

# 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:** House Floor

**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) (5) or 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.

No self-funded MEWA shall issue health benefit plans in the Commonwealth until it has obtained a license pursuant to regulations promulgated by the Commission. The Commission shall have the authority to adopt regulations applicable to self-funded MEWAs, whether domiciled inside or outside of the Commonwealth, including regulations addressing financial condition, solvency requirements and the exclusion of self-funded MEWAs from the Virginia Life, Accident and Sickness Insurance Guaranty Association.

**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:** The State Corporation Commission Bureau of Insurance recommends the following technical amendments to the amendment in the nature of a substitute to Senate Bill 861:
- Lines 123-784 should be removed from the bill. The removal of “bona fide association” may have unintended consequences for all types of associations that fall under that definition under current law and conflict with federal rules that govern those types of associations.
  - On Line 793, change the definition of “health benefit plan” to remove the reference to § 38.2-3431 and insert the appropriate language from § 38.2-3431 without any references to “insurance.”
  - On Line 798, change the definition of “sponsoring association” to reflect the language already outlined in the bill on Lines 359-375.
- 11. Other Comments:** Senate Bill 861 creates a new framework for MEWAs which, though not covered by the Virginia Life, Accident and Sickness Insurance Guaranty Association, meet all other financial solvency requirements. The State Corporation Commission will promulgate a regulation to address aspects of market regulation for this new framework. The State Corporation Commission Bureau of Insurance also 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 858-864 of the bill, there is a requirement that the health benefit plan documents state that “this coverage is not insurance”.
  - 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:** 3/2/20/V.Tompkins