

2014 SPECIAL SESSION I

INTRODUCED

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SENATE BILL NO. 5009

Offered September 18, 2014

A BILL to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6427, relating to the registration and operation of private health insurance exchanges in the Commonwealth; penalties.

Patron—Stanley

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6427, as follows:

CHAPTER 64.

PRIVATE HEALTH INSURANCE EXCHANGES.

§ 38.2-6400. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Ancillary benefit plan" means a policy or contract written or administered by a participating carrier that covers dental or vision benefits for the covered eligible employees of a participating employer and their dependents.

"Board" means the governing body of a private health insurance exchange. "Board" includes the board of directors of a corporation that is an exchange, the general partners of a partnership that is an exchange, or a sole proprietor of a sole proprietorship that is an exchange.

"Dependent" means the spouse or child of an eligible employee, subject to the applicable terms of the health benefit plan covering the eligible employee.

"Eligible employee" means any permanent employee who is actively engaged on a full-time basis within the Commonwealth in the conduct of business of the employer and who has satisfied any employer waiting period requirements. "Eligible employee" includes sole proprietors of a sole proprietorship or partners of a partnership who are actively engaged on a full-time basis in the employer's business, but does not include employees who work on a part-time or temporary basis.

"Employer" means any business entity doing business in the Commonwealth that may be eligible to participate in a private health insurance exchange. "Employer" includes any small employer health group cooperative organized and existing pursuant to Article 5 (§ 38.2-3551 et seq.) of Chapter 35.

"Enrollee" means an eligible employee or a dependent of an eligible employee who is enrolled in a health benefit plan or ancillary benefit plan offered through a private health insurance exchange by a participating carrier.

"Health benefit plan" means a policy, contract, certificate, or agreement offered by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. "Health benefit plan" includes short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition. "Health benefit plan" does not include (i) short-term travel, accident only, limited, or specified disease policies; (ii) short-term nonrenewable policies of not more than six months' duration; (iii) policies, contracts, or plans issued in the individual market or small group markets to employers with 50 or fewer employees; or (iv) policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

"Health carrier" has the same meaning ascribed to that term in § 38.2-3438.

"Management company" means the entity under contract to the private health insurance exchange to provide managerial services for the operation of the private health insurance exchange.

"Participating carrier" means a health carrier that contracts with a private health insurance exchange to provide coverage to enrollees under a health benefit plan or ancillary benefit plan.

"Participating employer" means an employer that contracts with a private health insurance exchange to provide for the enrollment of the employer's employees in a health benefit plan offered through an exchange.

"Private health insurance exchange" or "exchange" means a nongovernmental entity that is issued a certificate of registration pursuant to this chapter to facilitate the offering, marketing, and sale of health benefit plans of multiple unaffiliated participating carriers to multiple participating employers and their employees within the Commonwealth, as authorized pursuant to this chapter.

"Service region" means that geographic portion of the Commonwealth, designated by the Commission

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59 pursuant to regulations as described in this chapter, in which a private health insurance exchange shall
60 be required to facilitate the offering, marketing, and sale of health benefit plans.

61 **§ 38.2-6401. Regulation of private health insurance exchanges.**

62 A. The Commission shall regulate the establishment and conduct of private health insurance
63 exchanges as set forth in this chapter. In so doing, the Commission shall facilitate the contracting by
64 private health insurance exchanges with health carriers in order to provide participating employers with
65 a meaningful choice of health benefit plans or ancillary benefit plans.

66 B. No person, other than a Small Business Health Options Program operating in the Commonwealth
67 pursuant to the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended, shall
68 operate a marketplace, clearinghouse, portal, or similar enterprise in the Commonwealth through which
69 health benefit plans are offered, marketed, or sold to multiple employers, directly or to their employees,
70 without first being registered by the Commissioner pursuant to this chapter.

71 C. The Commission may establish service regions within the Commonwealth throughout which all
72 private health insurance exchanges shall operate. Service regions established pursuant to this section
73 shall, as a group, cover the entire Commonwealth, and the areas encompassed by any service region
74 shall be separate and distinct from areas encompassed in other service regions.

75 D. Nothing in this chapter shall be deemed to be in conflict with or limit the duties and powers
76 granted to the Commission under the laws of the Commonwealth.

77 E. The Commission shall promulgate rules and regulations as are necessary to administer this
78 chapter.

79 **§ 38.2-6402. Registration as a private health insurance exchange.**

80 A. An entity seeking to obtain a certificate of registration to act as a private health insurance
81 exchange shall complete and file with the Commissioner an application approved by the Commission.
82 An application will not be deemed filed until all information necessary to properly process the
83 application has been received by the Commissioner.

84 B. Upon filing, the Commissioner shall make a determination concerning the application and provide
85 notice of file determination to the applicant within 180 days of the date the application is deemed filed.
86 If approved, a copy of a certificate of registration, in a form designed by the Commissioner, shall be
87 provided to the private health insurance exchange. The certificate of registration shall serve as
88 authorization to operate pursuant to this chapter.

89 C. A private health insurance exchange shall maintain a minimum net worth in an amount set by the
90 Commission by regulation, plus one month's operating expenses as reserves. Net worth is defined as the
91 excess of admitted assets over all liabilities.

92 D. A private health insurance exchange shall at all times maintain current assets of at least \$10,000
93 in excess of current liabilities, as such current assets and liabilities may be defined pursuant to
94 regulations made by the Commission. In promulgating such regulations, the Commission shall be guided
95 by generally accepted accounting principles followed by certified public accountants in the
96 Commonwealth.

97 E. The entity that is seeking to obtain a certificate of registration to act as a private health
98 insurance exchange shall file with the Commissioner the following information or documents:

99 1. At the time of initial registration, a written description as to how the entity intends to meet the
100 public policy objectives of increased access and improved quality of health care services. The written
101 description shall also demonstrate that the private health insurance exchange will have the technical
102 expertise and physical capacity to serve employers and their eligible employees in the Commonwealth.
103 The written description shall also describe the scope of services to be offered in the Commonwealth and
104 the resources and expertise to be used to implement and administer those services;

105 2. Current partnership agreements, articles of incorporation, trust documents, or similar documents
106 establishing the entity;

107 3. Current bylaws of the entity;

108 4. A description of grievance procedures relative to the eligibility, enrollment, premium collection,
109 and administrative services provided by the exchange;

110 5. A statement of enrollment procedures and requirements, including participation and contribution
111 rules and requirements;

112 6. A statement of disenrollment criteria and procedures;

113 7. A statement of payment procedures, late payment procedures, and grace periods;

114 8. Evidence satisfactory to the Commission demonstrating that the applicant's governance makes it
115 an appropriate and effective representative of employers and their eligible employees' interests
116 throughout the Commonwealth and that the applicant will facilitate competition between multiple
117 unaffiliated health carriers;

118 9. A list of owners, partners, officers, and directors of the applicant and any contracted management
119 company, if such are retained, and personal biographical information or firm descriptions for each. The
120 owners, partners, officers, and directors of the exchange and any contracted managers shall not have a

prior record of administrative, civil, or criminal violations within any financial service industry. The personal biographical information and firm descriptions shall demonstrate by clear and convincing evidence that those involved in the operation of the exchange or contract manager, as applicable, have the expertise, experience, and character to effectively and professionally represent employers and their eligible employees in a fiduciary capacity;

10. Evidence of adequate security and prudence in the accounting, deposit, collection, handling, and transfer of moneys. The applicant shall affirmatively demonstrate adequate financial controls to the satisfaction of the Commissioner as a condition of being issued a certificate of registration;

11. A description of the employers and their eligible employees to which the private health insurance exchange will be marketing. A private health insurance exchange shall demonstrate to the satisfaction of the Commissioner that it will fairly and affirmatively offer, market, and sell all of its available health benefit plan products to all employers throughout all the service regions in the Commonwealth;

12. Disclosure of any preexisting oral or written agreements; and

13. Any other information required by the Commissioner deemed pertinent to the policies and operation of the exchange.

F. Thirty days prior to any amendment or modification to any of the documents submitted pursuant to subsection E, the exchange shall file with the Commissioner a copy of the amended or modified document. Any amendment or modification shall be deemed approved if the Commissioner has not disapproved the document within 30 days.

§ 38.2-6403. Audit required; penalties.

A. Each private health insurance exchange shall furnish an annual financial audit to the Commissioner on forms provided by the Commissioner. The annual financial audit may be filed either on a calendar year basis on or before March 31 or, if approved in writing by the Commissioner in respect to any individual private health insurance exchange, on a fiscal year basis on or before 90 days after the end of the fiscal year. The deadline for filing the annual audit may be extended by the Commissioner for good cause, as determined by the Commissioner, for a period not to exceed 60 days. Failure to submit an audit on time, or within any extended time that the Commissioner may grant, shall be grounds for an order by the Commissioner prohibiting the exchange from accepting any new business pursuant to this chapter. The audits shall be private, except that a synopsis of the balance sheet on a form prescribed by the Commissioner may be made available to the public upon request. The audits shall be conducted and prepared in accordance with generally accepted auditing standards by an independent certified public accountant whose certification is in good standing at the time of the preparation. Any private health insurance exchange that fails to file any audit or other report on or before the date it is due shall pay to the Commission a penalty of \$100 payable within 30 days of the due date of the audit and upon failure to pay that fine or any fee or file the audit required by this section shall forfeit the privilege of accepting new business until the delinquency is corrected. The Commissioner may refuse to accept an audit or order a new audit for any of the following reasons:

1. Adverse result in any proceeding before the Virginia Board of Accountancy affecting the auditor's license;

2. The auditor has an affiliation with the private health insurance exchange or any of its officers or directors that could prevent his reports on the private health insurance exchange from being reasonably objective;

3. The auditor has been convicted of any misdemeanor or felony on the basis of his activities as an accountant; or

4. Judgment adverse to the auditor in any civil action finding him guilty of fraud, deceit, or misrepresentation in the practice of his profession.

B. Financial and performance audits or examinations of the private health insurance exchange shall be conducted by the Commissioner once every two years. The costs of the examinations or audits shall be paid by the private health insurance exchange. The Commissioner may impose conditions on registration or continued registration to remedy compliance or performance problems.

C. At any time the Commissioner determines, after notice and hearing, that a private health insurance exchange registered under this chapter has willfully failed to comply with any of the provisions of this chapter, the Commissioner shall make his order prohibiting the private health insurance exchange from conducting its business for a period not to exceed one year. Any private health insurance exchange violating an order made under this subsection is subject to penalties under § 38.2-218 and revocation of its certificate of registration by the Commissioner. Any person aiding and abetting any private health insurance exchange in violation of such order is subject to penalties under § 38.2-218. The audit shall be designed to ensure that the private health insurance exchange is to demonstrate sound financial controls and money management and to prevent mismanagement or misappropriation of funds either through neglect or malfeasance. In order to carry out those purposes, the Commission shall make reasonable rules and regulations to govern the conduct of the business of

the private health insurance exchange subject to this chapter.

D. The Commission shall establish fees for initial registration of a private health insurance exchange and for renewal of registration of a private health insurance exchange in an amount sufficient to cover the costs of administering this chapter. A private health insurance exchange shall pay the initial registration fee at the time of application for registration and the renewal fee at the time of application for renewal.

§ 38.2-6404. Duty to maintain compliance.

After the issuance or reissuance of a certificate of registration to act as a private health insurance exchange, the holder of the registration shall continue to comply with the requirements as to its business set forth in this chapter and in the other applicable laws of the Commonwealth.

§ 38.2-6405. Grounds for denial, nonrenewal, or revocation of registration.

In addition to any other grounds specified in this chapter, the following constitute grounds for denial, nonrenewal, suspension, or revocation of an application or existing certificate of registration, following notice and an opportunity for hearing:

1. Failure to comply with the provisions of this chapter;
2. Failure to disclose a preexisting oral or written agreement during the application process;
3. Failure to fairly and affirmatively offer, market, and sell all of the health benefit plans offered through a private health insurance exchange to all employers;
4. Failure to have adequate controls or failure to follow approved procedures;
5. Failure to meet minimum standards in a financial or performance audit or examination;
6. Failure to comply with a lawful order of the Commission;
7. Commission of an unfair or deceptive trade practice;
8. Filing of any necessary form with the Commission that contains fraudulent information or omission;
9. Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a person or participating carrier otherwise not entitled thereto and that have been entrusted to the exchange in its fiduciary capacity;
10. Operation of the private health insurance exchange that is at variance with the basic organizational documents as filed pursuant to this chapter or as published by the private health insurance exchange or in any manner contrary to that described in, or reasonably inferred from, the private health insurance exchange's application for certification or report, or any modification thereof, unless amendments allowing the variation have been submitted to, and approved by, the Commissioner pursuant to this chapter;
11. The continued operation of the private health insurance exchange will constitute a substantial risk to participating employers or their employees and dependents;
12. The private health insurance exchange has violated, attempted to violate, or conspired to violate, directly or indirectly, or assisted in or abetted a violation or conspiracy to violate any provision of this chapter or any regulation adopted by the Commission pursuant to this chapter;
13. The private health insurance exchange has aided, abetted, or permitted the commission of any illegal acts; or
14. The private health insurance exchange, its management company, or any other affiliate of the private health insurance exchange, or any controlling person, officer, director, or other person occupying a principal management or supervisory position in the private health insurance exchange, management company, or affiliate, has been convicted of or pleaded no contest to a crime, or committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of that person under this chapter.

§ 38.2-6406. Disciplinary action.

A. The Commission may take disciplinary action against a private health insurance exchange if the Commission determines that the private health insurance exchange has committed any of the acts set forth in § 38.2-6405. The disciplinary action may include censuring the private health insurance exchange or prohibiting for a period not exceeding 24 months or barring permanently an entity from acting as a private health insurance exchange.

B. The Commission shall notify the private health insurance exchange of any order that suspends or bars an entity from engaging in operations as a private health insurance exchange. It shall be unlawful for any private health insurance exchange, after receipt of notice of the order, to enroll any new employer.

C. The Commissioner may prohibit any person from serving as an officer, director, employee, or associate of any private health insurance exchange, or any management company of any private health insurance exchange, if any of the following applies:

1. The prohibition is in the public interest and the person has committed or caused, participated in, or had knowledge of, and failed to properly report a violation of this chapter by a private health insurance exchange or management company;

2. The person was an officer, director, employee, associate, or provider of a private health insurance exchange or of a management company of any private health insurance exchange whose certificate has been suspended or revoked pursuant to this section and the person had knowledge of and failed to report, or participated in, any of the prohibited acts for which the certificate was suspended or revoked;

3. The person was an officer, director, employee, or associate of a private health insurance exchange that has been the subject of an order of suspension or bar from engaging in operations as a private health insurance exchange under this chapter and the person had knowledge of, or participated in, any of the prohibited acts for which the order was issued. A proceeding for the issuance of an order under this subdivision may be included with a proceeding against a private health insurance exchange under this section or may be conducted as a separate proceeding; or

4. The person has been convicted of or pleaded no contest to a crime, or committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of the person under this chapter.

D. Any disciplinary action under this section shall be conducted in accordance with the Commission's Rules of Practice and Procedure.

§ 38.2-6407. Reinstatement of revoked or suspended registration.

A. Any private health insurance exchange whose certificate has been revoked or suspended for more than one year may petition the Commission to reinstate the certificate. No petition may be considered if the petitioner is under criminal sentence for a violation of this chapter or for any offense that would constitute grounds for discipline or denial of registration under this chapter, including any period of probation or parole.

B. Any private health insurance exchange that is barred or suspended for more than one year from acting as such, or that is subject to an order imposing discipline that by its terms is effective for more than one year, may petition the Commission to reduce by order the penalty. No petition may be considered if the petitioner is under criminal sentence for a violation of this chapter or for any offense that would constitute grounds for discipline or denial of registration under this chapter, including any period of probation or parole.

C. Any petition for restoration shall be in the form prescribed by the Commission, and the Commission may condition the granting of the petition on any additional information and undertakings that the Commission may require in order to determine whether the private health insurance exchange, if restored, would engage in business in full compliance with the objectives and provisions of this chapter and the rules and regulations adopted by the Commission under this chapter.

D. The Commission may prescribe a fee not to exceed \$1,000 for the filing of a petition for restoration pursuant to this section.

§ 38.2-6408. Penalties.

Any person who knowingly violates any provision of this chapter, or who violates any regulation adopted pursuant to this chapter, shall be subject to penalties as provided in § 38.2-218.

§ 38.2-6409. Conflicts of interest.

No owner, officer, partner, or board members or members of their household nor any management personnel of an exchange may be employed by, a consultant for, a member of the board of directors of, affiliated with an agent of, or otherwise a representative of any health carrier or other insurer, agent, or health care provider. This provision shall not preclude any of the above from purchasing coverage through an exchange. Any employee of a private health insurance exchange and any entity or organization having any ownership interest in a private health insurance exchange or any organization with which the exchange contracts for marketing purposes shall be prohibited from receiving compensation based on the health status, claims experience, industry, occupation, or geographic location of participating employers or the participating employer's employees exclusive of a compensation arrangement that provides compensation based on a percentage of premium, provided that the percentage shall not vary because of health status, industry, occupation, medical utilization, claims experience, or geographic location within a service region. Those employees, persons, and organizations are expressly prohibited from receiving compensation based on a participating carrier's loss ratio resulting from the health carrier's participation in the private health insurance exchange. Additionally, any employee of a private health insurance exchange and those persons or organizations having an ownership interest in the private health insurance exchange shall be prohibited from encouraging or directing employers to seek coverage from a source other than the exchange because of the health status, claims experience, industry, occupation, or geographic location of the employer or the employer's employees.

§ 38.2-6410. Additional powers of and restrictions on private health insurance exchanges.

A private health insurance exchange shall:

1. Set reasonable fees, which may vary by employer size, in the private health insurance exchange that will finance reasonable and necessary costs incurred in marketing, operating, servicing, and

305 administering the private health insurance exchange. Fees shall not vary on the basis of the employer's
306 or its enrollees and dependents' actual or expected health status, medical utilization, claims experience,
307 industry, occupation, or the geographic location of participating employers within the same service
308 region;

309 2. Arrange for participating employers to select and purchase one or more health benefit plans or
310 ancillary benefit plans to provide coverage for the participating employer's employees and their
311 dependents, or arrange for the employees of participating employers to select a health benefit plan or
312 ancillary benefit plan directly from a participating carrier and to purchase such plan using funds
313 provided or made available to the employee for such purpose by the participating employer, with the
314 employee having the option to use the employee's own funds to supplement or increase the coverage
315 value that could be purchased if using only the funds provided or made available to the employee for
316 such purpose. The private health insurance exchange may also incidentally offer optional ancillary
317 benefit plans. The private health insurance exchange may also market and offer health benefit plans and
318 ancillary benefit plans to employers;

319 3. Require as a condition of participation that all employers include all their eligible employees or a
320 minimum percentage of eligible employees in coverage purchased through the private health insurance
321 exchange;

322 4. Provide premium collection services for health benefit plans and ancillary benefit plans offered
323 through the private health insurance exchange;

324 5. Establish administrative and accounting procedures for operating the private health insurance
325 exchange and for services to employers and enrollees, including billing, administration, underwriting,
326 marketing, enrollment, sales, and regulatory compliance, and ensuring health carrier and member
327 compliance with the private health insurance exchange requirements;

328 6. Establish rules, conditions, and procedures for participating employers;

329 7. Establish rules, conditions, and procedures for participating carriers;

330 8. Reject or allow a participating carrier to reject an employer from participation or drop or allow
331 a participating carrier to drop a participating employer if the participating employer or any of its
332 eligible employees fail to pay premiums, or if the participating employer fails to maintain the minimum
333 participation and contribution requirements, or if the participating employer has engaged in fraud or
334 material misrepresentation in connection with a health benefit plan or ancillary benefit plan purchased
335 through the private health insurance exchange. If a participating employer or enrollee is dropped from
336 coverage, the enrollee shall be entitled to continuation and conversion coverage to the extent provided
337 for under applicable state or federal laws relating to continuation or conversion of health coverage;

338 9. Contract with at least three unaffiliated participating carriers offering health benefit plans to
339 provide benefits in all regions of the Commonwealth in which each health carrier is licensed to operate
340 and together to provide health benefit plans throughout all service regions in the Commonwealth to
341 ensure that enrollees have a personal choice from among a reasonable number of competing health
342 carriers. The Commissioner may, upon a showing of good cause, waive the requirement to have at least
343 three unaffiliated participating carriers;

344 10. Fairly and affirmatively offer, market, and sell all the health benefit plans sponsored by the
345 private health insurance exchange that are sold or offered to employers to all employers, in all service
346 regions. In addition, the exchange shall require all participating carriers to make their private health
347 insurance exchange products available in all portions of each of the service regions where the health
348 carrier offers health care benefits;

349 11. Develop standard enrollment procedures;

350 12. Publish educational materials, plan descriptions, and comparison sheets describing participating
351 carriers and the benefit plan designs available through the private health insurance exchange for use in
352 enrolling employers and their eligible employees. The information may include an assessment of
353 utilization management procedures and the level of quality and cost-effective care;

354 13. Establish conditions for participation of employers that conform to the requirements of this
355 chapter and that include assurances that payment will be made for health benefit plans sold through the
356 exchange;

357 14. Provide that each eligible employee may choose from any participating carrier as long as the
358 participating carrier provides coverage where the employee works or lives;

359 15. Receive, review, and act, as appropriate, on grievances by participating employers or enrollees;

360 16. Establish administrative and accounting procedures for operating the private health insurance
361 exchange and for providing services to employers and enrollees;

362 17. Prepare an annual report on the operations of the private health insurance exchange to the
363 Commissioner, which shall include an accounting of all outside revenues received by the board and
364 internal and independent audits and any other information the Commissioner may require;

365 18. Establish procedures for billing and collection of premiums from employers, including any share
366 of the premium paid by enrollees;

19. Establish procedures for annual open enrollment periods during which an employee enrolled in a health benefit plan through the private health insurance exchange may elect to enroll in any health benefit plan that is available to that size group through the private health insurance exchange and that provides health coverage where the employee lives or works and during which any enrollee may elect to enroll in any health benefit plan that is available to that size group through the private health insurance exchange, and that provides health coverage where the enrollee lives or works;

20. Provide that in the event an employer terminates coverage purchased through the private health insurance exchange, the former employer shall be ineligible to purchase a health benefit plan or ancillary benefit plan through the private health insurance exchange for a period determined by the exchange, but not to exceed 12 months;

21. Maintain a trust account or accounts in a bank for deposit of all moneys received and collected for operation of the private health insurance exchange. A private health insurance exchange and its owners, operators, partners, board members, employees, and agents shall have a fiduciary duty with respect to all moneys received or owed to it to ensure payment of its obligations and a full accounting to its participating employers, health plans, and the Commissioner;

22. Treat all eligible employees of an employer equally with regard to administrative fees and benefits of participation; and

23. Exercise all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed by this chapter.

§ 38.2-6411. Authorized activities of private health insurance exchange.

A private health insurance exchange may:

1. Contract with qualified independent third parties for any services necessary to carry out the powers and duties authorized or required by this chapter;

2. Employ necessary staff;

3. Allow a participating employer to choose the benefit plan design, from those offered by the private health insurance exchange, to be made available to its eligible employees;

4. Allow eligible employees to enroll in any benefit plan design offered by the private health insurance exchange;

5. Contract with licensed insurance agents or brokers to market and service coverage made available through the private health insurance exchange to its members. Compensation for agents and brokers may not vary on the basis of the employer's or his enrollees and dependents' actual or expected health status, industry, occupation, medical utilization, claims experience, or geographic location within the service region. This subdivision shall not apply with respect to a compensation arrangement that provides compensation to an agent or broker based on percentage of premium, provided that percentage shall not vary because of the health status, industry, occupation, medical utilization, claims experience, or geographic location within the service region; and

6. Exclude a health carrier or freeze enrollment in a health carrier for failure to achieve established quality, access, or information reporting standards of the private health insurance exchange.

§ 38.2-6412. Prohibited activities of private health insurance exchange.

A private health insurance exchange shall not do any of the following:

1. Purchase health care services, assume risk for the cost or provision of health care services, or otherwise contract with health care providers for the provision of health care services directly to enrollees;

2. Charge a fee not directly related to the operation of the private health insurance exchange;

3. As a condition of participation, require an employer or eligible employee or dependent to subscribe to nonhealth care or nonhealth insurance related products or services;

4. Engage in any competitive act or practice that results in the selection of employers and their enrollees and dependents based on actual or expected health status, claims experience, medical utilization, industry, occupation, or geographic location within the service region; or

5. Require or take any action inconsistent or in conflict with state laws or regulations.

§ 38.2-6413. Designation of agent for service of process.

The Commission shall require every private health insurance exchange, as a condition precedent of receiving and holding a certificate of registration, to file with the Commission a writing designating an agent for service of process. The writing shall state the name of the agent and his place of business in the Commonwealth.

§ 38.2-6414. Participating carriers.

A. In order to be eligible to be a participating carrier, a health carrier shall demonstrate the following operating characteristics satisfactory to the exchange's board:

1. License and approval as a health carrier in good standing with the appropriate regulatory authority;

2. The ability to provide data required by the board, including information on enrollee satisfaction

428 based on standard surveys, as may be prescribed, and to meet reasonable satisfaction measures as may
429 be established;

430 3. The ability to provide standard data elements in a manner prescribed by the board; and

431 4. All other criteria established by the board.

432 B. In evaluating which health carriers may participate in the private health insurance exchange, the
433 board shall consider all of the following:

434 1. Minimum geographic service and participation requirements, maximum thresholds for premium
435 rates, and standards for determining whether a health carrier operates efficiently;

436 2. The ability of a health carrier to provide services within the private health insurance exchange
437 service regions; and

438 3. Pricing and the competitiveness of each bid from a health carrier.

439 **§ 38.2-6415. Duties of participating health carriers.**

440 Every participating health carrier shall:

441 1. Meet the standards established by the board pursuant to this chapter;

442 2. Provide any data required by the board;

443 3. Comply with all applicable laws and regulations that regulate health care coverage or medical
444 benefits provided to employers;

445 4. In determining rates for health benefit plans offered through a private health insurance exchange,
446 use the service regions established by this chapter in determining risk categories for standard employee
447 risk rates;

448 5. Enroll and disenroll individuals as directed by the private health insurance exchange or its
449 designee; and

450 6. Comply with any other requirement established by the board.

451 **§ 38.2-6416. Performance standards for participating carriers.**

452 In contracts with participating carriers, the private health insurance exchange may establish
453 performance standards for specific contractual elements and penalties for failure to fulfill specific
454 contractual obligations.

455 **§ 38.2-6417. Contracting with health care providers.**

456 Nothing in this chapter shall prohibit a participating carrier from contracting with particular health
457 care providers or types, classes, or categories of health care providers or setting reimbursement
458 methodology.

459 **§ 38.2-6418. Termination of participation by health carriers.**

460 If a participating carrier elects to terminate its participating agreement with a private health
461 insurance exchange, the participating carrier shall:

462 1. Provide advance notice of its decision to the board; and

463 2. Provide notice of the decision at least 180 days prior to the nonrenewal of any health benefit plan
464 or ancillary benefit plan to employers and enrollees. A participating carrier that elects not to renew a
465 health benefit plan with a private health insurance exchange shall be prohibited from writing new
466 business through the private health insurance exchange for a period of three years from the date of the
467 notice to the private health insurance exchange or until the private health insurance exchange, with the
468 concurrence of the Commissioner, invites the former participating carrier to renew participation,
469 whichever is sooner.

470 **§ 38.2-6419. Regulatory authority not affected by chapter.**

471 Nothing in this chapter shall be construed to limit the existing regulatory authority of the
472 Department of Health to regulate managed care plans or of the Bureau of Insurance to regulate health
473 benefit plans. None of the requirements of this chapter shall conflict with the participating carrier's
474 licensing requirements.

475 **§ 38.2-6420. Contracts between exchange and participating employers.**

476 Contracts between the private health insurance exchange and participating carriers shall specify how
477 all premiums will be transmitted, grace periods for payments, and penalties for nonpayment.

478 **§ 38.2-6421. Contracts between private health insurance exchanges and participating employers.**

479 Contracts between private health insurance exchanges and participating employers shall provide:

480 1. That, for administrative purposes, the private health insurance exchange shall not be the
481 policyholder of the health benefit plan or ancillary benefit plan on behalf of participating employers and
482 their eligible employees and dependents;

483 2. Whether the participating employer or its employees will be the policyholder of the health benefit
484 plan or ancillary benefit plan purchased from a participating carrier through the exchange;

485 3. That the participating carrier will issue a certificate of coverage, or equivalent document,
486 specifying the essential features of the health benefit plan's or ancillary benefit plan's coverage to each
487 enrolled eligible employee; and

488 4. That the following notice be provided to employers and eligible employees who obtain coverage
489 through a private health insurance exchange at the time of enrollment:

NOTICE

THE PRIVATE HEALTH INSURANCE EXCHANGE IS NOT AN INSURANCE COMPANY AND DOES NOT PAY BENEFITS OR CLAIMS. IT COLLECTS AND DISTRIBUTES PREMIUMS ON YOUR EMPLOYER'S BEHALF TO INSURERS WHO MAY PARTICIPATE IN A GUARANTEE FUND CREATED BY VIRGINIA LAW. THE EXCHANGE ITSELF DOES NOT PARTICIPATE IN A GUARANTEE FUND CREATED BY VIRGINIA LAW.

THE PRIVATE HEALTH INSURANCE EXCHANGE THAT YOUR EMPLOYER HAS JOINED IS REGISTERED BY THE BUREAU OF INSURANCE TO PROVIDE SPECIFIC ADMINISTRATIVE SERVICES AND MAY NOT ASSUME ANY RISK FOR CLAIM AND BENEFIT PAYMENTS.

FOR ADDITIONAL INFORMATION ABOUT THE PRIVATE HEALTH INSURANCE EXCHANGE, YOU SHOULD ASK QUESTIONS OF YOUR BENEFITS ADMINISTRATOR OR YOU MAY CONTACT THE BUREAU OF INSURANCE.

§ 38.2-6422. Marketing.

A. An exchange's board shall establish marketing standards to be used by participating carriers with regard to health benefit plans offered through the exchange.

B. Any marketing, advertisement, or educational material for health benefit plans or ancillary benefit plans sold through the private health insurance exchange shall be subject to board approval prior to its use.

§ 38.2-6423. Use of agent or broker.

This chapter shall not be construed to prohibit or to compel the private health insurance exchange or a participating carrier from using the services of an agent or broker.

§ 38.2-6424. Prohibited conduct; penalties.

A. No participating carrier, agent of a participating carrier, or independent insurance agent shall engage, directly or indirectly, in an activity or marketing practice that would encourage employers or eligible enrollees to do any of the following:

1. Refrain from enrolling in a health benefit plan offered through the private health insurance exchange because of their health status, claims experience, industry, occupation, or geographic location within a service region;

2. Seek coverage from other participating carriers because of their health status, claim experience, industry, occupation, or geographic location within a service region; or

3. Enroll or fail to enroll in the private health insurance exchange because of their health status, claims experience, industry, occupation, or geographic location within a service region.

B. Any agent or participating carrier that fails to abide by the provisions of subsection A shall be subject to the penalties set forth in § 38.2-218.

§ 38.2-6425. Solvency.

If a private health insurance exchange becomes insolvent, the Commission shall maintain jurisdiction over the exchange for purposes of protection of the interests of the exchange enrollees. In that event, the Commission may do any of the following:

1. Arrange for transfer of coverage from the insolvent private health insurance exchange to another that is deemed to be solvent by the Commission;

2. Arrange for individual employers participating in the private health insurance exchange to obtain coverage through one or more participating carriers outside of an exchange arrangement; or

3. Take any other actions necessary to preserve the coverage provided to employers and enrollees in the insolvent exchange.

B. In any proceedings under this section, the costs of employing persons appointed to carry out the provisions of this section and all expenses of taking possession of, converting, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the exchange shall be fixed by the Commission and shall be paid out of the assets of the exchange.

§ 38.2-6426. Exemption.

Private health insurance exchanges registered pursuant to this chapter shall be exempt from requirements of licensure as a health insurance agent.

§ 38.2-6427. Antitrust immunity.

Exchanges registered pursuant to this chapter, participating carriers, participating employers, and their employees and agents are exempt from state antitrust law for an act or omission that is permitted or required by this chapter or authorized or required by the Commission in accordance with this chapter.