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**SENATE BILL NO. 338**

Offered January 12, 2022

Prefiled January 11, 2022

*A BILL to amend and reenact §§ 38.2-6600 and 38.2-6602, as they may become effective, of the Code of Virginia, relating to the Commonwealth Health Reinsurance Program; federal risk adjustment program.*

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 Patron—Barker
 

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Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 38.2-6600 and 38.2-6602, as they may become effective, of the Code of Virginia are amended and reenacted as follows:**

**§ 38.2-6600. (Contingent effective date) Definitions.**

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

"Affordable Care Act" means the Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, P.L. 111-152, and as it may be further amended.

"Allowed amount" has the same meaning as provided in § 38.2-3438.

"Attachment point" means the amount set by the Commission for claims costs incurred by an eligible carrier for a covered person's covered benefits in a benefit year, above which the claims costs for benefits are eligible for reinsurance payments under the Program.

"Benefit year" means the calendar year for which an eligible carrier provides coverage through an individual health benefit plan.

"Coinsurance rate" means the rate set by the Commission at which the Program will reimburse an eligible carrier for claims incurred for a covered person's covered benefits in a benefit year, which claims exceed the attachment point but are below the reinsurance cap.

"Covered benefits" has the same meaning as provided in § 38.2-3438.

"Covered person" means an individual covered under individual health insurance coverage that (i) is delivered or issued for delivery in the Commonwealth and (ii) is neither a grandfathered plan, student health insurance coverage, nor transitional coverage that the federal government allows under a nonenforcement policy.

"Eligible carrier" means a carrier that (i) offers individual health insurance coverage other than a grandfathered plan, student health insurance coverage, or transitional coverage that the federal government allows under a nonenforcement policy and (ii) incurs claims costs for a covered person's covered benefits in the applicable benefit year.

"Fund" means the Commonwealth Health Reinsurance Program Special Fund established by the Commission pursuant to § 38.2-6604.

"Grandfathered plan" has the same meaning as provided in § 38.2-3438.

"Group health insurance coverage" has the same meaning as provided in § 38.2-3438.

"Individual health insurance coverage" has the same meaning as provided in § 38.2-3438.

"Net written premiums" means premiums earned on individual and group health insurance coverage, including grandfathered plans, in the Commonwealth, less return premiums and dividends paid or credited to policy or contract holders on the health benefits plan business.

"Payment parameters" means the attachment point, reinsurance cap, and coinsurance rate for the Program.

"Program" means the Commonwealth Health Reinsurance Program established pursuant to this chapter.

"Reinsurance cap" means the amount set by the Commission for claims costs incurred by an eligible carrier for a covered person's covered benefits in a benefit year, above which the claims costs for benefits are no longer eligible for reinsurance payments under the Program.

"Reinsurance payment" means an amount paid to an eligible carrier under the Program.

"State Innovation Waiver" means a waiver of one or more requirements of the Affordable Care Act authorized by § 1332 of the Affordable Care Act, 42 U.S.C. § 18052, and applicable federal regulations.

"Total amount paid by the eligible carrier for any eligible claim" means the amount paid by the eligible carrier based on the allowed amount less any deductible, coinsurance, or copayment, as of the time applicable data is submitted or made accessible under subdivision C 1 of § 38.2-6602.

**§ 38.2-6602. (Contingent effective date) Commonwealth Health Reinsurance Program;**

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59 established.

60 A. The Commission shall implement a reinsurance program, known as the Commonwealth Health  
61 Reinsurance Program. Implementation and operation of the Program is contingent upon approval of the  
62 State Innovation Waiver submitted by the Commission in accordance with § 38.2-6606. If the State  
63 Innovation Waiver and federal funding request submitted by the Commission pursuant to § 38.2-6606  
64 are approved, the Commission shall implement and operate the Program in accordance with this section.

65 B. The Commission or its designee shall collect or access data from an eligible carrier as necessary  
66 to determine reinsurance payments, according to the data requirements under subdivision C 1.

67 1. Unless an eligible carrier is notified otherwise by the Commission, on a quarterly basis during the  
68 applicable benefit year, each eligible carrier shall report to the Commission its claims costs that exceed  
69 the attachment point for that benefit year. For each applicable benefit year, the Commission shall notify  
70 eligible carriers of reinsurance payments to be made for the applicable benefit year no later than  
71 September 30 of the year following the applicable benefit year. By November 15 of the year following  
72 the applicable benefit year, the Commission shall disburse all applicable reinsurance payments to an  
73 eligible carrier.

74 2. For the 2023 benefit year and each benefit year thereafter, the Commission shall establish and  
75 publish the payment parameters for the applicable benefit year by May 1 of the year immediately  
76 preceding the applicable benefit year. In setting the payment parameters under this subsection, the  
77 Commission shall consider the following factors: (i) stabilized or reduced premium rates in the  
78 individual market; (ii) increased participation in the individual market; (iii) improved access to health  
79 care services and their providers for enrolled individuals; (iv) mitigation of the impact high-risk  
80 individuals have on premium rates in the individual market; (v) ~~transfers made under the federal risk~~  
81 ~~adjustment program to eliminate double reimbursement for high-cost cases;~~ (vi) the availability of any  
82 federal funding available for the Program; and ~~(vii) (vi)~~ the total amount available to fund the Program.

83 3. If the Commission determines that all reinsurance payments for a covered person's covered  
84 benefits requested under the Program by eligible carriers for a benefit year will not be equal to the  
85 amount of funding allocated to the Program, the Commission shall determine a uniform pro rata  
86 adjustment to be applied to all such requests for reinsurance payments.

87 C. A carrier that meets the requirement of this subsection and subsection D shall be eligible to  
88 request reinsurance payments from the Program. An eligible carrier shall make requests for reinsurance  
89 payments in accordance with the requirements established by the Commission.

90 1. To receive reinsurance payments through the Program, an eligible carrier shall, by April 30 of the  
91 year following the benefit year for which reinsurance payments are requested, (i) provide the  
92 Commission with access to the data within the dedicated data environment established by the eligible  
93 carrier under the federal risk adjustment program under 42 U.S.C. § 18063 or access to other  
94 carrier-specific data if and where necessary and (ii) submit to the Commission an attestation that the  
95 carrier has complied with the dedicated data environments, data requirements, establishment and usage  
96 of masked enrollee identification numbers, and data submission deadlines.

97 2. An eligible carrier shall maintain documents and records sufficient to substantiate the requests for  
98 reinsurance payments made pursuant to this section for at least five years. An eligible carrier shall also  
99 make those documents and records available upon request from the Commission for purposes of  
100 verification, investigation, audit, or other review of reinsurance payment requests. The Commission may  
101 audit an eligible carrier to assess the carrier's compliance with this section. The eligible carrier shall  
102 ensure that its contractors, subcontractors, and agents cooperate with any audit under this section.

103 D. The Commission or its designee shall calculate each reinsurance payment based on an eligible  
104 carrier's incurred claims costs for a covered person's covered benefits in the applicable benefit year ~~net~~  
105 ~~of transfers received for the same enrolled individual under the federal risk adjustment program.~~ If the  
106 ~~net~~ claims costs for a covered person's covered benefits in the applicable benefit year do not exceed the  
107 attachment point for the applicable benefit year, the carrier shall not be eligible for a reinsurance  
108 payment. If the claims costs exceed the attachment point for the applicable benefit year, the Commission  
109 shall calculate the reinsurance payment as the product of the coinsurance rate and the eligible carrier's  
110 claims costs up to the reinsurance cap. A carrier shall be ineligible for reinsurance payments for claims  
111 costs for a covered person's covered benefits in the applicable benefit year that exceed the reinsurance  
112 cap. The Commission shall ensure that reinsurance payments made to eligible carriers do not exceed the  
113 total amount paid by the eligible carrier for any eligible claim. An eligible carrier may request that the  
114 Commission reconsider a decision on the carrier's request for reinsurance payments within 21 days after  
115 notice of the Commission's decision.

116 E. The Commission shall require each eligible carrier that participates in the Program to file with the  
117 Commission, by a date and in a form and manner specified by the Commission by rule, the care  
118 management protocols the eligible carrier will use to manage claims within the payment parameters.