

A BILL

22-1021

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend, on a temporary basis, the Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Moto Vehicle Insurance Act of 1998 to revise definitions, to apply the requirements of title II to multiple employee welfare arrangements (“MEWAs”), to expand the rulemaking authority of the Commissioner of the Department of Insurance, Securities and Banking, and to impose requirements on MEWAs and short-term, limited-duration health insurance plans; to amend the Reasonable Health Insurance Ratemaking and Health Care Reform Act of 2010 to apply its requirements for small employers to certain MEWAs; and to amend the Federal Health Reform Implementation and Omnibus Amendment Act of 2014 to further specify the provisions of the federal health acts incorporated by reference and apply the small group requirements of these acts to MEWAs.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this Act may be cited as the “Health Insurance Marketplace Improvement Temporary Amendment Act of 2018”.

Sec. 2. The Health Insurance Portability and Accountability Federal Law Conformity and No–Fault Motor Vehicle Insurance Act of 1998, effective April 13, 1999 (D.C. Law 12-209; D.C. Official Code § 31-3303.01 *et. seq.*) is amended as follows:

- (a) Section 101(3) (D.C. Official Code § 31-3301.01(3)) is amended as follows:
  - (1) Subparagraph (E) is amended by striking the word “and” at the end.
  - (2) New subparagraphs (E-1) and (E-2) are added to read as follows:

31 “(E-1) Is domiciled and has its principal offices within the District of  
32 Columbia;”

33 “(E-2) Does not expand its membership based on geography; and”

34 (3) Subparagraph (F) is amended by striking the phrase “under the laws of the  
35 District of Columbia” and inserting the phrase “by the Commissioner by rule” in its place.

36 (b) Section 101(12) (D.C. Official Code § 31-3301.01(12)) is amended to read as follows:

37 “(12) “Employer” has the meaning given such term under section 3(5) of the  
38 Employee Retirement Income Security Act of 1974, approved September 12, 1974 (88 Stat. 834;  
39 29 U.S.C. § 1002(5)), as the section and implementing regulations were in effect on December  
40 15, 2017, except that such term shall include only employers of 2 or more employees.

41 (c) Section 101(12) (D.C. Official Code § 31-3301.01(19)) is amended to read as follows:

42 “(19) “Group health plan” means an employee welfare benefit plan (as defined in  
43 section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002(1)), as  
44 the section and implementing regulations were in effect on December 15, 2017, to the extent that  
45 the plan provides medical care and includes items and services paid for as medical care to  
46 employees or their dependents (as defined under the terms of the plan) directly or through  
47 insurance, reimbursement, or otherwise.”.

48 (d) A new section 206a is added to read as follows:

49 “Sec. 206a. Application to multiple employer welfare arrangements.

50 “The individual market requirements of this title apply to a health benefit plan offered by  
51 a multiple employer welfare arrangement, including an association, ~~professional employer or~~

52 ~~employee organization~~, or any other entity, if the plan covers an individual in the District who is  
53 not an employee or dependent of a participating employer.”.

54 (e) A new subsection 207(b-1) is added to read as follows:

55 “(b-1) The Commissioner may adopt regulations to establish and administer such  
56 standards relating to the provisions of this chapter as may be necessary to improve access and  
57 affordability of health insurance in the District and to maintain the requirements of the  
58 Affordable Care Act.”.

59 (f) Section 301 (D.C. Official Code §31-3303.01) is amended as follows:

60 (1) Designate the existing text as subsection (a).

61 (2) Add a new subsection (b) to read as follows:

62 “(b) Small group market requirements under this title apply to a health benefit plan  
63 offered by a multiple employer welfare arrangement including an association, ~~a professional~~  
64 ~~employer or employee organization~~, or any other entity, if the plan covers an employee of a  
65 small employer in the District as defined in section 101(42).”.

66 (g) New sections 313a, 313b, 313c, 313d are added to read as follows:

67 “Sec. 313a. Treatment of certain multiple employer welfare arrangements.

68 “The Commissioner may issue rules to create a grandfathered status with respect to any  
69 of the requirements of this act for multiple employer welfare arrangements that were in existence  
70 and operating in the District of Columbia as of December 15, 2017 and that are in compliance  
71 with federal law and regulations applicable to multiple employer welfare arrangements that were  
72 in place as of December 15, 2017. The Commissioner, may also establish by rulemaking

73 additional requirements for multiple employer welfare arrangements granted grandfathered  
74 status.

75 “Sec. 313b. License requirement for non-District multiple employer welfare  
76 arrangements.

77 “No multiple employer welfare arrangement located outside of the District of Columbia  
78 may conduct any business in the District, including the marketing, offering or issuing of a health  
79 benefit plan to any individual or employer, unless licensed as an insurer, a hospital and medical  
80 services corporation, a fraternal benefit society, or a health maintenance organization.

81 “Sec. 313c. Licensing requirement for certain multiple employer welfare arrangements.

82 “(a) A multiple employer welfare arrangement that is not fully insured, as defined in  
83 subsection (b) of this section, shall not operate in the District or market, offer, or issue a health  
84 benefit plan to any individual or employer in the District without first meeting the requirements  
85 for and becoming licensed as an insurer, a hospital and medical services corporation, a fraternal  
86 benefit society, or a health maintenance organization.

87 “(b) For the purposes of this section, a multiple employer welfare arrangement is not  
88 fully insured unless the covered benefits it provides are:

89 “(1) Insured on a direct basis by an insurance company licensed to transact the  
90 business of insurance in District; or

91 “(2) Arranged for or provided on a direct basis by

92 “(A) A hospital and medical services corporation;

93 “(B) A fraternal benefit society;

94                                   “(C) A health maintenance organization licensed in the District; or

95                                   “(D) Any combination of these entities.

96                   “(c) The existence of contracts of reinsurance shall not be considered in determining  
97 whether a multiple employer welfare arrangement is fully insured.

98                   “Sec. 313d. Short-term, limited-duration health insurance.

99                   “(a) An insurer shall not provide short-term, limited-duration health insurance policies,  
100 certificates of coverage, or contracts unless the insurer has a certificate of authority from the  
101 Commissioner to offer health insurance.

102                   “(b) An insurer offering for sale a short-term, limited-duration health insurance policy,  
103 certificate of coverage, or contract shall apply the same underwriting standards to all applicants  
104 for such coverage regardless of whether the applicant has previously been covered by a short-  
105 term, limited-duration health insurance policy, certificate of coverage, or contract.

106                   “(c) A short-term, limited-duration health insurance policy, certificate of coverage, or  
107 contract shall not exclude from coverage as a pre-existing condition any medical or behavioral  
108 health condition for which an applicant sought treatment in the prior 12 months or for which an  
109 applicant is currently in an active course of treatment. An insurer shall not use underwriting  
110 related to such a condition to deny enrollment in short-term, limited-duration coverage to an  
111 applicant.

112                   “(d) A short-term, limited-duration insurance policy, certificate of coverage, or contract  
113 shall terminate not more than 3 months after its effective date.

114           “(e) A short-term, limited-duration health insurance policy, certificate of coverage, or  
115 contract shall not be extended or renewed. The insurer shall not issue, directly or indirectly  
116 through an affiliate, a new short-term, limited-duration health insurance policy, certificate of  
117 coverage, or contract to an individual who had such a policy, certificate of coverage, or contract  
118 from the insurer within the preceding 9 months.

119           “(f) An insurer shall ensure that each policy, certificate of coverage, or contract for  
120 short-term, limited-duration health insurance and all application materials for enrollment in that  
121 coverage displays prominently, in at least 14-point type, a statement that the coverage does not  
122 constitute minimum essential coverage for purposes of satisfying the individual responsibility  
123 requirement in the District of Columbia. These documents shall also include any other  
124 disclosures the Commissioner may require through rulemaking, including the types of benefits  
125 and consumer protections that are and are not included in the coverage.

126           “(g) A company offering for sale a short-term, limited-duration health insurance policy,  
127 certificate of coverage, or contract shall provide to the Commissioner any information the  
128 Commissioner requires by rulemaking.”.

129           Sec. 3. The Reasonable Health Insurance Ratemaking and Health Care Reform Act of  
130 2010, effective April 8, 2011 (D.C. Law 18-360; D.C. Official Code §31-3311.01 *et seq.*) is  
131 amended as follows:

132           (a) Section 111 (D.C. Official Code §31-3311.10) is amended by striking the phrase “date  
133 of this title.” and inserting the phrase “date of this title. Small group requirements under this title  
134 apply to a health benefit plan offered by a multiple employer welfare arrangement, including an

135 association, ~~a professional employer or employee organization~~, or any other entity, if the plan  
136 covers an employee of a small employer in the District, as defined in section 101(42) of the  
137 Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Motor  
138 Vehicle Insurance Act of 1998, effective April 13, 1999 (D.C. Law 12-209; D.C. Official Code §  
139 31-3301.01(42)). Individual market requirements of this title apply to a health benefit plan  
140 offered by a multiple employer welfare arrangement, including an association, ~~professional~~  
141 ~~employer or employee organization~~, or any other entity, if the plan covers an individual in the  
142 District who is not an employee or dependent of a participating employer.” in its place.

143 (b) Section 112 (D.C. Official Code § 31-3311.11) is amended by striking the phrase “§  
144 18001, note).” and inserting the phrase “§ 18001, note), as the law and its implementing  
145 regulations were in effect on December 15, 2017.” in its place.

146 Sec. 4. The Federal Health Reform Implementation and Omnibus Amendment Act of  
147 2014, effective May 2, 2015 (D.C. Law 20-265; 62 DCR 1529) is amended as follows:

148 (a) Section 101(a) (D.C. Official Code § 31-3461(a)) is amended to read as follows:

149 “(a) Sections 1251, 1252, and 1304 of the Patient Protection and Affordable Care Act,  
150 approved March 23, 2010 (124 Stat. 119; 42 U.S.C. §§ 18011, 18021, and 18024), and sections  
151 2701 through 2709, 2711 through 2719A, and 2794 of the Public Health Service Act, approved  
152 July 1, 1944 (58 Stat. 682; 42 U.S.C. §§ 300gg, 300gg-1, 300gg-2, 300gg-3, 300gg-4, 300gg-5,  
153 300gg-6, 300gg-7, 300gg-8, 300gg-9, 300gg-11, 300gg-12, 300gg-13, 300gg-14, 300gg-15,  
154 300gg-15A, 300gg-16, 300gg-17, 300gg-18, 300gg-19, 300gg-19A, and 300gg-94), (collectively  
155 “federal health acts”) and any rules issued pursuant to the federal health acts, as the sections and

156 implementing regulations were in effect on December 15, 2017, are incorporated by reference  
157 and shall apply to all insurers, hospital and medical services corporations, health maintenance  
158 organizations, and multiple employer welfare arrangements, including associations, ~~professional~~  
159 ~~employer or employee organizations~~, or any other entities providing a health benefit plan to a  
160 small employer as defined in section 101(42) of the Health Insurance Portability and  
161 Accountability Federal Law Conformity and No-Fault Motor Vehicle Insurance Act of 1998,  
162 effective April 13, 1999 (D.C. Law 12-209; D.C. Official Code § 31-3301.01(42)), or an  
163 individual, that deliver or issue for delivery individual or group health insurance policies,  
164 contracts, or certificates of coverage in the District.”.

165 (b) A new section 101a is added to read as follows:

166 “Sec. 101a. Applicability of federal health acts to multiple employer welfare  
167 arrangements.

168 “(a) Requirements in the federal health acts incorporated by reference in section 101(a)  
169 that apply to the small group market apply to health benefit plans offered by multiple employer  
170 welfare arrangements including associations, ~~professional employer or employee organizations~~,  
171 or any other entity, if the plan covers an employee of a small employer in the District, as defined  
172 in section 101(42) of the Health Insurance Portability and Accountability Federal Law  
173 Conformity and No-Fault Motor Vehicle Insurance Act of 1998, effective April 13, 1999 (D.C.  
174 Law 12-209; D.C. Official Code § 31-3301.01(42)).

175 “(b) Requirements in the federal health acts incorporated by reference in section 101(a)  
176 that apply to insurers in the individual market apply to health benefit plans offered by multiple



177 employer welfare arrangements, including associations, ~~professional employer or employee~~  
178 ~~organizations~~, or any other entities, if the plan covers an individual in the District who is not an  
179 employee or dependent of a participating employer.”.

180           Sec. 5. Fiscal impact statement.

181           The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal  
182 impact statement required by section 4a of the General Legislative Procedures Act of 1975,  
183 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

184           Sec. 6. Effective date.

185           (a) This Act shall take effect following approval by the Mayor (or in the event of veto by  
186 the Mayor, action by the Council to override the veto), a 30-day period of Congressional review  
187 as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
188 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
189 Columbia Register.

190           (b) This act shall expire after 225 days of its having taken effect.