

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 2528  
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 solely for purposes of sponsoring a group health plan, re-  
15 gardless of whether the employers composing such group  
16 or association are in the same industry, trade, or profes-  
17 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;

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

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

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

19          “(ii) is structured in good faith with any set of  
20          criteria to qualify for such treatment in any advisory  
21          opinion issued prior to the date of enactment of the  
22          Association Health Plans Act; or

23          “(iii) meets any other set of criteria to qualify  
24          for such treatment that the Secretary by regulation  
25          may provide.

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

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

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

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

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

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

14               “(II) has a bona fide ownership right in a trade  
15    or business, regardless of whether such trade or  
16    business is incorporated or unincorporated;

17               “(III) earns wages (as defined in section  
18    3121(a) of the Internal Revenue Code of 1986) or  
19    self-employment income (as defined in section  
20    1402(b) of such Code) from such trade or business;  
21    and

22               “(IV) works at least 10 hours a week or 40  
23    hours per month providing personal services to such  
24    trade or business.

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

3               “(I) initially determine whether an individual  
4       meets the requirements under clause (ii) to be con-  
5       sidered to a self-employed individual for the pur-  
6       poses of being treated as an—

7               “(aa) employer member of such group or  
8               association (in accordance with clause (i)(I));  
9               and

10              “(bb) employee who may participate in the  
11              employee welfare benefit plan established and  
12              maintained by such group or association (in ac-  
13              cordance with clause (i)(II));

14              “(II) through reasonable monitoring proce-  
15              dures, periodically determine whether the individual  
16              continues to meet such requirements; and

17              “(III) if the board determines that an indi-  
18              vidual no longer meets such requirements, not make  
19              such plan coverage available to such individual (or  
20              dependents thereof) for any plan year following the  
21              plan year during which the board makes such deter-  
22              mination. If, subsequent to a determination that an  
23              individual no longer meets such requirements, such  
24              individual furnishes evidence of satisfying such re-

1        requirements, such individual (and dependents thereof)  
2        shall be eligible to receive plan coverage.

3        “(D) For purposes of subparagraph (B), all of the  
4        employees (including self-employed individuals) employed  
5        by all of the employer members (including self-employed  
6        individuals) of a group or association of employers shall  
7        be—

8                “(i) treated as participants in a single plan  
9        multiple employer welfare arrangement; and

10               “(ii) aggregated and counted together for pur-  
11        poses of any regulation of an employee welfare ben-  
12        efit plan established and maintained by such group  
13        or association.”.

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

1 **SEC. 3. RULES APPLICABLE TO EMPLOYEE WELFARE BEN-**  
2 **EFIT PLANS ESTABLISHED AND MAINTAINED**  
3 **BY A GROUP OR ASSOCIATION OF EMPLOY-**  
4 **ERS.**

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

8 **“SEC. 736. RULES APPLICABLE TO EMPLOYEE WELFARE**  
9 **BENEFIT PLANS ESTABLISHED AND MAIN-**  
10 **TAINED BY A GROUP OR ASSOCIATION OF**  
11 **EMPLOYERS.**

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

14 “(1)(A) In the case of an employee welfare ben-  
15 efit plan established and maintained by a group or  
16 association of employers described in section  
17 3(5)(B), such plan may, to the extent not prohibited  
18 under State law—

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

23 “(ii) utilize the specific risk profile of each  
24 employer member of such group or association  
25 to determine contribution rates for each such  
26 employer member’s share of a premium by ac-

1           tuarily adjusting above or below the estab-  
2           lished base premium rates.

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

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

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

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

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

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



1                   “(C) charge each plan participant the  
2                   same premium rate.

3           “(b) DISCRIMINATION AND PRE-EXISTING CONDI-  
4 TION PROTECTIONS.—An employee welfare benefit plan  
5 established and maintained by a group or association of  
6 employers described in section 3(5)(B) shall be prohibited  
7 from—

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

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

1 (consistent with the rules under section 702(b)(1));  
2 and  
3 “(3) denying coverage under such plan on the  
4 basis of a pre-existing condition (consistent with the  
5 rules under section 2704 of the Public Health Serv-  
6 ice Act).”.

7 **SEC. 4. RULE OF CONSTRUCTION.**

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

