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HOUSE BILL NO. 761

Offered January 11, 2006

Prefiled January 10, 2006

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 38.2-6305, relating to small employer health group cooperatives.

Patrons—Hamilton, Frederick, Melvin, Dance, Albo, Athey, Byron, Callahan, Cosgrove, Dudley, Ebbin, Englin, Gear, Gilbert, Hugo, Jones, S.C., Kilgore, Landes, Lingamfelter, Marshall, D.W., Marshall, R.G., McClellan, McQuigg, Morgan, O'Bannon, Rapp, Rust, Scott, E.T., Ware, O. and Welch

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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 38.2-6305, as follows:

CHAPTER 63.

SMALL EMPLOYER HEALTH GROUP COOPERATIVES.

§ 38.2-6300. Definitions.

As used in this chapter:

"Board of directors" means the board of directors of a health group cooperative.

"Cooperative" means a health group cooperative established under this chapter.

"Eligible employee" means an employee who works on a full-time basis and who usually works at least 30 hours a week. The term also includes a sole proprietor, a partner, and an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term does not include:

1. An employee who works on a part-time, temporary, seasonal, or substitute basis; or

2. An employee who is covered under (i) another health benefit plan; (ii) a self-funded or self-insured employee welfare benefit plan that provides health benefits and that is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); (iii) the Medicaid program if the employee elects not to be covered; (iv) another federal program, including the CHAMPUS program or Medicare program, if the employee elects not to be covered; or (v) a benefit plan established in another country if the employee elects not to be covered.

"Expanded service area" means any area larger than one locality in which a health group cooperative offers coverage.

"Group health benefit plan" shall mean any health care plan, subscription contract, evidence of coverage, certificate, health services plan, medical or hospital services plan, accident and sickness insurance policy or certificate, or other similar certificate, policy, contract, or arrangement, and any endorsement or rider thereto, offered, arranged, or issued by a carrier to a group contract holder to cover all or a portion of the cost of enrollees (or their eligible dependents) receiving covered health care items or services. Group health benefit plan does not mean (i) health care plans, contracts, or policies issued in the individual market; (ii) coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare), Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. or Title XX of the Social Security Act, 42 U.S.C. § 1397 et seq. (Medicaid), 5 U.S.C. § 8901 et seq. (federal employees), 10 U.S.C. § 1071 et seq. (CHAMPUS), or Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2 (state employees); (iii) accident only, credit, or disability insurance, or long-term care insurance, plans providing only limited health care services under § 38.2-4300 (unless offered by endorsement or rider to a group health benefit plan), CHAMPUS supplement, Medicare supplement, or workers' compensation coverages; (iv) an employee welfare benefit plan (as defined in § 3 (1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002 (1)) that is self-insured or self-funded; or (v) the essential and standard health benefit plans developed pursuant to subsection C of § 38.2-3431.

"Health status related factor" means:

1. Health status;

2. Medical condition, including both physical and mental illness;

3. Claims experience;

4. Receipt of health care;

5. Medical history;

6. Genetic information;

7. Evidence of insurability, including conditions arising out of acts of domestic violence; and

8. Disability.

"Small employer" means an employer who employed an average of at least two employees but not more than 50 eligible employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year. For purposes of this definition, a partnership is the employer of a partner.

§ 38.2-6301. Health group cooperatives.

A. Subject to subsection F, any person or persons may form a health group cooperative. A cooperative shall be organized as a nonprofit corporation and have the rights and duties provided by the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.).

B. On receipt of a certificate of incorporation from the Clerk of the Commission, the cooperative shall file written notification of the receipt of the certificate and a copy of the cooperative's organizational documents with the Commissioner.

C. The board of directors shall file annually with the Commissioner a statement of all amounts collected and expenses incurred for each of the preceding three years.

D. A health group cooperative, or a member of the board of directors, the executive director, or an employee or agent of a health group cooperative, shall not be liable for:

1. An act performed in good faith in the execution of duties in connection with the cooperative; or

2. An independent action of a small employer insurance carrier or a person who provides health care services under a health benefit plan.

E. A health group cooperative or a member of the board of directors, the executive director, or an employee or agent of a cooperative shall not be liable for failure to arrange for coverage of any particular illness, disease, or health condition.

F. A health carrier shall not form, or be a member of, a health group cooperative. A health carrier may associate with a sponsoring entity, such as a business association, chamber of commerce, or other organization representing employers or serving an analogous function, to assist the sponsoring entity in forming a health group cooperative.

§ 38.2-6302. Provisions relating to health group cooperatives.

A. The membership of a health group cooperative shall consist only of small employers. To participate as a member of a health group cooperative, an employer shall be a small employer.

B. Subject to the requirements of this chapter, a health group cooperative shall allow a small employer to join the health group cooperative and enroll in group health benefit plan coverage.

C. A health group cooperative shall allow any small employer to join the health group cooperative and enroll in the cooperative's group health benefit plan coverage during the initial enrollment and annual open enrollment periods.

D. A sponsoring entity of a health group cooperative may inform the members of the entity about the cooperative and the group health benefit plans offered by the cooperative. Coverage issued through the cooperative must be issued through a licensed agent marketing the coverage in accordance with this title.

E. The Commissioner shall adopt rules that govern the manner in which an employer may terminate, because of a financial hardship affecting the employer, participation in a health group cooperative.

F. A small employer's participation in a health group cooperative is voluntary, but an employer electing to participate in a health group cooperative shall commit to purchasing coverage through the health group cooperative for two years, except as provided by subsection E.

G. A health carrier issuing coverage to a health group cooperative:

1. Shall use a standard presentation form, prescribed by the Commissioner by rule, to market group health benefit plan coverage through the health group cooperative;

2. May contract to provide group health benefit plan coverage with only one health group cooperative in any locality, except that a health carrier may contract with additional health group cooperatives if it is providing group health benefit plan coverage in an expanded service area in accordance with subsection L;

3. Shall allow enrollment in group health benefit plan coverage in compliance with subsection C and with the health carrier's agreement with the health group cooperative;

4. Is exempt from any tax based on direct gross premium income pursuant to Chapter 25 (§ 58.1-2500 et seq.) of Title 58.1 with respect to the premiums or revenues received for coverage provided to each uninsured employee or dependent as defined by the Commissioner in accordance with subsection H; and

5. Shall maintain documentation to be provided by health group cooperatives to ensure compliance with the rules adopted by the Commissioner under subsection H with respect to uninsured employees or dependents.

H. The Commissioner by regulation shall determine who constitutes an uninsured employee or dependent for purposes of subdivision G 4.

I. Notwithstanding any other law, and except as provided by subsection N, a group health benefit plan issued by a health carrier to provide coverage with a health group cooperative is not subject to any state law, including a regulation, that:

1. Relates to a particular illness, disease, or treatment; or

2. Regulates the differences in rates applicable to services provided within a group health benefit plan network or outside the network.

J. The Commissioner by rule shall implement the exemption authorized by subsection I.

K. A health group cooperative may offer more than one group health benefit plan, but each plan offered must be made available to all employees covered by the cooperative.

L. A health carrier may, with notice to the Commissioner, provide group health benefit plan coverage to an expanded service area that includes the entire state. A health carrier may apply for approval of an expanded service area that comprises less than the entire state by filing with the Commissioner an application, in a form and manner prescribed by the Commissioner, at least 60 days before the date the health carrier issues coverage to the health group cooperative in the expanded service area. At the expiration of 60 days after the date of receipt by the Bureau of a filed application, the application shall be deemed approved by the Bureau unless, before that date, the application was either affirmatively approved or disapproved by written order of the Commissioner. The Commissioner, after notice and opportunity for hearing, may rescind an approval granted to a health carrier under this subsection if the Commissioner finds that the health carrier has failed to market fairly to all eligible employers in the Commonwealth or the expanded service area.

M. The provisions of this section shall not serve to limit or restrict a small employer's access to group health benefit plans under this chapter.

N. A group health benefit plan provided through a health group cooperative shall provide coverage for diabetes equipment, supplies, and services as required by § 38.2-3418.10.

§ 38.2-6303. Powers and duties of health group cooperatives.

A. A cooperative:

1. Shall arrange for group health benefit plan coverage for small employers who are members of the cooperative by contracting with carriers who meet the criteria established by subsection B for coverage under group health benefit plans;

2. Shall collect premiums to cover the cost of:

a. Group health benefit plan coverage purchased through the cooperative; and

b. The cooperative's administrative expenses;

3. May contract with agents to market coverage issued through the cooperative;

4. Shall establish administrative and accounting procedures for the operation of the cooperative;

5. Shall establish procedures under which an applicant for or participant in coverage issued through the cooperative may have a grievance reviewed by an impartial person;

6. May contract with a carrier or third-party administrator to provide administrative services to the cooperative;

7. Shall contract with carriers for the provision of services to small employers covered through the cooperative;

8. Shall develop and implement a plan to maintain public awareness of the cooperative and publicize the eligibility requirements for, and the procedures for enrollment in coverage through, the cooperative;

9. May negotiate the premiums paid by its members; and

10. May offer such other ancillary products and services to its members as are customarily offered in conjunction with group health benefit plans.

B. A cooperative shall contract only with carriers that demonstrate:

1. That the carrier is a health carrier or health maintenance organization licensed and in good standing with the Bureau;

2. The capacity to administer the group health benefit plans;

3. The ability to monitor and evaluate the quality and cost effectiveness of care and applicable procedures;

4. The ability to conduct utilization management and applicable procedures and policies;

5. The ability to assure enrollees adequate access to health care providers, including adequate numbers and types of providers;

6. A satisfactory grievance procedure and the ability to respond to enrollees' calls, questions, and complaints; and

7. Financial capacity, either through financial solvency standards as applied by the Commissioner or through appropriate reinsurance or other risk-sharing mechanisms.

C. A cooperative shall not self-insure or self-fund any health benefit plan or portion of a plan.

D. A cooperative shall comply with federal laws applicable to cooperatives and group health benefit plans issued through cooperatives, to the extent required by this title or regulations adopted thereunder.

A cooperative shall not limit, restrict, or condition an employer's or employee's membership in the cooperative or choice among benefit plans based on the risk characteristics of a group or of any member of a group.

E. A cooperative shall not limit, restrict, or condition an employer's or employee's membership in a cooperative or choice among benefit plans based on health status related factors, duration of coverage, or any similar characteristic related to the health status or experience of a group or of any member of a group.

F. To be eligible to exercise the authority granted under subdivision A 1, a health group cooperative shall have at least 10 participating employers.

§ 38.2-6304. Cooperative not insurer.

A. A cooperative is not an insurer and the employees of the cooperative are not required to be licensed under Chapter 18 (§ 38.2-1800 et seq.) of this title. This exemption from licensure includes a health group cooperative that acts to provide information about and to solicit membership in the cooperative.

B. A health group cooperative that is composed only of small employers is considered a single employer under this title and shall be treated in the same manner as a single employer for the purposes of this title, including for the purposes of any provision relating to premium rates and issuance and renewal of coverage. A cooperative shall have sole authority to make benefit elections and perform other administrative functions under the code for the cooperative's participating employers. The Bureau shall develop an expedited approval process for group health benefit plan coverage arranged by a health group cooperative.

C. An agent or third-party administrator used and compensated by the cooperative shall be licensed as required by Chapter 18 (§ 38.2-1800 et seq.) of this title.

D. A licensed agent used and compensated by the cooperative need not be appointed by each small employer carrier participating in the cooperative in order to market the products and services sponsored by the cooperative. However, a licensed agent may not market any other nonsponsored product or service of a participating small employer carrier without first being appointed by the small employer carrier.

§ 38.2-6305. Regulations.

The Commission shall adopt regulations as necessary to implement this chapter and to meet the minimum requirements of federal law and regulations.