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SENATE BILL NO. 364

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rules

on January 31, 2020)

(Patron Prior to Substitute—Senator Dunnavant)

A BILL to direct the Joint Commission on Health Care to review the implications of establishing association health plans for the individual market; state innovation waiver.

Be it enacted by the General Assembly of Virginia:

1. § 1. The Joint Commission on Health Care (JCHC) shall examine and review the implications of the establishment, implementation, and administration of a program, to be known as the Commonwealth Care Health Benefits Program (the Program), under which a division of the State Corporation Commission (the Commission), or nonprofit corporation established by the Commission, will be the sponsor of association health plans through which it will sell individual health insurance coverage in the Commonwealth. In conducting its examination and review, JCHC shall request and consider information and input from the Commission's Bureau of Insurance and the Secretary of Health and Human Resources. Technical assistance shall be provided to JCHC by the Bureau of Insurance and the Secretary of Health and Human Resources. All agencies of the Commonwealth shall provide assistance to JCHC for this study, upon request. Elements of the Program to be reviewed and examined by JCHC shall include the following:

1. The division of the Commission or nonprofit corporation established by the Commission selling health insurance coverage will be a self-insuring entity that serves as the sponsor of the association health plans.

2. The implementation of the Program would occur concurrently with the withdrawal of the Commonwealth from the health benefit exchange (the exchange) operated by the U.S. Secretary of Health and Human Services pursuant to § 1311(b) of the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended (the ACA).

3. Implementation of the Program would be contingent upon the approval by the U.S. Secretary of Health and Human Services of a state innovation waiver under § 1332 of the ACA (42 U.S.C. § 18052) for the Program that provides federal funding for (i) the Program to offset the elimination of subsidies for eligible individuals previously purchasing health insurance coverage on the health benefit exchange and (ii) a reinsurance program that partially reimburses the Program for high-cost claims, with such attachment points, coinsurance rates, and reinsurance caps as the corporation's actuary determines appropriate.

4. The Commission will retain staff sufficient to establish the above-described new division and nonprofit corporation and implement the Program, utilizing such funds, including a treasury loan, as may be appropriated or otherwise made available for such purposes.

5. The Program will arrange for a number of third-party administrators, sufficient to ensure competition but in no event fewer than two, to process claims, enroll individuals, collect premiums, and otherwise administer the health plans made available through the Program.

6. Each health plan offered through the Program will provide coverage for health care services provided to enrolled individuals that is not less than the coverage that a large group plan or association health plan subject to the Employee Retirement Income Security Act of 1974 (ERISA) when offered by a self-insuring employer is required to provide, provided that one or more of the health plans shall provide such additional benefits as may be required to provide coverage that is at least as comprehensive and affordable as would be required under health plans currently offered on the exchange pursuant to the ACA or otherwise to comply with the Guardrail requirements of the ACA.

7. The Program will address the establishment of a reinsurance program as described in clause (ii) of subdivision 3, the selection and compensation of the third-party administrators, the selection and compensation of pharmacy benefits managers, and the establishment of provider networks.

8. The Program will include subsidization of health plan premiums for individuals with a household income between 100 percent and 400 percent of the federal poverty level, with subsidies weighted for lower-income individuals in a manner consistent with criteria for determining subsidies for policies purchased currently through the exchange.

9. The Program will include a cost-sharing reduction feature that removes disincentives to Program participation by low-income individuals who are enrolled in the Medicaid program by lowering the copayments, deductibles, and other cost-sharing obligations for which they would otherwise be liable.

10. The establishment of the Program will not prohibit individuals from purchasing individual health insurance coverage outside the Program.

11. The premiums for the plans offered through the Program will be set by the third-party

60 administrators, subject to approval by the Commission with assistance of qualified actuaries, and the
61 Program shall address how any shortfall in premiums will be covered.

62 12. The ongoing costs of the Program are intended to be covered by premiums charged for health
63 plans offered under the Program and by federal funds provided to the Commonwealth through the state
64 innovation waiver as described in subdivision 3. The Program will be designed and operated in order to
65 ensure that any shortfall in revenues from such sources is addressed by the reinsurance program
66 described in clause (ii) of subdivision 3 and by self-funding a reserve that is determined by the
67 corporation's actuary to be adequate.

68 13. The Program will include premium incentives for compliance with wellness or chronic disease
69 management benefit programs.

70 14. The Program will establish how enrollment is to be conducted, including open enrollment
71 periods, by the corporation, the third-party administrators, and direct enrollment partners.

72 15. The Program's implementation shall be contingent upon approval of an appropriate state
73 innovation waiver under § 1332 of the ACA that, notwithstanding any provision of Title 38.2 of the
74 Code of Virginia or ERISA to the contrary, authorizes the offering or sale of association health plans
75 pursuant to the Program to individuals who are not employees.

76 The Joint Commission on Health Care shall report its findings and conclusions to the Joint
77 Committee for Health and Human Resources Oversight.