

HOUSE BILL NO. 2201

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Energy

on _____)

(Patron Prior to Substitute--Delegate Byron)

A BILL to amend and reenact § 38.2-3521.1 of the Code of Virginia, relating to association health plans; base rates based on employer member's risk profile.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3521.1 of the Code of Virginia is amended and reenacted as follows:

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

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

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

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

2. The premium for the policy shall be paid either from the employer's funds or from funds contributed by the insured employees, or from both. Except as provided in subdivision 3, a policy on

26 which no part of the premium is to be derived from funds contributed by the insured employees must
27 insure all eligible employees, except those who reject such coverage in writing.

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

30 B. A policy that is:

31 1. Not subject to Chapter 37.1 (§ 38.2-3727 et seq.): and

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

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

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

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

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

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

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

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

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

58 6. Notwithstanding the preceding provisions of this section, insurance on agricultural credit
59 transaction commitments may be written up to the amount of the loan commitment. Insurance on
60 educational credit transaction commitments may be written up to the amount of the loan commitment less
61 the amount of any repayments made on the loan.

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

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

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

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

75 D. A policy issued (i) to or for a multiple employer welfare arrangement, a rural electric
76 cooperative, or a rural electric telephone cooperative as these terms are defined in 29 U.S.C. § 1002, or
77 (ii) to a trust, or to the trustees of a fund, established or adopted by or for two or more employers, or by

78 one or more labor unions of similar employee organizations, or by one or more employers and one or more
79 labor unions or similar employee organizations, which trust or trustees shall be deemed the policyholder,
80 to insure employees of the employers or members of the unions or organizations for the benefit of persons
81 other than the employers or the unions or organizations, subject to the following requirements:

82 1. The persons eligible for insurance shall be all of the employees of the employers or all of the
83 members of the unions or organizations, or all of any class or classes thereof. The policy may provide that
84 the term "employee" shall include the employees of one or more subsidiary corporations, and the
85 employees, individual proprietors, and partners of one or more affiliated corporations, proprietorships or
86 partnerships if the business of the employer and of such affiliated corporations, proprietorships or
87 partnerships is under common control. The policy may provide that the term "employees" shall include
88 retired employees, former employees and directors of a corporate employer. The policy may provide that
89 the term "employees" shall include the trustees or their employees, or both, if their duties are principally
90 connected with such trusteeship.

91 2. The premium for the policy shall be paid from funds contributed by the employer or employers
92 of the insured persons, or by the union or unions or similar employee organizations, or by both, or from
93 funds contributed by the insured persons or from both the insured persons and the employers or unions or
94 similar employee organizations. Except as provided in subdivision 3, a policy on which no part of the
95 premium is to be derived from funds contributed by the insured persons specifically for their insurance
96 must insure all eligible persons, except those who reject such coverage in writing.

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

99 ~~E.-4.~~ A policy issued to an association or to a trust or to the trustees of a fund established, created,
100 or maintained for the benefit of members of one or more associations which association or trust shall be
101 deemed the policyholder.

102 1. The association or associations shall:

103 a. Have at the outset a minimum of 100 persons;

- 104 b. Have been organized and maintained in good faith for purposes other than that of obtaining
105 insurance;
 - 106 c. Have been in active existence for at least five years;
 - 107 d. Have a constitution and bylaws which provide that (i) the association or associations hold regular
108 meetings not less than annually to further purposes of the members, (ii) except for credit unions, the
109 association or associations collect dues or solicit contributions from members, and (iii) the members have
110 voting privileges and representation on the governing board and committees;
 - 111 e. Does not condition membership in the association on any health status-related factor relating to
112 an individual (including an employee of an employer or a dependent of an employee);
 - 113 f. Makes health insurance coverage offered through the association available to all members
114 regardless of any health status-related factor relating to such members (or individuals eligible for coverage
115 through a member);
 - 116 g. Does not make health insurance coverage offered through the association available other than
117 in connection with a member of the association; and
 - 118 h. Meets such additional requirements as may be imposed under the laws of this Commonwealth.
- 119 2. The policy shall be subject to the following requirements:
- 120 a. The policy may insure members of such association or associations, employees thereof or
121 employees of members, or one or more of the preceding or all of any class or classes thereof for the benefit
122 of persons other than the employee's employer.
 - 123 b. The premium for the policy shall be paid from funds contributed by the association or
124 associations, or by employer members, or by both, or from funds contributed by the covered persons or
125 from both the covered persons and the association, associations, or employer members.
 - 126 3. Except as provided in subdivision 4, a policy on which no part of the premium is to be derived
127 from funds contributed by the covered persons specifically for their insurance must insure all eligible
128 persons, except those who reject such coverage in writing.
 - 129 4. An insurer may exclude or limit the coverage on any person as to whom evidence of individual
130 insurability is not satisfactory to the insurer, except as otherwise prohibited in this title.

131 5. For a policy issued in the large group market and notwithstanding the provisions of § 38.2-3449,
132 an insurer may (i) establish base rates formed on an actuarially sound, modified community rating
133 methodology that considers the pooling of all participant claims and (ii) utilize each employer member's
134 specific risk profile to determine premium rates for each employer member by actuarially adjusting above
135 or below established base rates.

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

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

142 2. The premium for the policy shall be paid by the policyholder from the credit union's funds and,
143 except as provided in subdivision 3, must insure all eligible members.

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

146 G. Notwithstanding the provisions of subsection J, a policy issued to an association of real estate
147 salespersons, as defined in § 54.1-2101, which association shall be deemed the policyholder, to insure
148 members of such association, subject to the following requirements:

149 1. All of the members of such association shall be eligible for coverage. Members shall include (i)
150 an employer member with at least one employee that is domiciled in the Commonwealth or (ii) a self-
151 employed individual who (a) has an ownership right in a "trade or business," regardless of whether the
152 trade or business is incorporated or unincorporated, (b) earns wages or self-employment income from the
153 trade or business, and (c) works at least 20 hours a week or 80 hours a month providing personal services
154 to the trade or business or earns income from the trade or business that at least equals the self-employed
155 individual's cost of the health coverage.

156 2. The association shall (i) have at the outset a minimum of 25,000 members, (ii) have been
157 organized and maintained in good faith for purposes other than that of obtaining insurance, (iii) have been

158 in active existence for at least five years, and (iv) have a constitution and bylaws that provide that (a) the
159 association hold regular meetings not less than annually to further purposes of the members, (b) the
160 association collects dues or solicits contributions from members, and (c) the members have voting
161 privileges and representation on the governing board and committees.

162 3. In no case shall membership in the association be conditioned on any health status-related factor
163 relating to an individual, including an employee of an employer or a dependent of an employee.

164 4. The health insurance coverage offered through the association shall be available to all members
165 regardless of any health status-related factor relating to such members or individuals eligible for coverage
166 through a member.

167 5. The association shall not make health insurance coverage offered through the association
168 available other than in connection with a member of the association.

169 6. The premium for the policy shall be paid from funds contributed by the association or by
170 employer members, or by both, or from funds contributed by the covered persons or from both the covered
171 persons and the association or employer members.

172 7. The policy issued to such an association shall (i) be considered a large group market plan subject
173 to all coverage mandates applicable to a large group market plan offered in the Commonwealth and the
174 large group market insurance regulations under the federal Public Health Service Act, P.L. 78-410, as
175 amended; (ii) be subject to the group health plan coverage requirements under the federal Patient
176 Protection and Affordable Care Act, P.L. 111-148, as amended; (iii) be prohibited from denying coverage
177 under the policy on the basis of a preexisting condition as set forth in § 38.2-3444; (iv) be guaranteed issue
178 and guaranteed renewable; (v) notwithstanding the provisions of subsection A of § 38.2-3451 providing
179 that a large group market plan is not required to provide coverage for essential health benefits in a manner
180 that exceeds the requirements of the federal Patient Protection and Affordable Care Act, P.L. 111-148, as
181 amended, as of January 1, 2019, be subject to the requirements to provide essential health benefits and
182 cost-sharing requirements as set forth in § 38.2-3451; and (vi) offer a minimum level of coverage designed
183 to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits
184 provided under the plan.

