

Virginia

Virginia Insurance Commission
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Summary of Important Regulations

MEWA Regulations	Yes
TPA Regulations	No
Stop-Loss Regulations	No
UR Regulations	Yes

NAIC Model Laws and Regulation

<u>Name of Model Law/Regulation</u>	<u>Model/Similar</u>	<u>Related</u>
Health Insurance Reserves Model Regulation	14 Va. Admin. Code 5-320-10 to 5-320-70	None
Comprehensive Health Ins. Cost Containment Model Act	None	None
Standardized Health Claims Form Model Regulation	None	Va. Code § 38.2-322
Small Employer Health Insurance Availability Model Law	None	Va. Code §§ 38.2-3430.1 to 38.2-3437
Model Regulation To Eliminate Unfair Sex Discrimination	None	None
Health Information Privacy Model Law	None	None
Preferred Provider Arrangements Model Law	None	Va. Code §§ 38.2-3407, to 38.2-4209
Utilization Review Model Law	None	Va. Code §§ 38.2-5300 to 38.2-5309;38.2- -5400 to 38.2-5409; 14 Va. Admin. Code §§ 5-220 -10 to 5-220-130, Va. Code §§ 32.1-137.7 to 32.1-137.17
Managed Care Plan Network Adequacy Model Law	None	None
Third Party Administrator Law	None	None
Stop-loss Insurance Model Law	None	None

Virginia

NAIC Model Laws and Regulation

<u>Name of Model Law/Regulation</u>	<u>Model/Similar</u>	<u>Related</u>
Jurisdiction of Health Care Providers Model Law	Va. Code §§ 38.2-3420 to 38.2-3425	None
Standard Group Health Model Law	Va. Code §§ 38.2-3521 to 38.2-3543	None
Group Health Insurance Mandatory Conversion Law	None	Va. Code §§ 38.2-3416, 38.2-3541
Group Coverage Discontinuance/ Replacement Model Regulation	None	None
Premium Rates and Renewability of Coverage-Small Groups	None	Va. Code §§ 38.2-3430 to 38.2-3437
Group Coordination of Benefits Model Law	None	Va. Code § 38.2-3543.1
Model Regulation for Certification of Health Plans	None	None
Off-Label Drug Use Model Law	None	Va. Code § 38.2-3407.5
Group Health Mandatory Drug/ Alcohol Dependency Law	None	Va. Code § 38.2-3412.1
Model Newborn Children's Law	Va. Code § 38.2-3411	None

Virginia

Health Examination Benefits Availability Law	None	Va. Code § 38.2-3411.1
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NAIC Model Laws and Regulation

<u>Name of Model Law/Regulation</u>	<u>Model/Similar</u>	<u>Related</u>
Accident and Sickness Insurance Minimum Standards Model Law	Va. Code §§ 38.2-3516 to 38.2-3520	None
Agents and Brokers Licensing Model Law	None	Va. Code §§ 38.2-1800 to 38.2-1845
MEWA Licensing Model Law	None	None
Managing General Agents Law	Va. Code §§ 38.2-1858 to 38.2-1865	None
Health Maintenance Organization Model Law	Va. Code §§ 38.2-4300 to 38.2-4321	Va. Code § 38.2-3407.12
Insurance Information and Privacy Protection Law	Va. Code §§ 38.2-600 to 38.2-620	None
Unfair Trade Practices Law	Va. Code §§ 38.2-500 to 38.2-516	None
Model Regulation on Unfair Discrimination in Life and Health Insurance on the Basics of Physical or Mental Impairment	None	Va. Code § 38.2-508
Model Regulation on Unfair Discrimination in Life and Health Insurance on the Basics of Total or Partial Blindness	Va. Code § 38.2-508	None

Virginia

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<u>Name of Model Law/Regulation</u>	<u>Model/Similar</u>	<u>Related</u>
Unfair Discrimination against Subjects of Domestic Abuse in Health Benefit Plans Model Law	None	None
Unfair Claims Settlement Practices Law	Va. Code §§ 38.2-510	Va. Code § 38.2-517
Improper Termination Practices Law	None	None
Employee Leasing Registration Model Law	None	None
Private Employer Workers' Compensation Group Self-Insurance Model Law	None	Va. Code § 65.1-104.2; 14 Va. Admin. Code 5-370-10 to 5-370-180
Public Employee Workers' Compensation Group Self-Insurance Model Law	None	None
Twenty Four Hour Coverage Pilot Project Model Law	None	None

State-Mandates

Benefits That Must Be Covered

- Breast reconstruction
- Cancer pain drugs
- Cervical cancer screening (pap smear)
- Clinical trials
- Congenital bleeding disorders
- Contraceptives
- Emergency services
- Hearing screening for children
- Hospice care
- Mammography screening
- Mental health, general
- Mental health, parity
- Minimum hysterectomy stays
- Minimum mastectomy stays
- Minimum maternity stays
- Off-label drug use
- Prostate cancer screening
- TMJ disorders

Benefits That Must Be Offered

- Substance abuse treatment
- Bone marrow transplant
- Well-child care

Persons Who Must Be Allowed Coverage

- Adopted children
- Continuation/dependents
- Continuation/employees
- Conversion to non-group
- Handicapped dependents
- Newborns

Providers Who Must Be Covered

- Acupuncturists

Virginia

- Chiropractors
- Dentists
- Nurse Midwives
- Nurse Psychiatric
- Optometrists
- Osteopaths
- Physical Therapists
- Podiatrists
- Professional Counselors
- Psychologists
- Social Workers
- Speech/Hearing Therapists

Coordination of Benefits

- Birthday Rule?
- Divorced/Separated Rule?
- Joint Custody Rule?
- Active v. Inactive Rule?
- Longer v. Shorter Rule?
- Managed Care Rule?
- COBRA Rule?
- Preservation Rule?

No regulations provided

Patient's Bill of Rights Legislation

None

High Risk Health Pool

None

External Grievance System

Yes – all health plans

Basis of Filing Grievances

Medical Necessity

Status of Decision of Grievance Panel

Binding on both parties

Prompt Payment of Health Claim Requirement

Yes – 40 days

Miscellaneous

- Obstetrical services as a mandatory option.
- Benefits for pregnancy for an act of rape reported to the police within seven days of its occurrence, to the same extent as any other covered accident. The seven-day requirement is extended to 180 days in the case of rape or incest of a female under 13 years of age.

Virginia

- One screening mammogram to determine the presence of occult breast cancer to persons ages 35 through 39, one mammogram biannually to persons 40-49, one mammogram annually to persons age 50 and over. This may be limited to a benefit of \$50 per mammogram subject to dollar limits, deductibles, and insurance factors that are no less favorable than for physical illness generally. The mammogram must be ordered by a licensed health care practitioner, performed by a registered technologist, interpreted by a qualified radiologist under the direction of a licensed to practice medicine and surgery and certified by the American Board of Radiology or an equivalent examining body, and a copy of the mammogram must be sent, or delivered to, the health care practitioner who ordered it.
- Group accident and sickness policies must offer coverage, on an optional basis, for child health supervision services, providing for the periodic examination of covered children, unless the insurer or health services plan has fewer than 1,000 individuals or covered in Virginia, or less than \$500,000 in premiums in Virginia. In addition, the coverage need not be included in specific disease, hospital indemnity, or other limited benefit supplemental policies. The offered coverage must meet the following requirements:
 - i. At a minimum, it must provide benefits for child health supervision services at birth, at 2, 4, 6, 9, 12, 15 and 18 months, and at 2, 3, 4, 5, and 6 years. The plan may provide that services rendered during the periodic review are covered only to the extent that they are provided by, or under the supervision of, a single physician during the course of one visit.
 - ii. The review of the child's physical and emotional status must be conducted by a licensed and qualified physician or under a physician's supervision. The review may include a history, complete physical examination, developmental assessment, anticipatory guidance, appropriate immunizations, and laboratory tests, according to prevailing medical standards.
 - iii. Benefits for this coverage are exempt from copayment, coinsurance, deductible, or other dollar limitation in the policy. This exemption must be expressly stated that the premiums for the coverage must consider the cost of providing the coverage, cost savings realized or likely to be realized, because of the coverage, a reasonable profit for the insurer, and any other relevant information.
- i. Virginia law provides that health insurers, including HMOs that provide coverage for prescription drugs may not deny coverage to a patient with intractable cancer pain for drugs approved by the United States Food and Drug Administration for use in treatment of cancer pain on the basis that the dosage exceeds recommended limits.

MEWA Regulation

The state of Virginia adopted a regulation¹ in 1988 to govern MEWAs which were either domiciled or operating in Virginia. The authority for the regulations rests in a Virginia statute which declares that such entity as a MEWA is, if not so regulated, an unauthorized insurer. The purpose of the regulations was to establish reasonable standards for the licensing and operations of MEWAs. The principal provisions of the regulations are these:

- No existing MEWAs escaped regulation by being *grandfathered* out.
- Domestic and foreign MEWAs were regulated so long as a single Virginia citizen was involved.
- All insurer-related Virginia statutes apply to the MEWA as though the MEWA were the insurer.
- The MEWA definition is ERISA. Workers' compensation self-funded plans were excluded; also excluded were rural electric cooperations; also excluded were local governmental self-funded pools

subject to other Virginia statute or regulation.

- All MEWAs operating in Virginia must be licensed.
- In the application for licensing there must be adequate disclosure of information such as plan papers (documents, trusts, booklets, service agreements, etc.), biographicals on trustees and other plan personnel, manner of marketing, and details on service administrator. Should the Insurance Commission of Virginia find that any personnel are not competent and trustworthy, the MEWA may be denied a license.
- Details of the plan's stop-loss coverage shall be submitted.
- Details of the MEWA's fidelity bond shall be submitted which bond shall not be less than \$50,000.
- In addition to the fidelity bond, there is required a deposit of securities, or a surety bond, favoring the commonwealth of Virginia.
- Employers' contributions shall be based upon reasonable assumptions and certified as to sufficiency by an actuary or other person satisfactory to the Insurance Commission.
- Usual exemptions found with standard MEWAs for nonlicensing apply, such as insured plans and plans of health service companies.
- Initial application requires a \$500 application fee; the license must be renewed annually. Note: The licensing may be on a quarterly basis if the plan's financial condition is questionable.
- The MEWA must be financially sound:
 1. Minimum deposit or surety bond is required.
 2. Unimpaired reserves must at all times equal one month's claims and fixed costs as determined by the Insurance Commission.
 3. Claims reserves by Insurance Commission standards must be maintained.
 4. The Insurance Commission may, at its sole discretion, require the so-called runout liability to be covered by special stop-loss terms.
 5. Trust assets must be held in approved securities, as determined by Virginia statutes.
 6. The Insurance Commission shall oversee the dissolution of a MEWA.
 7. The MEWA is not covered by the Virginia Guaranty Association Act.
 8. Insurance Commission experiences involved in supervising the MEWAs under its jurisdiction shall be an assessable item of expense against all such MEWAs by the Commission.
- The MEWA may not be governed or controlled by *outsiders* (i.e., entrepreneurs), but must be governed by insiders.
- Special rules apply to TPAs who supervise Virginia MEWAs:
 1. Must be trust accounts for all monies.
 2. TPA must keep accurate and complete records.
 3. TPA-paid claims must be paid only by drafts authorized by the plan.
- MEWA's books must be open for inspection at all times.
- In operating the MEWA, there shall be no unfair trade practices nor shall there be any trustee, TPA, etc., who handles plan funds.
- Abrupt MEWA termination is prohibited.
- All MEWA forms must be filed and approved by the Insurance Commission; this means that all Virginia mandated benefits will be provided. In marketing the MEWA, there must be full disclosure of all pertinent terms.
- All marketers of the MEWAs must be fully licensed.
- Violation will be met with fines, MEWA shutdown, or revocation of licenses.

TPA Regulations

Virginia does not currently require that TPAs be licensed to perform administrative duties in Virginia. However, it may be necessary for a TPA to secure a Certificate of Authority from the Corporate Operations Division of the State Corporate Commission (State Corporate Commission, P.O. Box 1197, Richmond, VA 23209) in order to operate a business in the commonwealth.²

In addition, certification may be required of any TPA acting as a private review agent. TPAs must register with this state if they provide services to multiple employer health plans (MEWAs) that either (1) are domiciled in Virginia, (2) have one employer whose principal offices is in Virginia, or (3) have at least one employee covered by the MEWA that is employed in Virginia. A MEWA must be licensed or exempt before it can operate in this state and must submit a copy of a written agreement made with a TPA. TPAs must be approved by the Commissioner prior to the licensure of the MEWA.

Stop-Loss Regulation

No regulation is reported.

Utilization Review Regulations

Agency Responsible ³	Dept. of Insurance
Requirements	Certification
Exemptions	ERISA plans, HMOs
Waivers	None

Miscellaneous

Registration of Self-Funded Plans

A self-funded plans must register with the State Insurance Department. If the plan cannot show that it is subject to the jurisdiction of some other state or federal agency, it must meet certain solvency requirements and must comply with the insurance code.⁴

MSA Legislation

No action.

State Premium Taxes

Commercial insurers pay 2.25%; Blue Cross pays .75% (basis vs. subscriber fees); HMOs pay a 1% Insurance Department maintenance fee.

Continuation of Coverage and Conversion of Benefits

Virginia law requires group health policies to allow individuals to elect continuation or conversion

Virginia

coverage unless their group coverage terminated because the employer discontinued the plan. These rights do not apply to individuals who are eligible for Medicare or Medicaid. Virginia law requires group health policies to allow covered employees and their dependents to convert to individual coverage without evidence of insurability if their group coverage ends for any reason except termination of the plan by the employer.⁵

Small Group Plans

Virginia permits insurers and health service plans to issue limited mandated benefit group accident and sickness insurance policies to employers with less than 50 employees that have not offered health insurance in the last 12 months.

The contract must provide basic levels of primary, preventive, and hospital care for covered individuals including but not limited to:

- A minimum of 30 days in inpatient hospitalization coverage per policy year.
- Prenatal care including a minimum of one prenatal office visit per month during the first two trimesters of pregnancy, two office visits per month during the seventh and eighth months of pregnancy, and one office visit per week during the ninth month and until term. Coverage for each visit includes necessary and appropriate screening including history, physical examination and appropriate laboratory, and diagnostic procedures in addition to prenatal counseling.
- Obstetrical care including physician's services, delivery room, and other medically necessary hospital services.
- Well-baby and well-child care including periodic review of a child's physical and emotional status by a physician or under a physician's supervision including history, complete physical examination, developmental assessment, anticipatory guidance, appropriate immunizations, and respiratory tests in keeping with prevailing medical standards. Such reviews are covered when performed at birth, two months, four months, six months, nine months, 12 months, 15 months, 18 months, two years, three years, four years, five years, and six years.
- For other covered individuals, a basic level of primary and preventive care including, but not limited to, two physician office visits per calendar year.

Group policies or subscription contracts issued under this law may exclude the other state-mandated benefit requirements.

Endnotes

¹ Va. Ins. Reg. No. 31 (1988).

² Va. Code §§ 38-2.53 *et seq.*

³ Va. Code §§ 38-2-5300 *et seq.*; Va. Ins. Regs. §§ 37.1 *et seq.*

⁴ Va. Code § 38.1 to 43.1; Va. Ins. Regs. §§ 37-1 *et seq.*

⁵ Va. Code §§ 38.2-3341 to 38.2-3546.