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**HOUSE BILL NO. 2345**

Offered January 12, 2005

Prefiled January 11, 2005

A *BILL to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 63, consisting of sections numbered 38.2-6300 through 38.2-6311, relating to the provision of health insurance through multiple unaffiliated participating carriers to member small employers and their employees throughout the Commonwealth; Health Care Voluntary Purchasing Alliance Act; civil penalties.*

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 Patron—Hall
 

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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 63, consisting of sections numbered 38.2-6300 through 38.2-6311, as follows:**

**CHAPTER 63.****HEALTH CARE VOLUNTARY PURCHASING ALLIANCE ACT.****§ 38.2-6300. Definitions.**

"Authority" means the Health Care Voluntary Purchasing Alliance Authority established pursuant to this chapter.

"Board" means the Purchasing Alliance Board established pursuant to this chapter.

"Commissioner" means the Commissioner of the Commission's Bureau of Insurance.

"Dependent" means a spouse; an unmarried child under the age of 19 years; an unmarried child who is a full-time student under the age of 25 and who is financially dependent upon the enrollee; and an unmarried child of any age who is medically certified as disabled and dependent upon the enrollee.

"Eligible employee" means an employee who works for a small group employer on a full-time basis, has a normal work week of 30 or more hours, has satisfied applicable waiting period requirements, and is not a part-time, temporary or substitute employee.

"Fund" means the Purchasing Alliance Fund established under § 38.2-6310.

"Health benefit plan" means any accident and health insurance policy or certificate, health services plan contract, health maintenance organization subscriber contract, plan provided by a Multiple Employer Welfare Arrangement or plan provided by another benefit arrangement. "Health benefit plan" does not mean accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans, pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; Medicaid coverage; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

"Member small employer" means a small employer who enrolls in the purchasing alliance.

"Participating carrier" means a carrier that contracts with the purchasing alliance to provide coverage to enrollees under a health benefit plan.

"Purchasing Alliance" means the program established by the Authority providing health insurance through multiple unaffiliated participating carriers to member small employers and their employees.

"Regional service areas" means clearly defined, non-overlapping and exclusive geographical regions encompassing the entire Commonwealth as determined by the Board.

"Small employer" means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least two but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.

**§ 38.2-6301. Authority to act as purchasing alliance; powers of the Commissioner.**

A. Except as authorized by this chapter, no person or entity may market, sell, offer or arrange for a package of one or more health benefit plans underwritten by two or more carriers to two or more small employers or their eligible employees.

B. A person or entity not established under this chapter as a purchasing alliance and engaged in the purchase, sale, marketing or distribution of health insurance or health care benefit plans shall not hold itself out as an alliance, health insurance purchasing alliance, purchasing alliance or health insurance purchasing cooperative, or otherwise use a confusing similar name.

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59 C. Nothing in this chapter shall be deemed to be in conflict with or in limitation of the duties and  
60 powers granted to the Commissioner under the laws of the Commonwealth.

61 § 38.2-6302. Reporting suspected violations; penalties.

62 A. The Board shall report to the Commissioner suspected or alleged violations of this chapter.

63 B. Violations of this chapter shall be subject to the penalties contained in § 38.2-218.

64 § 38.2-6303. Health Care Voluntary Purchasing Alliance Authority created; Purchasing Alliance  
65 Board established; membership; terms.

66 A. To achieve the objective of providing health insurance through multiple unaffiliated participating  
67 carriers to member small employers and their employees throughout the Commonwealth, there is created  
68 a political subdivision of the Commonwealth to be known as the Health Care Voluntary Purchasing  
69 Alliance Authority. The Authority's exercise of powers and duties conferred by this article shall be  
70 deemed the performance of an essential governmental function and matters of public necessity for which  
71 public moneys may be spent and private property acquired.

72 B. The Authority shall be governed by a board of directors consisting of the Commissioner and  
73 eleven members, one from each congressional district in the Commonwealth, who shall be owners or  
74 employees of small employers, and who shall be appointed by the Governor, subject to confirmation by  
75 the General Assembly. Four of the 11 directors initially appointed by the Governor shall be appointed  
76 for terms of two and one-half years, four for terms of four and one-half years, and three for terms of six  
77 and one-half years, from the effective date of their appointment; and thereafter the terms of members of  
78 the Board shall be six years. No member appointed by the Governor shall be eligible to serve more than  
79 two terms; however, after the expiration of the term of a member appointed to serve three years or less,  
80 two additional terms may be served if appointed thereto. Any appointment to fill a vacancy shall be for  
81 the unexpired term. A person appointed by the Governor to fill a vacancy may be appointed to serve  
82 two additional terms. Members of the Board shall receive their expenses and shall be compensated at  
83 the rate provided in § 2.2-2104 for each day spent on the business of the Board.

84 C. The Board shall elect from its membership a chairman and a vice-chairman, and shall also elect  
85 a secretary and a treasurer, who need not be members of the Board, and may also elect other  
86 subordinate officers, who need not be members of the Board.

87 D. A majority of the Board shall constitute a quorum for the transaction of the Authority's business,  
88 and no vacancy in the membership shall impair the right of a quorum to exercise the rights and perform  
89 all duties of the Authority.

90 E. The Commissioner shall serve as the chief executive officer of the Authority, who shall be known  
91 as the Executive Director and who shall carry out such of the powers and duties conferred upon him by  
92 the Board. The employees of the Commission's Bureau of Insurance shall serve as staff to the Executive  
93 Director as may be necessary to fulfill the duties of the Authority conferred upon the Executive Director.  
94 The Executive Director shall also exercise and perform such other powers and duties as may be lawfully  
95 delegated to him or as may be conferred or imposed upon him by law.

96 F. No Board members or members of their households shall be employed by, be a consultant for, be  
97 a member of the board of directors of, be affiliated with an agent of, or otherwise be a representative of  
98 a carrier or other insurer, a health care provider or agent or broker. This provision shall not preclude  
99 a board member from purchasing coverage through the Alliance.

100 G. No cause of action or liability of any nature or kind shall arise against a member of the Board,  
101 or its staff, for any action taken in good faith by them in the performance of their powers and duties as  
102 defined in this chapter.

103 § 38.2-6304. Powers of the Authority.

104 A. The Authority is granted all powers necessary or convenient for the carrying out of its statutory  
105 purposes, including, but not limited to, the power to:

106 1. Sue and be sued, implead and be impleaded, complain and defend in all courts;

107 2. Adopt, use, and alter at will a common seal;

108 3. Acquire, purchase, hold, use, lease or otherwise dispose of any property, real, personal or mixed,  
109 tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the  
110 Authority;

111 4. Enter into contracts with participating carriers to provide health benefits to eligible employees  
112 and their dependents. The Authority shall not be required to specify the amounts encumbered for each  
113 contract, but may allocate funds to each contract based on projected and actual subscriber enrollments.  
114 The Authority may establish performance standards for specific contractual elements and penalties for  
115 failure to fulfill contractual obligations;

116 5. Contract with qualified, independent third parties for services necessary to carry out the powers  
117 and duties of the Authority. Unless permission is specifically granted by the Board, a third party hired  
118 by the Authority may not release, publish or otherwise use information to which the third party has  
119 access under its contract. Except with the express written approval of the Board, an entity may not act,  
120 directly or through an affiliated company, in the same regional service area both as a participating

carrier and a third party under contract to the Authority;

6. Make and enter into all other contracts as are necessary to carry out the powers and duties of this chapter;

7. Taking action necessary for securing legal remedies on behalf of, or against the Authority, member small employers, enrollees, a Board member or other parties subject to this chapter;

8. Appoint advisory committees that may include persons with expertise in health benefits management and marketing and representatives of participating carriers, consumer groups, health care providers, and others as may be deemed necessary to carry out the purposes of this chapter;

9. Appoint local beneficiary advisory councils to evaluate the Authority's functions and the performance of participating carriers in order to assess the efficacy of the operations for member small employers and enrollees;

10. Receive and accept grants, funds or anything of value from a public or private agency; and receive and accept contributions from a legitimate source of money, property, labor or any other thing of value. However, the Authority shall not accept anything of value from a person or entity that might have a vested interest in the decisions of the Board except with the express permission of the Commissioner;

11. Define and offer health benefit plans to small employers pursuant to the provisions of this chapter. The Authority may also incidentally offer optional group vision and dental benefit plans and, with the prior approval of the Commissioner, other limited benefit health insurance to enrollees;

12. Assess member small employers a reasonable fee for costs incurred or anticipated in connection with the operation of the Purchasing Alliance;

13. Undertake activities necessary to administer the Purchasing Alliance, including marketing and publicizing the Purchasing Alliance, and assuring participating carrier, small employer, and enrollee compliance with Purchasing Alliance requirements;

14. Establish conditions and procedures for participation of small employers and eligible employees, participating carriers, and agents or brokers;

15. Negotiate with participating carriers the administrative expense component of the premium rates charged for coverage offered through the Alliance consistent with § 38.2-6306;

16. Apportion the state into regional service areas in which multiple unaffiliated participating carriers will provide coverage to enrollees; and

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

B. Any contract entered into pursuant to this chapter shall be exempt from the provisions of Public Procurement Act (§ 2.2-4300 et seq.).

§ 38.2-6305. Powers and duties of the Purchasing Alliance Board.

A. The Board shall:

1. Operate the Purchasing Alliance as a statewide program offering health benefit plans to all small employers in the Commonwealth;

2. Develop model contracts that detail for potential contractors the requirements of the Purchasing Alliance;

3. Provide a copy of the model contract to interested carriers, detailing the contractual terms for participation in the Purchasing Alliance;

4. Develop and make available a list of objective criteria that must be met by participating carriers in order to be eligible to participate in the Purchasing Alliance;

5. Specify in contracts with participating carriers how all premiums will be transmitted together with inclusion of appropriate language for penalties and grace periods on late payments of premiums;

6. Contract with at least three unaffiliated carriers in each regional service area to ensure that enrollees have a choice from among a reasonable number of differing types of competing carriers and health benefit plans. The Commissioner may, upon a showing of good cause, waive the requirement to have at least three unaffiliated participating carriers throughout all portions of the regional service areas;

7. Develop standard enrollment procedures to be used by the Purchasing Alliance;

8. Publish educational materials, plan descriptions and comparison sheets describing participating carriers and the health benefit plans available through the Purchasing Alliance for use in enrolling small employers and their eligible employees;

9. Establish conditions for participation of small employers that conform to the requirements of this Act and that include, but are not limited to, assurances that the small employer is a bona fide employer group. The Board shall specify in contracts with member small employers that the Purchasing Alliance will be the master contract holder of the health benefit plan policy on behalf of member small employers and enrollees. These contracts shall also provide that all eligible employees of the small employer who obtain coverage under the health benefit plan offered by the small employer must obtain coverage

182 *through the Purchasing Alliance;*

183 *10. In enrolling member small employers, the Purchasing Alliance shall provide that each eligible*  
184 *employee is permitted to enroll in any health benefit plan offered by any participating carrier so long as*  
185 *the health benefit plan provides coverage where he or she works or lives;*

186 *11. Request from the Commissioner certification that all participating carriers are in good standing*  
187 *and licensed as small group carriers, and that the carriers satisfy the financial requirements established*  
188 *by applicable provisions of this title;*

189 *12. Receive, review and act, as appropriate, on grievances by member small employers or enrollees;*

190 *13. Review information and recommendations from consumers, employers, participating carriers or*  
191 *health care providers and other sources. After the review, the Board may issue reports or otherwise*  
192 *make recommendations to improve the delivery or purchase of health care benefits;*

193 *14. Establish administrative and accounting procedures for operating the Purchasing Alliance and*  
194 *for providing services to member small employers and enrollees;*

195 *15. Prepare an annual report on the operations of the Purchasing Alliance for the Commission, the*  
196 *General Assembly, and the Governor, which shall include, but not be limited to, an accounting of all*  
197 *outside revenues received by the Board and all internal and independent audits;*

198 *16. Establish procedures and mechanisms for billing and collection of premiums from member small*  
199 *employers, including any share of the premium paid by enrollees;*

200 *17. Establish procedures for annual or rolling open enrollment periods during which:*

201 *(a) An enrollee may elect to enroll in any other health benefit plan that is available through the*  
202 *Purchasing Alliance and that provides health coverage where he or she lives or works; and*

203 *(b) Any late enrollees may elect to enroll in any health benefit plan that is available through the*  
204 *Purchasing Alliance and that provides health coverage where he or she lives or works;*

205 *18. Place into its contracts between the Authority and member small employers pursuant to the*  
206 *Purchasing Alliance the following:*

207 *(a) For administrative purposes, the Authority will be the policyholder or contract holder of the*  
208 *health benefit plan on behalf of member small employers, their eligible employees and dependents;*

209 *(b) A provision that the participating carrier will issue a certificate of coverage, or equivalent*  
210 *document, specifying the essential features of the health benefit plan's coverage to each enrolled eligible*  
211 *employee; and*

212 *(c) A provision that all eligible employees of the small employer who obtains coverage under the*  
213 *health benefit plan offered by the small employer must obtain coverage through the Purchasing*  
214 *Alliance;*

215 *19. Provide that in the event a member small employer terminates coverage purchased through the*  
216 *purchasing alliance, the former member small employer shall be ineligible to purchase a health benefit*  
217 *plan through the Purchasing Alliance for a period of 12 months; and*

218 *20. Publicly disclose grants, funds or anything of value received pursuant to § 38.2-6304.*

219 *B. The Board may develop uniform standards for data to be provided by participating carriers and*  
220 *providers. The Authority may collect and disseminate data necessary for evaluation of the performance*  
221 *of participating carriers and their provider networks by consumers, providers, employers, and the state.*  
222 *In formulating data collection standards, the Board may use standards based on, and consistent with,*  
223 *existing state, National Association of Insurance Commissioners (NAIC) and national health care data*  
224 *collection initiatives and shall take into account their feasibility and cost-effectiveness.*

225 *C. The Board shall not:*

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

228 *2. Exclude a small employer or eligible employee or dependent of an eligible employee from*  
229 *membership in the Purchasing Alliance who agrees to pay fees for membership and the premium for*  
230 *coverage through the Purchasing Alliance and who abides by the bylaws and rules of the Purchasing*  
231 *Alliance;*

232 *3. Prohibit the participation of small employers, or differentiate classes of membership, based on*  
233 *industry type, experience, age, gender, family status, education, health status, income or other means in*  
234 *conflict with applicable law;*

235 *4. Commit an act constituting a rebate prohibited pursuant to § 38.2-509;*

236 *5. Charge a fee not directly related to the operation of the Purchasing Alliance or for non-health*  
237 *care related activities;*

238 *6. As a condition of membership, require a small employer, eligible employee, or dependent to*  
239 *subscribe to limited health benefit insurance or non-health care related products or services;*

240 *7. Operate the Purchasing Alliance or market the Purchasing Alliance in a locality in a way that*  
241 *would cause the Purchasing Alliance to select a risk pool with actuarially projected health care*  
242 *utilization over a two-year period that is below the projected average for all individuals residing in that*  
243 *county or primary metropolitan statistical area. The measurement and composition of projected*

utilization by members of the Purchasing Alliance to all individuals shall be done on a county or primary metropolitan statistical area basis and not across all members of the Purchasing Alliance;

8. Engage in any competitive act or practice that results in the selection of member small employers and enrollees based on any of the risk factors specified in this section or small employer size; or

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

§ 38.2-6306. Requirements for participating carriers.

A. In order to be eligible to be a participating carrier, a carrier must be able to satisfactorily demonstrate to the Board the following operating characteristics:

1. That it is licensed, approved as a small employer carrier, and in good standing;

2. The ability to administer a health benefit plan, to provide adequate service, and to comply with all contractual requirements of the Purchasing Alliance;

3. The ability to provide enrollees with reasonable access to covered services;

4. The ability to arrange and pay for the appropriate quality, level, and type of health care services;

5. The ability to provide data required by the Board, including information on enrollee satisfaction;

6. The ability to provide standard data elements in a manner prescribed by the Board;

7. The ability to meet applicable quality of care standards;

8. Strong financial condition;

9. Adequate administrative management;

10. A procedure to address enrollee grievances and appeals;

11. The ability to achieve satisfactory enrollment levels within the service area in which the carrier is licensed; and

12. All other criteria established by the board.

B. In evaluating which carriers may participate in the purchasing alliance, the Board shall consider, among other factors:

1. Minimum regional service area and participation requirements, maximum thresholds for premium rates, and standards for determining whether a carrier operates efficiently;

2. The ability of a carrier to provide services within a regional service area;

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

4. The effect of contracting with additional carriers on the administrative costs of the Purchasing Alliance and member small employers, the efficiency of the Purchasing Alliance, and the competitiveness of the premiums that will be paid to participating carriers.

C. Participating carriers that contract with or employ health care providers shall have mechanisms to accomplish all of the following, in a manner satisfactory to the Board:

1. Review the quality of care covered;

2. Review the appropriateness of care covered; and

3. Provide accessible health care services.

D. Every participating carrier shall:

1. Meet the standards established by the Board pursuant to this Act;

2. Provide data required by the Board;

3. Comply with all rules and regulations regarding underwriting, claims handling, sales, solicitation, licensing, fair marketing, unfair trade practices, the provisions of this chapter, and other applicable law;

4. Comply with all rules and regulations regarding adjusted community rating, except that the Purchasing Alliance and a participating carrier may negotiate only the administrative expense component of the premium rates charged for coverage offered through the Purchasing Alliance where the carrier can demonstrate net administrative cost savings for its Purchasing Alliance business. For the purposes of this paragraph, administrative expenses are limited to marketing expenses, acquisition expenses, the cost of paying claims, commissions and maintenance expenses;

5. Enroll and terminate the participation of individuals in the manner specified by the Board or its designee; and

6. Comply with other requirements established by the Board pursuant to this chapter.

E. Nothing in this chapter shall prohibit participating carriers from contracting with particular health care providers or types, classes, or categories of health care providers or setting reimbursement methodology.

F. If the participating carrier elects to terminate its contract with the Purchasing Alliance, the participating carrier shall:

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

2. Provide notice of the decision at least 180 days prior to the nonrenewal of a health benefit plan to the member small employers and enrollees. A participating carrier that elects not to renew a health benefit plan with the Purchasing Alliance shall be prohibited from writing new business through the Purchasing Alliance for a period of three years from the date of the notice to the Purchasing Alliance or until the Board, with the concurrence of the Commissioner, invites the former participating carrier to

305 *renew participation, whichever is earlier.*

306 *§ 38.2-6307. Marketing health benefit plans.*

307 *A. The Board shall establish marketing standards for use by participating carriers.*

308 *B. Any marketing, advertisement or educational material for health benefit plans sold through the*  
309 *Purchasing Alliance shall be approved by the Board prior to its use. The Board shall review all*  
310 *materials submitted to it and the materials shall be deemed approved if not disapproved within 30 days.*  
311 *The Authority may, through its contracts with participating carriers, deem certain classes of materials to*  
312 *be approved.*

313 *C. This section shall not be construed to prohibit or to compel the Authority or a participating*  
314 *carrier from using the services of an agent or broker.*

315 *D. A participating carrier, agent, broker, contractor or producer of a participating carrier, or*  
316 *independent insurance agent, broker, contractor or producer may not engage, directly or indirectly, in*  
317 *an activity or marketing practice that would encourage member small employers or eligible employees*  
318 *to:*

319 *1. Refrain from enrolling in a health benefit plan offered through the Purchasing Alliance because of*  
320 *their health status or claims experience;*

321 *2. Seek coverage from other participating carriers because of their health status or claim experience;*  
322 *or*

323 *3. Enroll or fail to enroll in the Purchasing Alliance because of their health status or claims*  
324 *experience.*

325 *§ 38.2-6308. Risk adjustment mechanism.*

326 *The Commissioner may establish a payment mechanism to adjust for the amount of risk covered by*  
327 *each participating carrier. The Commissioner may appoint an advisory committee composed of*  
328 *individuals that have risk adjustment and actuarial expertise to help establish the risk adjusters.*

329 *§ 38.2-6309. Antitrust immunity.*

330 *The Authority, the Board, carriers participating in the Purchasing Alliance, and their employees and*  
331 *agents, are exempt from state antitrust law for an act or omission that is permitted or required by this*  
332 *chapter or authorized or required by the Board in accordance with this chapter.*

333 *§ 38.2-6310. Purchasing Alliance Fund.*

334 *A. There is created in the Department of the Treasury a special nonreverting fund that shall be*  
335 *known as the Purchasing Alliance Fund.*

336 *B. The Fund shall be established on the books of the Comptroller. The Fund shall consist of such*  
337 *moneys available from employer premiums; employer participation fees; employer late fees; employer*  
338 *reinstatement fees; agent and broker fees paid by the employer; developmental costs appropriated or*  
339 *contributed by the Commonwealth; interest earned on the money in the Fund; money paid by the*  
340 *participating carriers for a pooled marketing effort; and other lawful sources. Interest earned on moneys*  
341 *in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,*  
342 *including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall*  
343 *remain in the Fund.*

344 *C. Moneys in the Fund shall be available to pay: participating carriers under their contracts; third*  
345 *parties for their services provided under contract; employer billing adjustments; agent and broker fees;*  
346 *funds owed the Commonwealth for its administrative costs; and all other expenditures authorized by the*  
347 *Board.*

348 *§ 38.2-6311. Purchasing Alliance evaluation.*

349 *The Board shall make a report not later than July 1, 2006, to the Governor, the Commissioner, and*  
350 *the General Assembly regarding:*

351 *1. The progress achieved in assuring affordable health care coverage to employees of member small*  
352 *employers;*

353 *2. The need, if any, for financial incentives or other mechanisms to increase participation in the*  
354 *Purchasing Alliance;*

355 *3. The benefits, if any, of exclusive purchasing of health insurance through the Purchasing Alliance*  
356 *for all small employers who choose to purchase health coverage; and*

357 *4. Other changes in the law or procedure that would improve the overall efficiency, further reduce*  
358 *costs, and improve fairness.*