

# State Corporation Commission

## 2020 Fiscal Impact Statement

**1. Bill Number:** SB861

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed  
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

**2. Patron:** Mason

**3. Committee:** Commerce and Labor

**4. Title:** Group health benefit plans; bona fide associations; benefits consortium.

**5. Summary:** Provides that certain trusts constitute a benefits consortium and are authorized to sell health benefits plans to members of a sponsoring association that (i) has been formed and maintained in good faith for purposes other than obtaining or providing health benefits; (ii) does not condition membership in the sponsoring association on any factor relating to the health status of an individual, including an employee of a member of the sponsoring association or a dependent of such an employee; (iii) makes any health benefit plan available to all members regardless of any factor relating to the health status of such members or individuals eligible for coverage through a member; (iv) does not make any health benefit plan available to any person who is not a member of the association; (v) makes available health plans or health benefit plans that meet requirements provided for in the bill; (vi) operates as a nonprofit entity under § 501(c)(6) of the Internal Revenue Code; and (vii) has been in active existence for at least five years. The bill replaces references to "bona fide association," as used in provisions applicable to health care plans in the small employer market, with the term "sponsoring association."

The bill requires any health benefit plan issued by a self-funded multiple employer welfare arrangement (MEWA) that covers one or more employees of one or more small employers to (a) provide essential health benefits and cost-sharing requirements; (b) offer a minimum level of coverage designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan; (c) not limit or exclude coverage for an individual by imposing a preexisting condition exclusion on that individual; (d) be prohibited from establishing discriminatory rules based on health status related to eligibility or premium or contribution requirements as imposed on health carriers; (e) meet the renewability standards set forth for health insurance issuers; (f) establish base rates formed on an actuarially sound, modified community rating methodology that considers the pooling of all participant claims; and (g) utilize each employer member's specific risk profile to determine premiums by actuarially adjusting above or below established base rates, and utilize either pooling or reinsurance of individual large claimants to reduce the adverse impact on any specific employer member's premiums.

**6. Budget Amendment Necessary:** No

**7. Fiscal Impact Estimates:** No fiscal impact on the State Corporation Commission

**8. Fiscal Implications:** None on the State Corporation Commission

**9. Specific Agency or Political Subdivisions Affected:** State Corporation Commission  
Bureau of Insurance

**10. Technical Amendment Necessary: No**

**11. Other Comments:** The State Corporation Commission Bureau of Insurance offered the following comments to the patron of Senate Bill 861:

- There is uncertainty regarding the purpose of the bill. Currently, self-funded MEWAs are already subject to the licensing provisions of Title 38.2.
- In accordance with 14 VAC 5-410-40, any MEWA that is not fully insured shall not operate in this Commonwealth without first meeting the criteria and becoming appropriately licensed as an insurance company, health maintenance organization, health services plan, or a dental or optometric services plan pursuant to Title 38.2 of the Code of Virginia.
- "Multiple employer welfare arrangement" is defined as any plan or arrangement which is established or maintained for the purpose of offering or providing coverage for health care services. However, on Lines 864-871 of the bill, there is a requirement that the health benefit plan documents state that "this coverage is not insurance".
- This bill appears to subject the self-funded MEWAs to the financial and solvency requirements imposed upon domestic insurers; however, there is no mention of market regulation. Sound insurance regulation includes the regulation of the forms and rates of carriers. There would be concerns about potential solvency risk from anything less than full market regulation.
- Versions of this bill that passed through the Assembly last session included additional, more robust consumer protections, including that the Virginians in these plans would be covered by the Virginia Life, Accident, and Sickness Insurance Guaranty Association.
- Versions of this bill last session also included provisions that these plans would be appropriately subject to taxes and maintenance assessments equivalent to those levied upon insurance companies.
- There appears to be an internal inconsistency within the new language in 38.2-3420(B)(2) where some self-funded MEWAs may not be able to rate coverage at the member employer level as is required by 38.2-3420(B)(2)(vii). Self-funded MEWAs that are Plan MEWAs (also known as association health plans) would be prohibited from rating at the member employer level due to the rating discrimination requirements (found in 38.2-3449) that apply to self-funded MEWAs 38.2-3420(B)(2)(iv).

**Date:** 1/16/20/V.Tompkins