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## SENATE BILL NO. 1717

Offered January 15, 2019

A BILL to establish the Commonwealth Care Health Benefits Program; association health plan for the individual market; state innovation waiver.

Patron—Dunnavant

Referred to Committee on Commerce and Labor

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

1. § 1. That the State Corporation Commission (the Commission), through a division within the Commission to be established and designated as the Commonwealth Care Division (the Division), shall establish a nonprofit corporation (the Corporation) that shall have as its purpose the establishment, implementation, and administration of a program to be known as the Commonwealth Care Health Benefits Program (the Program). The Program shall sell and offer for sale individual health insurance coverage through qualifying association health plans. Such health plans shall be offered by the Corporation as a self-insuring entity that will serve as the sponsor of the association health plans. The Corporation shall be subject to oversight by the Division. The implementation of the Program shall occur concurrently with the withdrawal of the Commonwealth from the health benefit exchange (the exchange) operated by the U.S. Secretary of Health and Human Services pursuant to § 1311(b) of the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended (the ACA). The Division shall work with the Centers for Medicare and Medicaid Services (CMS) to develop and implement the Program. The Program shall include the following elements:

1. Implementation of the Program shall be contingent upon the approval by the U.S. Secretary of Health and Human Services of a state innovation waiver under § 1332 of the ACA (42 U.S.C. § 18052) for the Program that provides federal funding for (i) the Program to offset the elimination of subsidies for eligible individuals previously purchasing health insurance coverage on the health benefit exchange and (ii) a reinsurance program that partially reimburses the Program for high-cost claims, with such attachment points, coinsurance rates, and reinsurance caps as the Corporation's actuary determines appropriate.

2. The Commission shall retain staff sufficient to establish the Division and the Corporation and implement the Program, utilizing such funds, including a treasury loan, as may be appropriated or otherwise made available for such purposes.

3. The Program shall arrange for a number of third-party administrators, sufficient to ensure competition but in no event fewer than two, to process claims, enroll individuals, collect premiums, and otherwise administer the health plans made available through the Program.

4. Each health plan offered through the Program shall provide coverage for health care services provided to enrolled individuals that is not less than the coverage that a large group plan or association health plan subject to the Employee Retirement Income Security Act of 1974 (ERISA) when offered by a self-insuring employer is required to provide, provided that one or more of the health plans shall provide such additional benefits as may be required to provide coverage that is at least as comprehensive and affordable as would be required under health plans currently offered on the exchange pursuant to the ACA or otherwise to comply with the Guardrail requirements of the ACA.

5. The Program shall address the establishment of a reinsurance program as described in clause (ii) of subdivision 1, the selection and compensation of the third-party administrators, the selection and compensation of pharmacy benefits managers, and the establishment of provider networks.

6. The Program shall include subsidization of health plan premiums for individuals with a household income between 100 percent and 400 percent of the federal poverty level, with subsidies weighted for lower-income individuals in a manner consistent with criteria for determining subsidies for policies purchased currently through the exchange.

7. The Program shall include a cost-sharing reduction feature that removes disincentives to Program participation by low-income individuals who are enrolled in the Medicaid program by lowering the copayments, deductibles, and other cost-sharing obligations for which they would otherwise be liable.

8. The establishment of the Program shall not prohibit individuals from purchasing individual health insurance coverage outside the Program.

9. The premiums for the plans offered through the Program shall be set by the third-party administrators, subject to approval by the Commission with assistance of qualified actuaries, and the Program shall address how any shortfall in premiums will be covered.

10. The ongoing costs of the Program are intended to be covered by premiums charged for health

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59 plans offered under the Program and by federal funds provided to the Commonwealth through the state  
60 innovation waiver as described in subdivision 1. The Program shall be designed and operated in order  
61 to ensure that any shortfall in revenues from such sources is addressed by the reinsurance program  
62 described in subdivision 1 (i) and by self-funding a reserve that is determined by the Corporation's  
63 actuary to be adequate.

64 11. The Program shall include premium incentives for compliance with wellness or chronic disease  
65 management benefit programs.

66 12. The Program shall establish how enrollment is to be conducted, including open enrollment  
67 periods, by the Corporation, the third-party administrators, and direct enrollment partners.

68 13. Notwithstanding any provision of Title 38.2 of the Code of Virginia or ERISA to the contrary, the  
69 offering or sale by the Corporation of association health plans pursuant to the Program to individuals  
70 who are not employees shall be permitted as provided in the Program, provided that the state  
71 innovation waiver under § 1332 of the ACA authorizes such activities.

72 **2. That the Commissioner of Insurance shall apply to the U.S. Secretary of Health and Human**  
73 **Services under 42 U.S.C. § 18052 for a state innovation waiver to implement the Commonwealth**  
74 **Care Health Benefits Program for benefit years beginning January 1, 2021, and future years, to**  
75 **maximize federal funding. The waiver application shall clearly state that implementation of the**  
76 **Commonwealth Care Health Benefits Program is contingent on approval of the waiver request.**

77 **3. That the Commissioner of Insurance (the Commissioner) shall submit the waiver application to**  
78 **the U.S. Secretary of Health and Human Services by January 1, 2020. The Commissioner shall**  
79 **make a draft application available for public review and comment by September 1, 2019. The**  
80 **Commissioner shall promptly notify the Governor and the Chairmen of the House Committees on**  
81 **Appropriations and Commerce and Labor and the Senate Committees on Commerce and Labor**  
82 **and Finance of any federal actions regarding the waiver request.**

83 **4. That the provisions of the first enactment of this act shall become effective 30 days following**  
84 **the date the Commissioner of Insurance notifies the Governor and the Chairmen of the House**  
85 **Committees on Appropriations and Commerce and Labor and the Senate Committees on**  
86 **Commerce and Labor and Finance of federal approval of the state innovation request required to**  
87 **be submitted by the Commissioner of Insurance pursuant to the second and third enactments of**  
88 **this act.**