COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 7, 2020

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

Ex Parte: In the matter of an assessment on health carriers offering qualified individual health or dental plans through the Virginia Health Benefit Exchange on the federal platform for the 2021 calendar year

CASE NO. INS-2020-00118

ASSESSMENT ORDER

Pursuant to Chapter 65 of Title 38.2 (§§ 38.2-6500 *et seq.*) of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is required to begin development and operation of a Virginia Health Benefit Exchange ("Exchange"), which is intended to operate as a State-based Exchange on the Federal platform for plan years 2021 and 2022, and shall be administered by the Health Benefits Exchange Division.

Following enactment of the federal Patient Protection and Affordable Care Act, 42 U.S.C. §§ 18001 *et seq.*, each state has implemented a health insurance exchange where consumers may find information about options as well as purchase health insurance. Health insurance exchanges in each state generally have been one of the following types: (1) federally-facilitated exchange, in which the Federal Government performs the exchange's functions; (2) state-based exchange ("SBE"), in which the state performs all of the exchange's functions; and (3) state-based exchange on the federal platform ("SBE-FP"), in which the state performs the exchange's functions with assistance from the Federal Government on eligibility and enrollment functions of the exchange. Prior to 2020, the Commonwealth of Virginia operated a federally-facilitated exchange. In 2020, the Virginia General Assembly passed legislation (Chapter 65 of Title 38.2 (§ 38.2-6500 *et seq.*)) to establish the Exchange. Pursuant to this legislation and effective July 1, 2020, the Exchange begins as a SBE-FP and then transitions to a SBE over the course of several years.

Pursuant to 45 CFR § 156.50, a health insurance exchange – whether federally-facilitated or state-based – is financially supported through user fees assessed to health carriers operating on the exchange. For SBE-FPs (which rely on the Federal Government to assist with eligibility and enrollment functions of the exchange), 45 CFR § 156.50(c)(2) requires that a health carrier operating on the SBE-FP pay the Department of Health and Human Services ("HHS") a user fee. The amount of this user fee is established based on the annual Notice of Benefit and Payment Parameters ("Notice"), which was published most recently by the Centers for Medicare & Medicaid Services ("CMS") in May 2020. The Notice also sets the user fee assessed to carriers operating on federally-facilitated exchanges.

As part of the most recent Notice, CMS retained the same rates as those previously set for plan year 2020. For plan year 2021, the Notice thus establishes a user fee of 2.5% of total monthly premiums for SBE-FPs and a user fee of 3.0% for federally-facilitated exchanges. SBE-FPs are not limited to the user fee set forth in the Notice and may assess additional amounts to support the operations of an exchange.

For plan year 2021, the Exchange will operate as a SBE-FP and the user fee of 2.5% established by the Notice applies. Additionally, § 38.2-6510 of the Code further authorizes the Exchange to fund its operations, in part, through special fund revenues generated by assessment fees on health carriers offering plans through the Exchange. Section 38.2-6510 of the Code provides that funding for the Exchange shall be in an amount sufficient to support its ongoing operations, and that assessments on health carriers shall be reasonable and necessary to support the development, operations, and prudent cash management of the Exchange. Such assessments are required to be approved by the Commission prior to implementation and shall not exceed 3.0% of the carrier's total monthly premium as set forth in the statute or except as otherwise allowed.

For plan year 2021, the recommendation is to assess a user fee in the amount of 0.5% of a carrier's total monthly premium from effectuated enrollment in qualified health plans and qualified dental plans sold in the individual market. This assessment is in addition to the user fee of 2.5% for SBE-FPs established by the Notice, such that the total user fee assessed for plan year 2021 is 3.0%.

The Commission is mindful of the impact that assessments may have and sensitive to the reality that such assessments often are passed through to the consumer. These considerations are heightened by current public health and economic concerns, which affect the health insurance marketplace as well as those whom the Exchange should help, including consumers without health insurance and those in underserved communities. The goal of the Commission is to keep user fees to a minimum to avoid unwanted impact on those served by the Exchange, as well as ensure that any fees comply with the requirements of § 38.2-6510 C of the Code limiting assessments to those funds "reasonable and necessary" to support the development of the Exchange.

Here, the proposed assessment of 0.5% achieves those goals. The Commission notes that, when this assessment is added to the 2.5% user fee established by the Notice, the total user fee of 3.0% is the same as that previously used by Virginia's federally-facilitated exchange for plan year 2020. This effectively means that the user fee remains unchanged for plan year 2021 and is consistent with CMS's decision to retain the same user fees for plan years 2020 and 2021. The Commission further notes that a total user fee of 3.0% is consistent with the same fee assessed in states with federally-facilitated exchanges and that would have applied if Virginia had continued with its own federally-facilitated exchange. Finally, the proposed assessment is reasonable and necessary for purposes of developing the Exchange as it begins operations and an eventual transition to a SBE.

UPON CONSIDERATION thereof, and upon the finding of the Commission that it is reasonable, necessary, and proper to do so under applicable laws,

IT IS HEREBY ORDERED that:

1. For plan year 2021 that begins January 1, 2021, there shall be ASSESSED upon health carriers operating in the Exchange, based on that carrier's total monthly premium from effectuated enrollment in qualified health benefit plans and qualified dental plans sold in the Commonwealth of Virginia in the individual market through the State-based Exchange on the Federal platform, a sum equal to 0.5% of total monthly premium. This amount shall be in addition to the user fee required by 45 CFR § 156.50(c)(2), which amount is 2.5% of total monthly premium for plan year 2021;

2. The assessment fee shall be paid monthly. The Health Benefit Exchange Division, through the Bureau of Insurance as necessary, is instructed to provide further guidance to carriers regarding the calculation and payment of the assessment fee;

3. The assessment fee of 0.5% shall be paid to the state treasury and deposited to the special fund designated "Health Insurance Exchange Special Fund State Corporation Commission" in accordance with § 38.2-6510 A of the Code; and,

4. The assessment fee shall not be assessed to carriers on qualified health benefit plans or qualified dental plans sold in the small employer market or to plans sold off the Exchange.

A copy hereof shall be sent by the Clerk of the Commission to Leo Padis, Commission Comptroller, and the Bureau of Insurance, c/o Julie Blauvelt, Deputy Commissioner, who forthwith shall cause a copy of this Order to be furnished to each health carrier that will participate in the Exchange.