph (B), all of the  
8 employees (including self-employed individuals) employed  
9 by all of the employer members (including self-employed  
10 individuals) of a group or association of employers shall  
11 be—

12 “(i) treated as employed by a single employer;

13 and

14 “(ii) aggregated and counted together for pur-  
15 poses of any regulation of an employee welfare ben-  
16 efit plan established and maintained by such group  
17 or association.”.

18 (b) DETERMINATION OF EMPLOYER OR JOINT EM-  
19 PLOYER STATUS.—The provision of employee welfare ben-  
20 efit plan coverage by a group or association of employers  
21 shall not be construed as evidence for establishing an em-  
22 ployer or joint employer relationship under any Federal  
23 or State law.

1 **SEC. 3. RULES APPLICABLE TO GROUP HEALTH PLANS ES-**  
2 **TABLISHED AND MAINTAINED BY A GROUP**  
3 **OR ASSOCIATION OF EMPLOYERS.**

4 Part 7 of subtitle B of title I of the Employee Retirement  
5 Income Security Act of 1974 (29 U.S.C. 1181, et  
6 seq.) is amended by adding at the end the following:

7 **“SEC. 736. RULES APPLICABLE TO GROUP HEALTH PLANS**  
8 **ESTABLISHED AND MAINTAINED BY A GROUP**  
9 **OR ASSOCIATION OF EMPLOYERS.**

10 “(a) PREMIUM RATES FOR A GROUP OR ASSOCIA-  
11 TION OF EMPLOYERS.—

12 “(1)(A) In the case of a group health plan es-  
13 tablished and maintained by a group or association  
14 of employers described in section 3(5)(B), such plan  
15 may—

16 “(i) establish base premium rates formed  
17 on an actuarially sound, modified community  
18 rating methodology that considers the pooling  
19 of all plan participant claims; and

20 “(ii) utilize the specific risk profile of each  
21 employer member of such group or association  
22 to determine contribution rates for each such  
23 employer member’s share of a premium by ac-  
24 tuarially adjusting above or below the estab-  
25 lished base premium rates.

1           “(B) For purposes of paragraph (1), the term  
2           ‘employer member’ means—

3                   “(i) an employer who is a member of such  
4                   group or association of employers and employs  
5                   at least 1 common law employee; or

6                   “(ii) a group made up solely of self-em-  
7                   ployed individuals, within which all of the self-  
8                   employed individual members of such group or  
9                   association are aggregated together as a single  
10                  employer member group, provided the group in-  
11                  cludes at least 20 self-employed individual  
12                  members.

13                  “(2) In the event a group or association is  
14                  made up solely of self-employed individuals (and no  
15                  employers with at least 1 common law employee are  
16                  members of such group or association), the group  
17                  health plan established by such group or association  
18                  shall—

19                          “(A) treat all self-employed individuals  
20                          who are members of such group or association  
21                          as a single risk pool;

22                          “(B) pool all plan participant claims; and

23                          “(C) charge each plan participant the  
24                          same premium rate.



1       “(b) DISCRIMINATION AND PRE-EXISTING CONDI-  
2 TION PROTECTIONS.—A group health plan established  
3 and maintained by a group or association of employers de-  
4 scribed in section 3(5)(B) shall be prohibited from—

5           “(1) establishing any rule for eligibility (includ-  
6 ing continued eligibility) of any individual (including  
7 an employee of an employer member or a self-em-  
8 ployed individual, or a dependent of such employee  
9 or self-employed individual) to enroll for benefits  
10 under the terms of the plan that discriminates based  
11 on any health status-related factor that relates to  
12 such individual (consistent with the rules under sec-  
13 tion 702(a)(1));

14           “(2) requiring an individual (including an em-  
15 ployee of an employer member or a self-employed in-  
16 dividual, or a dependent of such employee or self-  
17 employed individual), as a condition of enrollment or  
18 continued enrollment under the plan, to pay a pre-  
19 mium or contribution that is greater than the pre-  
20 mium or contribution for a similarly situated indi-  
21 vidual enrolled in the plan based on any health sta-  
22 tus-related factor that relates to such individual  
23 (consistent with the rules under section 702(b)(1));  
24 and

1           “(3) denying coverage under such plan on the  
2           basis of a pre-existing condition (consistent with the  
3           rules under section 2704 of the Public Health Serv-  
4           ice Act).”.

5 **SEC. 4. RULE OF CONSTRUCTION.**

6           Nothing in this Act shall be construed to exempt a  
7           group health plan which is an employee welfare benefit  
8           plan offered through a group or association of employers  
9           from the requirements of part 7 of subtitle B of title I  
10          of the Employee Retirement Income Security Act of 1974  
11          (29 U.S.C. 1181 et. seq.), including the provisions of part  
12          A of title XXVII of the Public Health Service Act as incor-  
13          porated by reference into this Act through section 715.

