



Administrator

Washington, DC 20201

September 6, 2023

The Honorable Glen Youngkin
Governor
Office of the Governor
P.O. Box 1475
Richmond, VA 23218

Scott White
Insurance Commissioner
Virginia Bureau of Insurance
P.O. Box 1157
Richmond, VA 23218

Dear Governor Youngkin and Commissioner White,

The Centers for Medicare & Medicaid Services (CMS) on behalf of the Department of Health and Human Services has a responsibility to enforce provisions of part A of title XXVII of the Public Health Service Act (PHS Act) and title I of the Patient Protection and Affordable Care Act (ACA) that a state fails to substantially enforce with respect to health insurance issuers in the state.¹ This letter provides CMS's final determination pursuant to section 2723(a)(2) of the PHS Act, section 1321(c)(2) of the ACA, and section 150.219 of title 45 of the Code of Federal Regulations (CFR) that the Commonwealth of Virginia has not corrected the failure to substantially enforce certain federal market reforms with respect to issuers offering health insurance coverage through an association of real estate salespersons described in section 38.2-3521.1 G of the Code of Virginia, as enacted by HB 768/SB 335 (2022) (referred to in this letter as the state law).

On May 31, 2023, we provided notice of CMS's preliminary determination of the Commonwealth's failure to substantially enforce and offered the Commonwealth a reasonable opportunity to show evidence of substantial enforcement of the federal market reforms identified in the preliminary determination. The preliminary determination as well as all other related correspondence between CMS and the Commonwealth are incorporated by reference.

The Virginia Bureau of Insurance (Bureau) responded to CMS's preliminary determination on June 30, 2023. The Bureau, reiterating its September 27, 2022 and March 9, 2023 letters, stated that it is obligated to act consistently with its charge to execute all laws relating to insurance and insurance issuers in Virginia, and that as such, it will administer and enforce the laws enacted by the Virginia General Assembly, including the state law at issue. The Bureau also reiterated that it was not aware of any health insurance issuer offering or providing coverage to associations of real estate salespersons under the state law. The letter indicated that the Bureau was responding only on its own behalf. CMS received no response from or on behalf of the Governor.

¹ Section 2723(a)(2) of the PHS Act and section 1321(c)(2) of the ACA; 45 CFR 150, subpart B.

The Commonwealth has not provided evidence or other information that demonstrates to CMS's satisfaction that it is substantially enforcing the federal market reforms identified in the preliminary determination with respect to issuers in Virginia offering health insurance coverage through an association of real estate salespersons described in the state law. In accordance with 45 CFR 150.219, we are issuing this final written determination that the Commonwealth has not corrected the failure to substantially enforce. As a result of this final determination, CMS will directly enforce the federal market reforms identified in the appendix to this letter with respect to issuers in Virginia offering health insurance coverage through an association of real estate salespersons described in the state law. The effective date of CMS's enforcement is July 1, 2022.²

CMS may take enforcement action against any issuer in Virginia that on or after such date fails to comply with applicable federal market reforms that CMS is responsible for enforcing for health insurance coverage offered through an association of real estate salespersons described in the state law, including in situations where the issuer otherwise received approval from the Commonwealth to offer such coverage. In addition, CMS may review policy forms and rate filings of issuers in Virginia, address complaints, and perform market conduct examinations or conduct investigations, as necessary, to ensure compliance with the requirements that CMS is responsible for enforcing with respect to health insurance coverage offered through an association of real estate salespersons described in the state law. Any issuer subject to CMS's enforcement authority that fails to comply with applicable federal market reforms that CMS is responsible for enforcing may be subject to a civil money penalty.³ CMS expects that the Commonwealth will inform CMS when it receives a filing for coverage offered through an association of real estate salespersons described in the state law.

In the future, if the Commonwealth demonstrates that it is prepared to assume substantial enforcement of the federal market reforms identified in the appendix to this letter with respect to issuers in Virginia for health insurance coverage offered through an association of real estate salespersons described in the state law and CMS determines that responsibility for enforcement should be returned to the Commonwealth, CMS will enter into discussions with the Commonwealth on the process for an effective transition to state enforcement, as outlined in 45 CFR 150.221.

If you have any questions, please contact Jacob Ackerman, Senior Advisor, Center for Consumer Information & Insurance Oversight, at jacob.ackerman1@cms.hhs.gov or (202) 641-8967.

Sincerely,



Chiquita Brooks-LaSure

² The effective date of the state law, July 1, 2022, is the date that CMS has identified as the point at which the Commonwealth's failure to substantially enforce commenced. See 64 FR 45786, 45788 (Aug. 20, 1999).

³ Section 2723(b)(2) of the PHS Act and section 1321(c)(2) of the ACA; 45 CFR 150.301, et. seq.

Enclosure

cc: James H. Williams, Deputy Secretary of Health and Human Resources,
Office of the Governor
Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General
Julie Blauvelt, Deputy Commissioner, Bureau of Insurance

Appendix: Federal Market Reforms that CMS is Responsible for Enforcing

Effective July 1, 2022, the federal market reforms that CMS is responsible for enforcing with respect to health insurance issuers in Virginia offering health insurance coverage through an association of real estate salespersons described in § 38.2-3521.1 G of the Code of Virginia are the following provisions of title XXVII of the PHS Act and title I of the ACA and their implementing regulations:

Public Health Service Act

- Section 2701 (relating to fair health insurance premiums);
- Section 2702 (relating to guaranteed availability of coverage), as implemented at 45 CFR 147.104(f), with respect to the requirement that coverage be offered on a calendar-year basis in the individual market;
- Section 2703 (relating to guaranteed renewability of coverage), as implemented at 45 CFR 147.106(e) and (f), with respect to uniform modification of coverage and standard notice requirements;
- Section 2705 (relating to the prohibition of discrimination against individual participants and beneficiaries based on health status), with respect to the prohibition on offering health-contingent wellness programs in the individual market;
- Section 2707 (relating to comprehensive health insurance coverage), with respect to actuarial value levels of coverage;
- Section 2746 (relating to disclosure to enrollees of individual market coverage); and
- Section 2794 (relating to ensuring the consumers get value for their dollars).

Affordable Care Act

- Section 1312(c) (relating to single risk pool)