

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend and reenact § 38.2-3447 of the Code of Virginia, relating to health insurance; tobacco
3 surcharge.

4 [S 1011]
5 Approved

6 **Be it enacted by the General Assembly of Virginia:**
7 **1. That § 38.2-3447 of the Code of Virginia is amended and reenacted as follows:**
8 **§ 38.2-3447. Restrictions relating to premium rates.**

9 A. Notwithstanding any provision of § 38.2-3432.2, 38.2-3501, 38.2-4306, or any other section of
10 this title to the contrary, a health carrier offering a health benefit plan providing individual or small
11 group health insurance coverage shall develop its premium rates based on the following:

- 12 1. Whether the health benefit plan covers an individual or family;
- 13 2. Rating areas, as may be established by the Commission; *and*
- 14 3. Age, except that the rate shall not vary by more than 3 to 1 for adults; ~~and~~
- 15 4. ~~Tobacco use, except that the rate shall not vary by more than 1.5 to 1.~~

16 B. A premium rate shall not vary with respect to any particular health benefit plan by any other
17 factor not described in subsection A.

18 C. Rating variations for family coverage shall be applied based on the portion of the premium that is
19 attributable to each family member covered under the health benefit plan.

20 D. If the proposed area rate factors set forth in a rate filing for individual or small group health
21 insurance coverage by a health carrier for a rating area exceed by more than 15 percent the weighted
22 average of the proposed area rate factors among all rating areas in which the health carrier offers health
23 benefit plans in that market, then:

- 24 1. The health carrier's rate filing shall include in a publicly available and unredacted form:
 - 25 a. A comparison of the area rate factor for individual and small group health benefit plans that utilize
 - 26 the same provider network and provider reimbursement levels of the health benefit plans that are subject
 - 27 to the filing;
 - 28 b. A detailed disclosure of the area rate factor methodology, which disclosure shall include any
 - 29 third-party resources or representations from a person other than the signing actuary, on which the
 - 30 signing actuary relied, provided that disclosure of third-party resources shall address that the source data
 - 31 only reflects differences in unit cost and provider practice patterns; and
 - 32 c. To the extent that the health carrier is deriving any area rate factor from experience data, by rating
 - 33 area for the experience period used:

34 (1) The (i) total enrollment; (ii) total premiums; (iii) allowed claims; (iv) incurred claims excluding
35 anticipated or, if available, actual risk adjustment payments or receipts; (v) incurred claims including
36 anticipated or, if available, actual risk adjustment payments or receipts; and (vi) loss ratio for each of
37 their rating areas in that market; and

38 (2) Aggregated incurred claims for any health system exceeding 30 percent of total incurred claims
39 for that rating area in that market.

40 2. The Commission shall hold a public hearing on the proposed premium rates prior to the approval
41 of the rate filing.

42 3. The Commission shall not approve the proposed rate filing if (i) a variance in area rate factors,
43 indexed to the same rating region for both the individual and small group markets, of 15 percent or
44 more exists between health benefit plans a carrier intends to offer in the individual market and health
45 benefit plans intended to be offered in the small group market, when those plans utilize the same
46 provider network and provider reimbursement levels and (ii) the methodologies used to calculate the
47 area rate factors are different between the two markets.

48 E. Beginning for plan year 2020, a health carrier with an approved rate filing that contains at least
49 one area rate factor that exceeds by more than 25 percent the weighted average of the area rate factors
50 among all rating areas in a market in which the health carrier offers individual or small group health
51 insurance coverage shall file with the Commission for each calendar quarter during that plan year a
52 report that provides, for each rating area within the market in which the health carrier operates, the
53 plan's (i) enrollment; (ii) total premiums; (iii) allowed claims; (iv) incurred claims excluding anticipated
54 or, if available, actual risk adjustment payments or receipts; (v) incurred claims including anticipated or,
55 if available, actual risk adjustment payments or receipts; (vi) loss ratio; and (vii) aggregate incurred
56 claims, for each health system exceeding 25 percent of total incurred claims for that rating area. The

57 health carrier shall make each such quarterly report publicly available, without redaction, not later than
58 45 days after the end of the calendar quarter.

59 F. As used in ~~subdivisions~~ *subsections* D and E:

60 "Allowed claims" means the amount of claims of a covered person for health care services that are
61 owed pursuant to the terms of the covered person's health benefits plan, including payment made by the
62 covered person's health carrier, and cost-sharing obligations owed by or on behalf of the covered person.

63 "Health system" means an organization that consists of either (i) at least one hospital plus at least
64 one group of physicians or (ii) more than one group of physicians.

65 "Incurred claims" means allowed claims less copayments, deductible amounts, and other cost-sharing
66 obligations owed by or on behalf of a covered person.

67 "Methodologies," when referring to the calculation of area rate factors, includes (i) the types of
68 inputs, including experience period claims data, third-party database, other sources of data, and (ii) the
69 series of calculations that are used to derive area rate factors. This definition shall not preclude a health
70 carrier from calculating area rate factors for rates for the individual market, based on the cost and care
71 delivery practices associated with the providers expected to be utilized by covered persons that reside in
72 a given rating area, while calculating area rate factors for rates for the small group market, based on
73 those providers that are expected to be utilized by individuals employed by small employers that are
74 located in the rating area without regard to where the covered persons reside.

75 "Provider" means a health care provider, as defined in § 38.2-3438, that is affiliated or in-network
76 with a health carrier.

77 "Weighted average," when referring to area rate factors, means the mean of the area rate factors
78 when weighted based on the projected number of covered persons distributed by rating area.

79 **2. That the provisions of this act shall apply to health benefit plans providing individual or small
80 group health insurance coverage entered into, amended, extended, or renewed on or after January
81 1, 2024.**

82 **3. That the State Corporation Commission shall prepare and deliver an annual report
83 summarizing the reductions in premiums related to the elimination of the tobacco surcharge and
84 the percentage of new enrollees in localities with above-average rates of tobacco use to the
85 Governor and the Chairs of the House Committee on Commerce and Energy and Senate
86 Committee on Commerce and Labor by January 1 of each year.**

87 **4. That the provisions of this act shall expire on January 1, 2026.**