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SENATE BILL NO. 195

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 24, 2022

(Patrons Prior to Substitute—Senators Mason and Dunnavant [SB 549])

A BILL to amend and reenact §§ 38.2-508.5, 38.2-3420, 38.2-3431, 38.2-3432.1, 38.2-3432.2, 38.2-3432.3, and 38.2-3521.1 of the Code of Virginia and to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 55, consisting of sections numbered 59.1-589 through 59.1-592, relating to group health benefit plans; sponsoring associations; formation of benefits consortium.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-508.5, 38.2-3420, 38.2-3431, 38.2-3432.1, 38.2-3432.2, 38.2-3432.3, and 38.2-3521.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 55, consisting of sections numbered 59.1-589 through 59.1-592, as follows:

§ 38.2-508.5. Re-underwriting individual under existing group or individual accident and sickness insurance policy prohibited; exceptions.

A. No premium increase, including a reduced premium increase in the form of a discount, may be implemented for an insured individual under existing individual health insurance coverage as defined in subsection B of § 38.2-3431 subsequent to the initial effective date of coverage under such policy or certificate to the extent that such premium increase is determined based upon: (i) a change in a health-status-related factor of the individual insured as defined in subsection B of § 38.2-3431 or (ii) the past or prospective claim experience of the individual insured.

B. No reduction in benefits may be implemented for an insured individual under existing individual health insurance coverage as defined in subsection B of § 38.2-3431 subsequent to the initial effective date of coverage under such policy or certificate to the extent that such reduction in benefits is determined based upon: (i) a change in a health-status-related factor of the individual insured as defined in subsection B of § 38.2-3431 or (ii) the past or prospective claim experience of the individual insured.

C. No modifications to contractual terms and conditions may be implemented for an insured individual under existing individual health insurance coverage as defined in subsection B of § 38.2-3431 subsequent to the initial effective date of coverage under such policy or certificate to the extent that such modifications to contractual terms and conditions are determined based upon: (i) a change in a health-status-related factor of the individual insured as defined in subsection B of § 38.2-3431 or (ii) the past or prospective claim experience of the individual insured.

D. This section shall not prohibit adjustments to premium, rescission of, or amendments to the insurance contract in the following circumstances:

1. When an insurer learns of information subsequent to issuing the policy or certificate that was not disclosed in the underwriting process and that, had it been known, would have resulted in a higher premium level or denial of coverage. Any adjustment to premium or rescission of coverage made for this reason may be made only to extent that it would have been made had the information been disclosed in the application process, and shall not be imposed beyond any period of incontestability, or beyond any time period proscribing an insurer from asserting defenses based upon misstatements in applications, as otherwise may be provided by applicable law. Any such rescission shall be consistent with § 38.2-3430.3 regarding guaranteed availability.

2. When an insurer provides a lifestyle-based good health discount based upon an individual's adherence to a healthy lifestyle and this discount is not based upon a specific health condition or diagnosis.

3. When an insurer removes waivers or riders attached to the policy at issue that limit coverage for specific named pre-existing medical conditions.

E. For purposes of this section, re-underwriting means the reevaluation of any health-status-related factor of an individual for purposes of adjusting premiums, benefits or contractual terms as provided in subsections A, B, and C.

F. The provisions of this section shall not apply to individual health insurance coverage issued to members of a bona fide sponsoring association, as defined in subsection B of § 38.2-3431, where coverage is available to all members of the association and eligible dependents of such members without regard to any health-status-related factor.

G. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ 38.2-3438 et seq.) of Chapter 34.

§ 38.2-3420. Authority and jurisdiction of Commission; exception.

A. Except as provided in subsection B C, any person offering or providing coverage in the

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60 Commonwealth for health care services, whether the coverage is by direct payment, reimbursement, or
61 otherwise, shall be presumed to be subject to the jurisdiction of the Commission to the extent the person
62 is not regulated by another agency of the Commonwealth, any subdivision of the Commonwealth, or the
63 federal government relating to the offering or providing of coverage for health care services.

64 B. *As used in this subsection:*

65 *"Health benefit plan" has the same meaning ascribed to the term in § 38.2-3431.*

66 *"Self-funded multiple employer welfare arrangement" or "self-funded MEWA" means any multiple*
67 *employer welfare arrangement that is not fully insured by a licensed insurance company. This term*
68 *includes a benefit consortium established under Chapter 55 (§ 59.1-589 et seq.) of Title 59.1.*

69 *No self-funded multiple employer welfare arrangement shall issue health benefit plans in the*
70 *Commonwealth until it has obtained a license pursuant to regulations promulgated by the Commission.*
71 *Notwithstanding any other section of this title or Chapter 55 (§ 59.1-589 et seq.) of Title 59.1 to the*
72 *contrary:*

73 *1. All financial and solvency requirements imposed by provisions of this title upon domestic insurers*
74 *shall apply to domestic self-funded MEWAs unless domestic self-funded MEWAs are otherwise*
75 *specifically exempted. For the purposes of handling the rehabilitation, liquidation, or conservation of a*
76 *domestic self-funded MEWA, the provisions of Chapter 15 (§ 38.2-1500 et seq.) shall apply; and*

77 *2. Any health benefit plan issued by a self-funded MEWA, including through a trust, benefits*
78 *consortium, or other arrangement, that covers one or more employees of one or more small employers*
79 *shall (i) provide essential health benefits and cost-sharing requirements as set forth in § 38.2-3451; (ii)*
80 *offer a minimum level of coverage designed to provide benefits that are actuarially equivalent to 60*
81 *percent of the full actuarial value of the benefits provided under the plan; (iii) not limit or exclude*
82 *coverage for an individual by imposing a preexisting condition exclusion on that individual pursuant to*
83 *§ 38.2-3444; (iv) be prohibited from establishing discriminatory rules based on health status related to*
84 *eligibility or premium or contribution requirements as imposed on health carriers pursuant to*
85 *§ 38.2-3432.2; (v) meet the renewability standards set forth for health insurance issuers in*
86 *§ 38.2-3432.1; (vi) establish base rates formed on an actuarially sound, modified community rating*
87 *methodology that considers the pooling of all participant claims; and (vii) utilize each employer*
88 *member's specific risk profile to determine premiums by actuarially adjusting above or below established*
89 *base rates, and utilize either pooling or reinsurance of individual large claimants to reduce the adverse*
90 *impact on any specific employer member's premiums.*

91 *No provision of this subsection shall authorize a self-funded MEWA domiciled outside of the*
92 *Commonwealth to operate in the Commonwealth without obtaining a license pursuant to the regulations*
93 *promulgated by the Commission.*

94 *The Commission shall have the authority to adopt regulations applicable to self-funded MEWAs,*
95 *whether domiciled inside or outside of the Commonwealth, including regulations addressing the*
96 *self-funded MEWAs financial condition, solvency requirements, and insolvency plan and its exclusion,*
97 *pursuant to § 59.1-592, from the Virginia Life, Accident and Sickness Insurance Guaranty Association*
98 *established under Chapter 17 (§ 38.2-1700 et seq.).*

99 C. Neither the provisions of this section nor any other provision of this title shall be construed to
100 affect or apply to a multiple employer welfare arrangement (MEWA) comprised only of banks together
101 with their plan-sponsoring organization, and their respective employees, provided the multiple employer
102 welfare arrangement (i) is duly licensed as a MEWA by the insurance regulatory agency of a state
103 contiguous to the Commonwealth, (ii) files with the Commission a copy of its certificate of authority or
104 other proper license from the contiguous state, (iii) has no more than 500 Virginia residents who are
105 employees of its member banks enrolled in or receiving accident and sickness benefits as insureds,
106 members, enrollees, or subscribers of the MEWA, and (iv) is subject to solvency examination authority
107 and reserve adequacy requirements determined by sound actuarial principles by such domiciliary
108 contiguous state. For purposes of this subsection:

109 "Bank" means an institution that has or is eligible for insurance of deposits by the Federal Deposit
110 Insurance Corporation.

111 "Plan-sponsoring organization" means an association that (i) sponsors a MEWA comprised only of
112 banks; (ii) has been actively in existence for at least five years; (iii) has been formed and maintained in
113 good faith for purposes other than obtaining insurance; (iv) does not condition membership in the
114 association on any health status-related factor relating to an individual, including an employee of an
115 employer or a dependent of an employee; (v) makes health insurance coverage offered through the
116 association available to all members regardless of any health status-related factor relating to such
117 members or individuals eligible for coverage through a member; (vi) does not make health insurance
118 coverage offered through the association available other than in connection with a member of the
119 association; and (vii) meets such additional requirements as may be imposed under the laws of the
120 Commonwealth, and includes any subsidiary of such an association.

121 **§ 38.2-3431. Application of article; definitions.**

122 A. This article applies to group health plans and to health insurance issuers offering group health
123 insurance coverage, and individual policies offered to employees of small employers.

124 Each insurer proposing to issue individual or group accident and sickness insurance policies
125 providing hospital, medical and surgical or major medical coverage on an expense incurred basis, each
126 corporation providing individual or group accident and sickness subscription contracts, and each health
127 maintenance organization or multiple employer welfare arrangement providing health care plans for
128 health care services that offers individual or group coverage to the small employer market in ~~this~~
129 *the* Commonwealth shall be subject to the provisions of this article. Any issuer of individual coverage to
130 employees of a small employer shall be subject to the provisions of this article if any of the following
131 conditions are met:

132 1. Any portion of the premiums or benefits is paid by or on behalf of the employer;

133 2. The eligible employee or dependent is reimbursed, whether through wage adjustments or
134 otherwise, by or on behalf of the employer for any portion of the premium;

135 3. The employer has permitted payroll deduction for the covered individual and any portion of the
136 premium is paid by the employer, provided that the health insurance issuer providing individual
137 coverage under such circumstances shall be registered as a health insurance issuer in the small group
138 market under this article, and shall have offered small employer group insurance to the employer in the
139 manner required under this article; or

140 4. The health benefit plan is treated by the employer or any of the covered individuals as part of a
141 plan or program for the purpose of § 106, 125, or 162 of the United States Internal Revenue Code.

142 B. For the purposes of this article:

143 "Actuarial certification" means a written statement by a member of the American Academy of
144 Actuaries or other individual acceptable to the Commission that a health insurance issuer is in
145 compliance with the provisions of this article based upon the person's examination, including a review of
146 the appropriate records and of the actuarial assumptions and methods used by the health insurance issuer
147 in establishing premium rates for applicable insurance coverage.

148 "Affiliation period" means a period which, under the terms of the health insurance coverage offered
149 by a health maintenance organization, must expire before the health insurance coverage becomes
150 effective. The health maintenance organization is not required to provide health care services or benefits
151 during such period and no premium shall be charged to the participant or beneficiary for any coverage
152 during the period.

153 1. Such period shall begin on the enrollment date.

154 2. An affiliation period under a plan shall run concurrently with any waiting period under the plan.

155 "Beneficiary" has the meaning given such term under section 3(8) of the Employee Retirement
156 Income Security Act of 1974 (29 U.S.C. § 1002 (8)).

157 "Bona fide association" means, with respect to health insurance coverage offered in this
158 Commonwealth, an association which:

159 1. Has been actively in existence for at least five years;

160 2. Has been formed and maintained in good faith for purposes other than obtaining insurance;

161 3. Does not condition membership in the association on any health status-related factor relating to an
162 individual (including an employee of an employer or a dependent of an employee);

163 4. Makes health insurance coverage offered through the association available to all members
164 regardless of any health status-related factor relating to such members (or individuals eligible for
165 coverage through a member);

166 5. Does not make health insurance coverage offered through the association available other than in
167 connection with a member of the association; and

168 6. Meets such additional requirements as may be imposed under the laws of this Commonwealth.

169 "Certification" means a written certification of the period of creditable coverage of an individual
170 under a group health plan and coverage provided by a health insurance issuer offering group health
171 insurance coverage and the coverage if any under such COBRA continuation provision, and the waiting
172 period if any and affiliation period if applicable imposed with respect to the individual for any coverage
173 under such plan.

174 "Church plan" has the meaning given such term under section 3(33) of the Employee Retirement
175 Income Security Act of 1974 (29 U.S.C. § 1002 (33)).

176 "COBRA continuation provision" means any of the following:

177 1. Section 4980B of the Internal Revenue Code of 1986 (26 U.S.C. § 4980B), other than subsection
178 (f)(1) of such section insofar as it relates to pediatric vaccines;

179 2. Part 6 of subtitle B of Title I of the Employee Retirement Income Security Act of 1974 (29
180 U.S.C. § 1161 et seq.), other than section 609 of such Act; or

181 3. Title XXII of P.L. 104-191.

182 "Creditable coverage" means with respect to an individual, coverage of the individual under any of

183 the following:

- 184 1. A group health plan;
 185 2. Health insurance coverage;
 186 3. Part A or B of Title XVIII of the Social Security Act (42 U.S.C. § 1395c or § 1395);
 187 4. Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), other than coverage consisting
 188 solely of benefits under section 1928;
 189 5. Chapter 55 of Title 10, United States Code (10 U.S.C. § 1071 et seq.);
 190 6. A medical care program of the Indian Health Service or of a tribal organization;
 191 7. A state health benefits risk pool;
 192 8. A health plan offered under Chapter 89 of Title 5, United States Code (5 U.S.C. § 8901 et seq.);
 193 9. A public health plan (as defined in federal regulations);
 194 10. A health benefit plan under section 5 (e) of the Peace Corps Act (22 U.S.C. § 2504(e)); or
 195 11. Individual health insurance coverage.

196 Such term does not include coverage consisting solely of coverage of excepted benefits.

197 "Dependent" means the spouse or child of an eligible employee, subject to the applicable terms of
 198 the policy, contract or plan covering the eligible employee.

199 "Eligible employee" means an employee who works for a small group employer on a full-time basis,
 200 has a normal work week of 30 or more hours, has satisfied applicable waiting period requirements, and
 201 is not a part-time, temporary or substitute employee. At the employer's sole discretion, the eligibility
 202 criterion may be broadened to include part-time employees.

203 "Eligible individual" means such an individual in relation to the employer as shall be determined:

- 204 1. In accordance with the terms of such plan;
 205 2. As provided by the health insurance issuer under rules of the health insurance issuer which are
 206 uniformly applicable to employers in the group market; and
 207 3. In accordance with all applicable law of ~~this~~ *the* Commonwealth governing such issuer and such
 208 market.

209 "Employee" has the meaning given such term under section 3(6) of the Employee Retirement Income
 210 Security Act of 1974 (29 U.S.C. § 1002 (6)).

211 "Employer" has the meaning given such term under section 3(5) of the Employee Retirement Income
 212 Security Act of 1974 (29 U.S.C. § 1002 (5)), except that such term shall include only employers of two
 213 or more employees.

214 "Enrollment date" means, with respect to an eligible individual covered under a group health plan or
 215 health insurance coverage, the date of enrollment of the eligible individual in the plan or coverage or, if
 216 earlier, the first day of the waiting period for such enrollment.

217 "Excepted benefits" means benefits under one or more (or any combination thereof) of the following:

- 218 1. Benefits not subject to requirements of this article:
 219 a. Coverage only for accident, or disability income insurance, or any combination thereof;
 220 b. Coverage issued as a supplement to liability insurance;
 221 c. Liability insurance, including general liability insurance and automobile liability insurance;
 222 d. Workers' compensation or similar insurance;
 223 e. Medical expense and loss of income benefits;
 224 f. Credit-only insurance;
 225 g. Coverage for on-site medical clinics; and
 226 h. Other similar insurance coverage, specified in regulations, under which benefits for medical care
 227 are secondary or incidental to other insurance benefits.
 228 2. Benefits not subject to requirements of this article if offered separately:
 229 a. Limited scope dental or vision benefits;
 230 b. Benefits for long-term care, nursing home care, home health care, community-based care, or any
 231 combination thereof; and
 232 c. Such other similar, limited benefits as are specified in regulations.

233 3. Benefits not subject to requirements of this article if offered as independent, noncoordinated
 234 benefits:

- 235 a. Coverage only for a specified disease or illness; and
 236 b. Hospital indemnity or other fixed indemnity insurance.
 237 4. Benefits not subject to requirements of this article if offered as separate insurance policy:
 238 a. Medicare supplemental health insurance (as defined under section 1882 (g)(1) of the Social
 239 Security Act (42 U.S.C. § 1395ss (g)(1));
 240 b. Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code
 241 (10 U.S.C. § 1071 et seq.); and
 242 c. Similar supplemental coverage provided to coverage under a group health plan.

243 "Federal governmental plan" means a governmental plan established or maintained for its employees
 244 by the government of the United States or by an agency or instrumentality of such government.

245 "Governmental plan" has the meaning given such term under section 3(32) of the Employee
246 Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (32)) and any federal governmental plan.

247 "Group health insurance coverage" means in connection with a group health plan, health insurance
248 coverage offered in connection with such plan.

249 "Group health plan" means an employee welfare benefit plan (as defined in section 3 (1) of the
250 Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (1)), to the extent that the plan
251 provides medical care and including items and services paid for as medical care to employees or their
252 dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or
253 otherwise.

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

265 "Health insurance coverage" means benefits consisting of medical care (provided directly, through
266 insurance or reimbursement, or otherwise and including items and services paid for as medical care)
267 under any hospital or medical service policy or certificate, hospital or medical service plan contract, or
268 health maintenance organization contract offered by a health insurance issuer.

269 "Health insurance issuer" means an insurance company, or insurance organization (including a health
270 maintenance organization) which is licensed to engage in the business of insurance in ~~this~~ *the*
271 Commonwealth and which is subject to the laws of ~~this~~ *the* Commonwealth which regulate insurance
272 within the meaning of section 514 (b)(2) of the Employee Retirement Income Security Act of 1974 (29
273 U.S.C. § 1144 (b)(2)). Such term does not include a group health plan.

274 "Health maintenance organization" means:

- 275 1. A federally qualified health maintenance organization;
- 276 2. An organization recognized under the laws of ~~this~~ *the* Commonwealth as a health maintenance
277 organization; or
- 278 3. A similar organization regulated under the laws of ~~this~~ *the* Commonwealth for solvency in the
279 same manner and to the same extent as such a health maintenance organization.

280 "Health status-related factor" means the following in relation to the individual or a dependent eligible
281 for coverage under a group health plan or health insurance coverage offered by a health insurance
282 issuer:

- 283 1. Health status;
- 284 2. Medical condition (including both physical and mental illnesses);
- 285 3. Claims experience;
- 286 4. Receipt of health care;
- 287 5. Medical history;
- 288 6. Genetic information;
- 289 7. Evidence of insurability (including conditions arising out of acts of domestic violence); or
- 290 8. Disability.

291 "Individual health insurance coverage" means health insurance coverage offered to individuals in the
292 individual market, but does not include coverage defined as excepted benefits. Individual health
293 insurance coverage does not include short-term limited duration coverage.

294 "Individual market" means the market for health insurance coverage offered to individuals other than
295 in connection with a group health plan.

296 "Large employer" means, in connection with a group health plan or health insurance coverage with
297 respect to a calendar year and a plan year, an employer who employed an average of at least 51
298 employees on business days during the preceding calendar year and who employs at least one employee
299 on the first day of the plan year.

300 "Large group market" means the health insurance market under which individuals obtain health
301 insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents)
302 through a group health plan maintained by a large employer.

303 "Late enrollee" means, with respect to coverage under a group health plan or health insurance
304 coverage provided by a health insurance issuer, a participant or beneficiary who enrolls under the plan
305 other than during:

- 306 1. The first period in which the individual is eligible to enroll under the plan; or
307 2. A special enrollment period as required pursuant to subsections J through M of § 38.2-3432.3.
- 308 "Medical care" means amounts paid for:
- 309 1. The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the
310 purpose of affecting any structure or function of the body;
311 2. Transportation primarily for and essential to medical care referred to in subdivision 1; and
312 3. Insurance covering medical care referred to in subdivisions 1 and 2.
- 313 "Network plan" means health insurance coverage of a health insurance issuer under which the
314 financing and delivery of medical care (including items and services paid for as medical care) are
315 provided, in whole or in part, through a defined set of providers under contract with the health insurance
316 issuer.
- 317 "Nonfederal governmental plan" means a governmental plan that is not a federal governmental plan.
- 318 "Participant" has the meaning given such term under section 3(7) of the Employee Retirement
319 Income Security Act of 1974 (29 U.S.C. § 1002 (7)).
- 320 "Placed for adoption," or "placement" or "being placed" for adoption, in connection with any
321 placement for adoption of a child with any person, means the assumption and retention by such person
322 of a legal obligation for total or partial support of such child in anticipation of adoption of such child.
323 The child's placement with such person terminates upon the termination of such legal obligation.
- 324 "Plan sponsor" has the meaning given such term under section 3(16)(B) of the Employee Retirement
325 Income Security Act of 1974 (29 U.S.C. § 1002 (16)(B)).
- 326 "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of
327 benefits relating to a condition based on the fact that the condition was present before the date of
328 enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was
329 recommended or received before such date. Genetic information shall not be treated as a preexisting
330 condition in the absence of a diagnosis of the condition related to such information.
- 331 "Premium" means all moneys paid by an employer and eligible employees as a condition of coverage
332 from a health insurance issuer, including fees and other contributions associated with the health benefit
333 plan.
- 334 "Rating period" means the 12-month period for which premium rates are determined by a health
335 insurance issuer and are assumed to be in effect.
- 336 "Self-employed individual" means an individual who derives a substantial portion of his income from
337 a trade or business (i) operated by the individual as a sole proprietor, (ii) through which the individual
338 has attempted to earn taxable income, and (iii) for which he has filed the appropriate Internal Revenue
339 Service Form 1040, Schedule C or F, for the previous taxable year.
- 340 "Service area" means a broad geographic area of the Commonwealth in which a health insurance
341 issuer sells or has sold insurance policies on or before January 1994, or upon its subsequent
342 authorization to do business in Virginia.
- 343 "Small employer" means in connection with a group health plan or health insurance coverage with
344 respect to a calendar year and a plan year, an employer who employed an average of at least one but
345 not more than 50 employees on business days during the preceding calendar year and who employs at
346 least one employee on the first day of the plan year. In determining whether a corporation or limited
347 liability company employed an average of at least one individual during the preceding calendar year and
348 employed at least one employee on the first day of the plan year, an individual who performed any
349 service for remuneration under a contract of hire, written or oral, express or implied, for a (i)
350 corporation of which the individual is a shareholder or an immediate family member of a shareholder or
351 (ii) a limited liability company of which the individual is a member shall be deemed to be an employee
352 of the corporation or the limited liability company, respectively. However, a health insurance issuer shall
353 not be required to issue more than one group health plan for each employer identification number issued
354 by the Internal Revenue Service for a business entity, without regard to the number of shareholders or
355 members of such business entity. "Small employer" includes a self-employed individual.
- 356 "Small group market" means the health insurance market under which individuals obtain health
357 insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents)
358 through a group health plan maintained by a small employer.
- 359 "Sponsoring association" means a nonstock corporation formed under the Virginia Nonstock
360 Corporation Act (§ 13.1-801 et seq.) that:
- 361 1. Has been formed and maintained in good faith for purposes other than obtaining or providing
362 health benefits;
- 363 2. Does not condition membership in the sponsoring association on any factor relating to the health
364 status of an individual, including an employee of a member of the sponsoring association or a
365 dependent of such an employee;
- 366 3. Makes any health benefit plan available to all members regardless of any factor relating to the
367 health status of such members or individuals eligible for coverage through a member;

368 4. Does not make any health benefit plan available to any person who is not a member of the
369 association;

370 5. Makes available health plans or health benefit plans that meet the requirements for health benefit
371 plans set forth in subdivision B 2 of § 38.2-3420;

372 6. Operates as a nonprofit entity under § 501(c)(5) or 501(c)(6) of the Internal Revenue Code;

373 7. Has been in active existence for at least five years; and

374 8. Meets such additional requirements as may be imposed under the laws of the Commonwealth.

375 "Sponsoring association" includes any wholly owned subsidiary of a sponsoring association.

376 "State" means each of the several states, the District of Columbia, Puerto Rico, the Virgin Islands,
377 Guam, American Samoa, and the Northern Mariana Islands.

378 "Waiting period" means, with respect to a group health plan or health insurance coverage provided
379 by a health insurance issuer and an individual who is a potential participant or beneficiary in the plan,
380 the period that must pass with respect to the individual before the individual is eligible to be covered for
381 benefits under the terms of the plan. If an employee or dependent enrolls during a special enrollment
382 period pursuant to subsections J through M of § 38.2-3432.3 or as a late enrollee, any period before
383 such enrollment is not a waiting period.

384 C. The provisions of this section shall not apply in any instance in which the provisions of this
385 section are inconsistent or in conflict with a provision of Article 6 (§ 38.2-3438 et seq.) of Chapter 34.

386 **§ 38.2-3432.1. Renewability.**

387 A. Every health insurance issuer that offers health insurance coverage in the group market in ~~this~~ *the*
388 Commonwealth shall renew or continue in force such coverage with respect to all insureds at the option
389 of the employer except:

390 1. For nonpayment of the required premiums by the policyholder, or contract holder, or where the
391 health insurance issuer has not received timely premium payments;

392 2. When the health insurance issuer is ceasing to offer coverage in the small group market in
393 accordance with subdivisions 9 and 10;

394 3. For fraud or misrepresentation by the employer, with respect to their coverage;

395 4. With regard to coverage provided to an eligible employee, for fraud or misrepresentation by the
396 employee with regard to his or her coverage;

397 5. For failure to comply with contribution and participation requirements defined by the health
398 benefit plan;

399 6. For failure to comply with health benefit plan provisions that have been approved by the
400 Commission;

401 7. When a health insurance issuer offers health insurance coverage in the group market through a
402 network plan, and there is no longer an enrollee in connection with such plan who lives, resides, or
403 works in the service area of the health insurance issuer (or in the area for which the health insurance
404 issuer is authorized to do business) and, in the case of the group market, the health insurance issuer
405 would deny enrollment with respect to such plan under the provisions of subdivision 9 or 10;

406 8. When health insurance coverage is made available in the group market only through one or more
407 ~~bona fide~~ *sponsoring* associations, the membership of an employer in the association (on the basis of
408 which the coverage is provided) ceases but only if such coverage is terminated under this subdivision
409 uniformly without regard to any health status related factor relating to any covered individual;

410 9. When a health insurance issuer decides to discontinue offering a particular type of group health
411 insurance coverage in the group market in ~~this~~ *the* Commonwealth, coverage of such type may be
412 discontinued by the health insurance issuer in accordance with the laws of ~~this~~ *the* Commonwealth in
413 such market only if (i) the health insurance issuer provides notice to each plan sponsor provided
414 coverage of this type in such market (and participants and beneficiaries covered under such coverage) of
415 such discontinuation at least ninety days prior to the date of the discontinuation of such coverage; (ii)
416 the health insurance issuer offers to each plan sponsor provided coverage of this type in such market,
417 the option to purchase any other health insurance coverage currently being offered by the health
418 insurance issuer to a group health plan in such market; and (iii) in exercising the option to discontinue
419 coverage of this type and in offering the option of coverage under this subdivision, the health insurance
420 issuer acts uniformly without regard to the claims experience of those sponsors or any health
421 status-related factor relating to any participants or beneficiaries covered or new participants or
422 beneficiaries who may become eligible for such coverage;

423 10. In any case in which a health insurance issuer elects to discontinue offering all health insurance
424 coverage in the group market in ~~this~~ *the* Commonwealth, health insurance coverage may be discontinued
425 by the health insurance issuer only in accordance with the laws of ~~this~~ *the* Commonwealth and if: (i) the
426 health insurance issuer provides notice to the Commission and to each plan sponsor (and participants
427 and beneficiaries covered under such coverage) of such discontinuation at least 180 days prior to the
428 date of the discontinuation of such coverage; and (ii) all health insurance issued or delivered for

429 issuance in ~~this~~ *the* Commonwealth in such market (or markets) are discontinued and coverage under
430 such health insurance coverage in such market (or markets) is not renewed;

431 11. In the case of a discontinuation under subdivision 10 of ~~this subsection~~ in a market, the health
432 insurance issuer may not provide for the issuance of any health insurance coverage in the market and ~~this~~
433 *the* Commonwealth during the five-year period beginning on the date of the discontinuation of the last
434 health insurance coverage not so renewed;

435 12. At the time of coverage renewal, a health insurance issuer may modify the health insurance
436 coverage for a product offered to a group health plan or health insurance issuer offering group health
437 insurance coverage in the group market if, for coverage that is available in such market other than only
438 through one or more *bona fide sponsoring* associations, such modification is consistent with the laws of
439 ~~this~~ *the* Commonwealth and effective on a uniform basis among group health plans or health insurance
440 issuers offering group health insurance coverage with that product; or

441 13. In applying this section in the case of health insurance coverage that is made available by a
442 health insurance issuer in the group market to employers only through one or more associations, a
443 reference to "plan sponsor" is deemed, with respect to coverage provided to an employer member of the
444 association, to include a reference to such employer.

445 B. If coverage to the small employer market pursuant to this article ceases to be written,
446 administered or otherwise provided, such coverage shall continue to be governed by this article with
447 respect to business conducted under this article that was transacted prior to the effective date of
448 termination and that remains in force.

449 **§ 38.2-3432.2. Availability.**

450 A. If coverage is offered under this article in the small employer market:

451 1. Such coverage shall be offered and made available to all the eligible employees of every small
452 employer and their dependents, including late enrollees, that apply for such coverage. No coverage may
453 be offered only to certain eligible employees or their dependents and no employees or their dependents
454 may be excluded or charged additional premiums because of health status; and

455 2. All products that are approved for sale in the small group market that the health insurance issuer
456 is actively marketing must be offered to all small employers, and the health insurance issuer must accept
457 any employer that applies for any of those products. This subdivision shall not apply to health insurance
458 coverage or products offered by a health insurance issuer if such coverage or product is made available
459 in the small group market only through one or more *bona fide sponsoring* associations.

460 B. No coverage offered under this article shall exclude an employer based solely on the nature of the
461 employer's business.

462 C. A health insurance issuer that offers health insurance coverage in a small group market through a
463 network plan may:

464 1. Limit the employers that may apply for such coverage to those eligible individuals who live, work
465 or reside in the service area for such network plan; and

466 2. Within the service area of such plan, deny such coverage to such employers if the health insurance
467 issuer has demonstrated, if required, to the satisfaction of the Commission that:

468 a. It will not have the capacity to deliver services adequately to enrollees of any additional groups
469 because of its obligations to existing group contract holders and enrollees; and

470 b. It is applying this subdivision uniformly to all employers without regard to the claims experience
471 of those employers and their employees (and their dependents) or any health status-related factors
472 relating to such employees and dependents.

473 3. A health insurance issuer upon denying health insurance coverage in any service area in
474 accordance with subdivision D 1, may not offer coverage in the small group market within such service
475 area for a period of 180 days after the date such coverage is denied.

476 D. A health insurance issuer may deny health insurance coverage in the small group market if the
477 health insurance issuer has demonstrated, if required, to the satisfaction of the Commission that:

478 1. It does not have the financial reserves necessary to underwrite additional coverage; and

479 2. It is applying this subdivision uniformly to all employers in the small group market in the
480 Commonwealth consistent with the laws of ~~this~~ *the* Commonwealth and without regard to the claims
481 experience of those employers and their employees (and their dependents) or any health status-related
482 factor relating to such employees and dependents.

483 E. A health insurance issuer upon denying health insurance coverage in accordance with subsection
484 D in the Commonwealth may not offer coverage in the small group market for a period of 180 days
485 after the date such coverage is denied or until the health insurance issuer has demonstrated to the
486 satisfaction of the Commission that the health insurance issuer has sufficient financial reserves to
487 underwrite additional coverage, whichever is later.

488 F. Nothing in this article shall be construed to preclude a health insurance issuer from establishing
489 employer contribution rules or group participation rules in connection with a health benefit plan offered
490 in the small group market. As used in this article, the term "employer contribution rule" means a

491 requirement relating to the minimum level or amount of employer contribution toward the premium for
492 enrollment of eligible individuals and the term "group participation rule" means a requirement relating to
493 the minimum number of eligible employees that must be enrolled in relation to a specified percentage or
494 number of eligible employees. Any employer contribution rule or group participation rule shall be
495 applied uniformly among small employers without reference to the size of the small employer group,
496 health status of the small employer group, or other factors.

497 G. The provisions of this section shall not apply in any instance in which the provisions of this
498 section are inconsistent or in conflict with a provision of Article 6 (§ 38.2-3438 et seq.) of Chapter 34.

499 **§ 38.2-3432.3. Limitation on preexisting condition exclusion period.**

500 A. Subject to subsection B, a health insurer offering health insurance coverage may, with respect to a
501 participant or beneficiary, impose a preexisting limitation only if:

502 1. For group health insurance coverage, such exclusion relates to a condition (whether physical or
503 mental), regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment
504 was recommended or received within the six-month period ending on the enrollment date;

505 2. For individual health insurance coverage, such exclusion relates to a condition that, during a
506 12-month period immediately preceding the effective date of coverage, had manifested itself in such a
507 manner as would cause an ordinarily prudent person to seek diagnosis, care, or treatment, or for which
508 medical advice, diagnosis, care or treatment was recommended or received within 12 months
509 immediately preceding the effective date of coverage;

510 3. Such exclusion extends for a period of not more than 12 months (or 12 months in the case of a
511 late enrollee) after the enrollment date; and

512 4. The period of any such preexisting condition exclusion is reduced by the aggregate of the periods
513 of creditable coverage, if any, applicable to the participant or beneficiary as of the enrollment date.

514 B. Exceptions:

515 1. Subject to subdivision 4, a health insurance issuer offering health insurance coverage may not
516 impose any preexisting condition exclusion in the case of an individual who, as of the last day of the
517 30-day period beginning with the date of birth, is covered under creditable coverage;

518 2. Subject to subdivision 4, a health insurance issuer offering health insurance coverage may not
519 impose any preexisting condition exclusion in the case of a child who is adopted or placed for adoption
520 before attaining 18 years of age and who, as of the last day of the 30-day period beginning on the date
521 of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence
522 shall not apply to coverage before the date of such adoption or placement for adoption;

523 3. A health insurance issuer offering health insurance coverage may not impose any preexisting
524 condition exclusion relating to pregnancy as a preexisting condition, except in the case of individual
525 health insurance coverage for a person who is not considered an eligible individual, as defined in
526 § 38.2-3430.2, in which case the health insurance issuer may impose a preexisting condition exclusion
527 for a pregnancy existing on the effective date of coverage;

528 4. Subdivisions 1 and 2 shall no longer apply to an individual after the end of the first 63-day period
529 during all of which the individual was not covered under any creditable coverage; and

530 5. Subdivision A 4 shall not apply to health insurance coverage offered in the individual market on a
531 "guarantee issue" basis without regard to health status including policies, contracts, certificates, or
532 evidences of coverage issued through a bona fide sponsoring association or to students through school
533 sponsored programs at an institution of higher education unless the person is an eligible individual as
534 defined in § 38.2-3430.2.

535 C. A period of creditable coverage shall not be counted, with respect to enrollment of an individual
536 under a health benefit plan, if, after such period and before the enrollment date, there was a 63-day
537 period during all of which the individual was not covered under any creditable coverage.

538 D. For purposes of subdivision B 4 and subsection C, any period that an individual is in a waiting
539 period for any coverage under a group health plan (or for group health insurance coverage) or is in an
540 affiliation period shall not be taken into account in determining the continuous period under subsection
541 C.

542 E. Methods of crediting coverage:

543 1. Except as otherwise provided under subdivision 2, a health insurance issuer offering group health
544 coverage shall count a period of creditable coverage without regard to the specific benefits covered
545 during the period;

546 2. A health insurance issuer offering group health insurance coverage may elect to count a period of
547 creditable coverage based on coverage of benefits within each of several classes or categories of benefits
548 rather than as provided under subdivision 1. Such election shall be made on a uniform basis for all
549 participants and beneficiaries. Under such election a health insurance issuer shall count a period of
550 creditable coverage with respect to any class or category of benefits if any level of benefits is covered
551 within such class or category;

552 3. In the case of an election with respect to a group plan under subdivision 2 (whether or not health
553 insurance coverage is provided in connection with such plan), the plan shall (i) prominently state in any
554 disclosure statements concerning the plan, and state to each enrollee at the time of enrollment under the
555 plan, that the plan has made such election and (ii) include in such statements a description of the effect
556 of this election; and

557 4. In the case of an election under subdivision 2 with respect to health insurance coverage offered by
558 a health insurance issuer in the small or large group market, the health insurance issuer shall (i)
559 prominently state in any disclosure statements concerning the coverage, and to each employer at the
560 time of the offer or sale of the coverage, that the health insurance issuer has made such election and (ii)
561 include in such statements a description of the effect of such election.

562 F. Periods of creditable coverage with respect to an individual shall be established through
563 presentation of certifications described in subsection G or in such other manner as may be specified in
564 federal regulations.

565 G. A health insurance issuer offering group health insurance coverage shall provide for certification
566 of the period of creditable coverage:

567 1. At the time an individual ceases to be covered under the plan or otherwise becomes covered under
568 a COBRA continuation provision;

569 2. In the case of an individual becoming covered under a COBRA continuation provision, at the time
570 the individual ceases to be covered under such provision; and

571 3. At the request, or on behalf of, an individual made not later than 24 months after the date of
572 cessation of the coverage described in subdivision 1 or 2, whichever is later. The certification under
573 subdivision 1 may be provided, to the extent practicable, at a time consistent with notices required under
574 any applicable COBRA continuation provision.

575 H. To the extent that medical care under a group health plan consists of group health insurance
576 coverage, the plan is deemed to have satisfied the certification requirement under this section if the
577 health insurance issuer offering the coverage provides for such certification in accordance with this
578 section.

579 I. In the case of an election described in subdivision E 2 by a health insurance issuer, if the health
580 insurance issuer enrolls an individual for coverage under the plan and the individual provides a
581 certification of coverage of the individual under subsection F:

582 1. Upon request of such health insurance issuer, the entity which issued the certification provided by
583 the individual shall promptly disclose to such requesting group insurance issuer information on coverage
584 of classes and categories of health benefits available under such entity's plan or coverage; and

585 2. Such entity may charge the requesting health insurance issuer for the reasonable cost of disclosing
586 such information.

587 J. A health insurance issuer offering group health insurance coverage shall permit an employee who
588 is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an
589 employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for
590 coverage under the terms of the plan if each of the following conditions is met:

591 1. The employee or dependent was covered under a group health plan or had health insurance
592 coverage at the time coverage was previously offered to the employee or dependent;

593 2. The employee stated in writing at such time that coverage under a group health plan or health
594 insurance coverage was the reason for declining enrollment, but only if the plan sponsor or health
595 insurance issuer (if applicable) required such a statement at such time and provided the employee with
596 notice of such requirement (and the consequences of such requirement) at such time;

597 3. The employee's or dependent's coverage described in subdivision 1 (i) was under a COBRA
598 continuation provision and the coverage under such provision was exhausted or (ii) was not under such
599 a provision and either the coverage was terminated as a result of loss of eligibility for the coverage
600 (including as a result of legal separation, divorce, death, termination of employment, or reduction in the
601 number of hours of employment) or employer contributions towards such coverage were terminated; and

602 4. Under the terms of the plan, the employee requests such enrollment not later than 30 days after
603 the date of exhaustion of coverage described in clause (i) of subdivision 3 or termination of coverage or
604 employer contribution described in clause (ii) of subdivision 3.

605 K. If (i) a health insurance issuer makes coverage available with respect to a dependent of an
606 individual; (ii) the individual is a participant under the plan (or has met any waiting period applicable to
607 becoming a participant under the plan and is eligible to be enrolled under the plan but for a failure to
608 enroll during a previous enrollment period); and (iii) a person becomes such a dependent of the
609 individual through marriage, birth, or adoption or placement for adoption, the health insurance issuer
610 shall provide for a dependent special enrollment period described in subsection L during which the
611 person (or, if not otherwise enrolled, the individual) may also be enrolled under the plan as a dependent
612 of the individual, and in the case of the birth or adoption of a child, the spouse of the individual may
613 also be enrolled as a dependent of the individual if such spouse is otherwise eligible for coverage.

614 L. A dependent special enrollment period under this subsection shall be a period of not less than 30
615 days and shall begin on the later of:

616 1. The date dependent coverage is made available; or

617 2. The date of the marriage, birth, or adoption or placement for adoption (as the case may be)
618 described in subsection K.

619 M. If an individual seeks to enroll a dependent during the first 30 days of such a dependent special
620 enrollment period, the coverage of the dependent shall become effective:

621 1. In the case of marriage, not later than the first day of the first month beginning after the date the
622 completed request for enrollment is received;

623 2. In the case of a dependent's birth, as of the date of such birth; or

624 3. In the case of a dependent's adoption or placement for adoption, the date of such adoption or
625 placement for adoption.

626 N. A late enrollee may be excluded from coverage for up to 12 months or may have a preexisting
627 condition limitation apply for up to 12 months; however, in no case shall a late enrollee be excluded
628 from some or all coverage for more than 12 months. An eligible employee or dependent shall not be
629 considered a late enrollee if all of the conditions set forth below in subdivisions 1 through 4 are met or
630 one of the conditions set forth below in subdivision 5 or 6 is met:

631 1. The individual was covered under a public or private health benefit plan at the time the individual
632 was eligible to enroll.

633 2. The individual certified at the time of initial enrollment that coverage under another health benefit
634 plan was the reason for declining enrollment.

635 3. The individual has lost coverage under a public or private health benefit plan as a result of
636 termination of employment or employment status eligibility, the termination of the other plan's entire
637 group coverage, death of a spouse, or divorce.

638 4. The individual requests enrollment within 30 days after termination of coverage provided under a
639 public or private health benefit plan.

640 5. The individual is employed by a small employer that offers multiple health benefit plans and the
641 individual elects a different plan offered by that small employer during an open enrollment period.

642 6. A court has ordered that coverage be provided for a spouse or minor child under a covered
643 employee's health benefit plan, the minor is eligible for coverage and is a dependent, and the request for
644 enrollment is made within 30 days after issuance of such court order.

645 However, such individual may be considered a late enrollee for benefit riders or enhanced coverage
646 levels not covered under the enrollee's prior plan.

647 O. The provisions of this section shall not apply in any instance in which the provisions of this
648 section are inconsistent or in conflict with a provision of Article 6 (§ 38.2-3438 et seq.) of Chapter 34.

649 **§ 38.2-3521.1. Group accident and sickness insurance definitions.**

650 Except as provided in § 38.2-3522.1, no policy of group accident and sickness insurance shall be
651 delivered in ~~this~~ the Commonwealth unless it conforms to one of the following descriptions:

652 A. A policy issued to an employer, or to the trustees of a fund established by an employer, which
653 employer or trustees shall be deemed the policyholder, to insure employees of the employer for the
654 benefit of persons other than the employer, subject to the following requirements:

655 1. The employees eligible for insurance under the policy shall be all of the employees of the
656 employer, or all of any class or classes thereof. The policy may provide that the term "employees" shall
657 include the employees of one or more subsidiary corporations, and the employees, individual proprietors,
658 and partners of one or more affiliated corporations, proprietorships or partnerships if the business of the
659 employer and of such affiliated corporations, proprietorships or partnerships is under common control.
660 The policy may provide that the term "employees" shall include retired employees, former employees
661 and directors of a corporate employer. A policy issued to insure the employees of a public body may
662 provide that the term "employees" shall include elected or appointed officials.

663 2. The premium for the policy shall be paid either from the employer's funds or from funds
664 contributed by the insured employees, or from both. Except as provided in subdivision 3 ~~of this~~
665 ~~subsection~~, a policy on which no part of the premium is to be derived from funds contributed by the
666 insured employees must insure all eligible employees, except those who reject such coverage in writing.

667 3. An insurer may exclude or limit the coverage on any person as to whom evidence of individual
668 insurability is not satisfactory to the insurer, except as otherwise prohibited in this title.

669 B. A policy which is:

670 1. Not subject to Chapter 37.1 (§ 38.2-3727 et seq.) of this title, and

671 2. Issued to a creditor or its parent holding company or to a trustee or trustees or agent designated
672 by two or more creditors, which creditor, holding company, affiliate, trustee, trustees or agent shall be
673 deemed the policyholder, to insure debtors of the creditor or creditors with respect to their indebtedness,
674 subject to the following requirements:

675 a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor or
676 creditors, or all of any class or classes thereof. The policy may provide that the term "debtors" shall
677 include:

678 (1) Borrowers of money or purchasers or lessees of goods, services, or property for which payment is
679 arranged through a credit transaction;

680 (2) The debtors of one or more subsidiary corporations; and

681 (3) The debtors of one or more affiliated corporations, proprietorships or partnerships if the business
682 of the policyholder and of such affiliated corporations, proprietorships or partnerships is under common
683 control.

684 b. The premium for the policy shall be paid either from the creditor's funds, or from charges
685 collected from the insured debtors, or from both. Except as provided in subdivision 3 of this subsection,
686 a policy on which no part of the premium is to be derived from funds contributed by insured debtors
687 specifically for their insurance must insure all eligible debtors.

688 3. An insurer may exclude any debtors as to whom evidence of individual insurability is not
689 satisfactory to the insurer.

690 4. The total amount of insurance payable with respect to an indebtedness shall not exceed the greater
691 of the scheduled or actual amount of unpaid indebtedness to the creditor. The insurer may exclude any
692 payments which are delinquent on the date the debtor becomes disabled as defined in the policy.

693 5. The insurance may be payable to the creditor or any successor to the right, title, and interest of
694 the creditor. Such payment or payments shall reduce or extinguish the unpaid indebtedness of the debtor
695 to the extent of each such payment and any excess of the insurance shall be payable to the insured or
696 the estate of the insured.

697 6. Notwithstanding the preceding provisions of this section, insurance on agricultural credit
698 transaction commitments may be written up to the amount of the loan commitment. Insurance on
699 educational credit transaction commitments may be written up to the amount of the loan commitment
700 less the amount of any repayments made on the loan.

701 C. A policy issued to a labor union, or similar employee organization, which labor union or
702 organization shall be deemed to be the policyholder, to insure members of such union or organization
703 for the benefit of persons other than the union or organization or any of its officials, representatives, or
704 agents, subject to the following requirements:

705 1. The members eligible for insurance under the policy shall be all of the members of the union or
706 organization, or all of any class or classes thereof.

707 2. The premium for the policy shall be paid either from funds of the union or organization, or from
708 funds contributed by the insured members specifically for their insurance, or from both. Except as
709 provided in subdivision 3 of this subsection, a policy on which no part of the premium is to be derived
710 from funds contributed by the insured members specifically for their insurance must insure all eligible
711 members, except those who reject such coverage in writing.

712 3. An insurer may exclude or limit the coverage on any person as to whom evidence of individual
713 insurability is not satisfactory to the insurer, except as otherwise prohibited in this title.

714 D. A policy issued (i) to or for a multiple employer welfare arrangement, a rural electric cooperative,
715 or a rural electric telephone cooperative as these terms are defined in 29 U.S.C. § 1002, or (ii) to a trust,
716 or to the trustees of a fund, established or adopted by or for two or more employers, or by one or more
717 labor unions of similar employee organizations, or by one or more employers and one or more labor
718 unions or similar employee organizations, which trust or trustees shall be deemed the policyholder, to
719 insure employees of the employers or members of the unions or organizations for the benefit of persons
720 other than the employers or the unions or organizations, subject to the following requirements:

721 1. The persons eligible for insurance shall be all of the employees of the employers or all of the
722 members of the unions or organizations, or all of any class or classes thereof. The policy may provide
723 that the term "employee" shall include the employees of one or more subsidiary corporations, and the
724 employees, individual proprietors, and partners of one or more affiliated corporations, proprietorships or
725 partnerships if the business of the employer and of such affiliated corporations, proprietorships or
726 partnerships is under common control. The policy may provide that the term "employees" shall include
727 retired employees, former employees and directors of a corporate employer. The policy may provide that
728 the term "employees" shall include the trustees or their employees, or both, if their duties are principally
729 connected with such trusteeship.

730 2. The premium for the policy shall be paid from funds contributed by the employer or employers of
731 the insured persons, or by the union or unions or similar employee organizations, or by both, or from
732 funds contributed by the insured persons or from both the insured persons and the employers or unions
733 or similar employee organizations. Except as provided in subdivision 3 of this subsection, a policy on
734 which no part of the premium is to be derived from funds contributed by the insured persons
735 specifically for their insurance must insure all eligible persons, except those who reject such coverage in
736 writing.

737 3. An insurer may exclude or limit the coverage on any person as to whom evidence of individual
738 insurability is not satisfactory to the insurer, except as otherwise prohibited in this title.

739 E. 1. A policy issued to an association or to a trust or to the trustees of a fund established, created,
740 or maintained for the benefit of members of one or more associations which association or trust shall be
741 deemed the policyholder. The association or associations shall:

742 a. ~~Have at the outset a minimum of 100 persons;~~

743 b. ~~Have been organized and maintained in good faith for purposes other than that of obtaining~~
744 ~~insurance;~~

745 e. ~~Have been in active existence for at least five years;~~

746 d. ~~Have a constitution and bylaws which provide that (i) the association or associations hold regular~~
747 ~~meetings not less than annually to further purposes of the members, (ii) except for credit unions, the~~
748 ~~association or associations collect dues or solicit contributions from members, and (iii) the members~~
749 ~~have voting privileges and representation on the governing board and committees;~~

750 e. ~~Does not b. Not~~ condition membership in the association on any health status-related factor
751 relating to an individual (including an employee of an employer or a dependent of an employee);

752 f. ~~Makes c. Make~~ health insurance coverage offered through the association available to all members
753 regardless of any health status-related factor relating to such members (or individuals eligible for
754 coverage through a member);

755 g. ~~Does not d. Not~~ make health insurance coverage offered through the association available other
756 than in connection with a member of the association; and

757 h. ~~Meets e. Meet~~ such additional requirements as may be imposed under the laws of ~~this the~~
758 Commonwealth.

759 2. The policy shall be subject to the following requirements:

760 a. The policy may insure members of such association or associations, employees thereof or
761 employees of members, or one or more of the preceding or all of any class or classes thereof for the
762 benefit of persons other than the employee's employer.

763 b. The premium for the policy shall be paid from funds contributed by the association or
764 associations, or by employer members, or by both, or from funds contributed by the covered persons or
765 from both the covered persons and the association, associations, or employer members.

766 3. Except as provided in subdivision 4 ~~of this subsection~~, a policy on which no part of the premium
767 is to be derived from funds contributed by the covered persons specifically for their insurance must
768 insure all eligible persons, except those who reject such coverage in writing.

769 4. An insurer may exclude or limit the coverage on any person as to whom evidence of individual
770 insurability is not satisfactory to the insurer, except as otherwise prohibited in this title.

771 F. A policy issued to a credit union or to a trustee or trustees or agent designated by two or more
772 credit unions, which credit union, trustee, trustees, or agent shall be deemed the policyholder, to insure
773 members of such credit union or credit unions for the benefit of persons other than the credit union or
774 credit unions, trustee or trustees, or agent or any of their officials, subject to the following requirements:

775 1. The members eligible for insurance shall be all of the members of the credit union or credit
776 unions, or all of any class or classes thereof.

777 2. The premium for the policy shall be paid by the policyholder from the credit union's funds and,
778 except as provided in subdivision 3 ~~of this subsection~~, must insure all eligible members.

779 3. An insurer may exclude or limit the coverage on any person as to whom evidence of individual
780 insurability is not satisfactory to the insurer.

781 G. A policy issued to a health maintenance organization as provided in subsection B of § 38.2-4314.

782 H. A policy of blanket insurance issued in accordance with § 38.2-3521.2.

783 I. The provisions of this section shall not apply in any instance in which the provisions of this
784 section are inconsistent or in conflict with a provision of Article 6 (§ 38.2-3438 et seq.) of Chapter 34.

785 CHAPTER 55.

786 BENEFITS CONSORTIUM.

787 § 59.1-589. Definitions.

788 As used in this chapter, unless the context requires a different meaning:

789 "Benefits consortium" means a trust that is a self-funded MEWA as defined in § 38.2-3420 and that
790 complies with the conditions set forth in § 59.1-590.

791 "ERISA" means the federal Employee Retirement Income Security Act of 1974, P.L. 93-406, 88 Stat.
792 829, as amended.

793 "Health benefit plan" has the same meaning ascribed to the term in § 38.2-3431.

794 "Health plan" means an employee welfare benefit plan, within the meaning of § 3(1) of ERISA, that
795 provides hospital, surgical, or medical expense benefits in the event of sickness or injury.

796 "Member" means a person that is a member of the sponsoring association, conducts business
797 operations within the Commonwealth, and employs individuals who reside in the Commonwealth.

798 "Sponsoring association" has the meaning ascribed thereto in § 38.2-3431. "Sponsoring association"
799 includes any wholly owned subsidiary of a sponsoring association.

800 "Trust" means a trust that (i) is established to accept and hold assets of a health benefit plan in trust
801 in accordance with the terms of the written trust document for the sole purposes of providing medical,
802 prescription drug, dental, and vision benefits and defraying reasonable administrative costs of providing
803 health benefits under a health benefit plan and (ii) complies with the conditions set forth in § 59.1-590.

804 **§ 59.1-590. Conditions for a benefits consortium.**

805 A. This section does not apply to a multiple employer welfare arrangement that offers or provides
806 health benefit plans that are fully insured by an insurer authorized to transact the business of health
807 insurance in the Commonwealth.

808 B. A trust shall constitute a benefits consortium and be authorized to sell or offer to sell health
809 benefit plans to members of the sponsoring association in accordance with the provisions of this chapter
810 if all of the following conditions are satisfied:

811 1. The trust is subject to (i) ERISA and U.S. Department of Labor regulations applicable to multiple
812 employer welfare arrangements and (ii) the authority of the U.S. Department of Labor to enforce such
813 law and regulations;

814 2. A Form M-1, Report for Multiple Employer Welfare Arrangements (MEWAs), for the applicable
815 plan year shall be filed with the U.S. Department of Labor identifying the arrangement among the trust,
816 sponsoring association, and health benefit plans offered through the trust as a multiple employer welfare
817 arrangement;

818 3. The trust's organizational documents:

819 a. Provide that the trust is sponsored by the sponsoring association;

820 b. State that its purpose is to provide medical, prescription drug, dental, and vision benefits to
821 participating employees of the sponsoring association or its members, and the dependents of those
822 employees, through health benefit plans;

823 c. Provide that the funds of the trust are to be used for the benefit of participating employees, and
824 the dependents of those employees, through self-funding of claims, the purchase of reinsurance, or a
825 combination thereof, as determined by the trustee, and for defraying reasonable expenses of
826 administering and operating the trust and any health benefit plan;

827 d. Limit participation in health benefit plans to the sponsoring association and its members;

828 e. Provide for a board of trustees, comprised of no fewer than five trustees, that has complete fiscal
829 control over the arrangement and is responsible for all operations of the arrangement. The trustees
830 selected for the board shall be owners, partners, officers, directors, or employees of one or more
831 employers in the arrangement. A trustee or director may not be an owner, officer, or employee of the
832 administrator or service company of the arrangement. The board shall have the authority to approve
833 applications of association members for participation in the arrangement and to contract with a licensed
834 administrator or service company to administer the day-to-day affairs of the arrangement;

835 f. Provide for the election of trustees to the board of trustees; and

836 g. Require the trustees to discharge their duties with respect to the trust in accordance with the
837 fiduciary duties defined in ERISA;

838 4. Five or more members participate in one or more health benefit plans;

839 5. The trust establishes and maintains reserves determined in accordance with sound actuarial
840 principles and in compliance with all financial and solvency requirements imposed upon domestic
841 self-funded MEWAs;

842 6. The trust has purchased and maintains policies of specific, aggregate, and terminal excess
843 insurance with retention levels determined in accordance with sound actuarial principles from insurers
844 licensed to transact the business of insurance in the Commonwealth;

845 7. The trust has secured one or more guarantees or standby letters of credit that:

846 a. Guarantee the payment of claims under the health benefit plans in an aggregate amount not less
847 than the trust's annual aggregate excess insurance retention level, minus the annual premium
848 assessments for the health benefit plans, minus the trust's net assets, which net assets amount shall be
849 net of the trust's reasonable estimate of incurred but not reported claims; and

850 b. Have been issued by qualified United States financial institutions as such term is used in
851 subdivision 2 c of § 38.2-1316.4;

852 8. The trust has purchased and maintains commercially reasonable fiduciary liability insurance;

853 9. The trust has purchased and maintains a bond that satisfies the requirements of ERISA;

854 10. The trust is audited annually by an independent certified public accountant; and

855 11. The trust does not include in its name the words "insurance," "insurer," "underwriter," "mutual,"
856 or any other word or term or combination of words or terms that is uniquely descriptive of an
857 insurance company or insurance business unless the context of the remaining words or terms clearly
858 indicates that the entity is not an insurance company and is not carrying on the business of insurance.

859 **§ 59.1-591. Additional requirements.**

860 A. The trustee committee shall:
861 1. Operate any health benefit plans in accordance with the fiduciary duties defined in ERISA; and
862 2. Have the power to make and collect special assessments against members and, if any assessment
863 is not timely paid, to enforce collection of such assessment.
864 B. Each member shall be liable for its allocated share of the liabilities of the sponsoring association
865 under a health benefit plan as determined by the board of trustees.
866 C. Health benefit plan documents shall have the following statement printed on the first page, in
867 14-point boldface type: "This coverage is not insurance and is not offered through an insurance
868 company. This coverage is not required to comply with certain federal market requirements for health
869 insurance, nor is it required to comply with certain state laws for health insurance. Each member shall
870 be liable for its allocated share of the liabilities of the sponsoring association under the health benefit
871 plan as determined by the board of trustees. This may mean that each member will be responsible to
872 pay an additional sum if the annual premiums present a shortfall for the trust. The trust financial
873 documents are available for public inspection at (insert website of sponsoring association trust
874 documents)."
875 **§ 59.1-592. Benefits consortium and sponsoring associations; exemption from certain provisions**
876 **and license tax.**
877 Notwithstanding any other provision of law, a benefits consortium or a sponsoring association, by
878 virtue of its sponsorship of the benefits consortium or any benefits plan, shall not be subject to (i) the
879 provisions of Chapter 17 (§ 38.2-1700 et seq.) of Title 38.2 or any regulations adopted thereunder or
880 (ii) any annual license tax levied pursuant to § 58.1-2501.