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Legal Matters: Association Health Care Plans Work **By Jeff Gingold, Lane Powell PC**

Fourteen years ago, Washington's state Legislature adopted comprehensive health care reforms intended to expand health insurance coverage through sustainable, affordable, quality programs. These reforms, while controversial, were well-intended. The goals were unassailable and the details complicated.

Between 1993 and 1995, public and political scrutiny focused on the legislation's fine print. As the details became clear, support eroded. Too many provisions rubbed Washingtonians the wrong way: heavy government regulation, reduced choice through strict standardization of products and rates, and mandates to both employers and individuals requiring everyone to purchase and maintain health insurance. Ultimately, the state's failure to obtain a federal waiver from ERISA laws that govern most employer-sponsored health plans blocked the employer mandate. Without it, lawmakers lost their desire to force individuals to purchase and maintain health insurance coverage.

Meanwhile, in the other Washington, President Bill Clinton's proposed reforms—which mirrored much of this state's legislation—had generated major opposition. In just two years, what seemed to be an irreversible wave of public and political support for comprehensive health care reform quickly morphed into a backlash against untested and overly complicated theories that ultimately were rejected as unworkable and unaffordable.

Despite the collapse of comprehensive health care reforms, Washington's business community understood that doing nothing was unacceptable. The fundamental need for sustainable access to affordable, quality health care coverage options remained. Although this need applied to both large and small companies, most recognized that large employers had more

options in addressing the health care issue. They had more negotiating power with carriers, allowing them to get better premium rates tailored to their claims experience. They also had the ability to self-fund their plans, if necessary.

In 1995, AWB and other business and insurance industry representatives worked with Gov. Mike Lowry and the Legislature to address health care coverage for small employers. They wanted to make it possible for small employers to provide good benefits for their employees. They faced a major obstacle: Many small businesses could not afford the premium rates developed through community rating requirements that applied to small employers who purchase their health insurance coverage directly from an insurance carrier. Community ratings group together the claims experience of all small employers covered by a health insurance carrier.

With Gov. Lowry's leadership, the Legislature changed the insurance code. The new law allowed small employers that purchase health insurance coverage from association and member-governed group plans to be exempted from the community rating requirement.

The 1995 legislation has helped fill a big gap in affordability for small employers. Associations like AWB provide quality health insurance benefits to an estimated 500,000 Washington workers and their dependents. Historically, nearly 40 percent of AWB's HealthChoice program participants did not previously provide coverage to their employees. More than 85 percent renew because associations work with carriers and small businesses to assure access to affordable, high-quality benefits.

The 1995 law has worked well and has continued to meet its objective in covering hundreds of thousands of Washingtonians. But there's a problem.

Last December, Insurance Commissioner Mike Kreidler issued a technical assistance advisory, or TAA, that effectively changes the law passed by the Legislature in 1995,

establishing new legal requirements and jeopardizing the ability of association plans, like AWB's, to continue to offer health care insurance coverage to small employers. AWB has joined Associated Industries in filing a lawsuit against the Office of the Insurance Commissioner and is vigorously pursuing a judicial declaration invalidating the TAA and preventing its enforcement. We believe that the TAA exceeds the insurance commissioner's constitutional authority and unlawfully encroaches on the Legislature's authority to make new laws. The complaint also says that the TAA violates the Administrative Procedures Act by effectively making new rules without following procedural requirements. A ruling is anticipated in May.

Currently, small employers can choose to obtain health care coverage directly from insurance carriers' small employer community-rated pool, or from association and member-governed group plans that have been able to rate each small employer based on its own aggregated claims experience. Many association plans offer ways to help employers keep their groups' costs down such as wellness and disease management programs. Employers that take advantage of these programs are rewarded by lower premiums.

Association plans work. Because of them, many thousands of Washington residents enjoy the security of affordable, quality health care coverage.

We've come a long way. Fourteen years ago, Washington tried to remake the entire health care system. Within two years it was a political no-go. The Legislature and the governor responded to business's commitment to provide an affordable option to small employers, and association plans became a rare example of a successful health care reform that continues to work. Let's do no harm to these success stories.

Jeff Gingold is an attorney with Lane Powell in Seattle. He is a member of the National Health Lawyers Association and focuses his practice on health care and insurance matters.

