ENROLLED ORIGINAL

AN ACT

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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 Motor Vehicle Insurance Act of 1998 to revise definitions of the terms "bona fide association", "employer", and "group health plan", to apply the requirements of the act to multiple employer welfare arrangements, to expand the rulemaking authority of the Commissioner of the Department of Insurance, Securities, and Banking, and to impose requirements on multiple employer welfare arrangements 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 multiple employer welfare arrangements; and to amend the Federal Health Reform Implementation and Omnibus Amendment Act of 2014 to specify that the requirements of the federal Patient Protection and Affordable Care Act and the federal Public Health Service Act are incorporated by reference as such requirements existed on December 15, 2017, and to apply the individual and small group requirements of those federal health care acts to multiple employer welfare arrangements.

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 § 31-3301.01 *et. seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 31-3301.01) is amended as follows:

(1) Paragraph (3) is amended as follows:

(A) Subparagraph (E) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(B) New subparagraphs (E-1) and (E-2) are added to read as follows:

"(E-1) Is domiciled and has its principal offices within the District;

"(E-2) Does not expand its membership based on geography; and".

(C) Subparagraph (F) is amended by striking the phrase "under the laws of the District of Columbia" and inserting the phrase "by the Commissioner by rule" in its place.

(2) Paragraph (12) is amended by striking the phrase “except that such term” and inserting the phrase “as such section and its implementing regulations were in effect on December 15, 2017, except that such term” in its place.

(3) Paragraph (19) is amended by striking the phrase “to the extent” and inserting the phrase “as such section and its implementing regulations were in effect on December 15, 2017, to the extent” in its place.

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

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

“The individual market requirements of this title shall apply to a health benefit plan offered by a multiple employer welfare arrangement, including an association or any other entity, if the plan covers an individual in the District who is not an employee or dependent of a participating employer.”.

(c) Section 207 (D.C. Official Code § 31-3302.07) is amended by adding a new subsection (b-1) to read as follows:

“(b-1) The Commissioner may adopt regulations to establish and administer such standards relating to the provisions of this act as may be necessary to improve access and affordability of health insurance in the District and to maintain the requirements of the Patient Protection and Affordable Care Act approved March 23, 2010 (124 Stat. 111; 42 U.S.C. § 18001, note).”.

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

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

(2) A new subsection (b) is added to read as follows:

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

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

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

“The Commissioner may issue rules to create a grandfathered status with respect to any of the requirements of this act for multiple employer welfare arrangements that existed and operated in the District as of December 15, 2017, and comply with federal law and regulations applicable to multiple employer welfare arrangements as of December 15, 2017. The Commissioner may also establish by rulemaking additional requirements for multiple employer welfare arrangements granted grandfathered status.

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

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

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

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

"(b) The existence of contracts of reinsurance shall not be considered in determining whether a multiple employer welfare arrangement is fully insured.

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

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

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

"(A) A hospital and medical services corporation;

"(B) A fraternal benefit society;

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

"(D) Any combination of these entities.

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

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

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

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

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

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

"(f) An insurer shall ensure that each policy, certificate of coverage, or contract for short-term, limited-duration health insurance and all application materials for enrollment in that coverage displays prominently, in at least 14-point type, a statement that the coverage does not

constitute minimum essential coverage for purposes of satisfying the individual responsibility requirement in the District, and any other disclosures the Commissioner may require through rulemaking, including the types of benefits and consumer protections that are and are not included in the coverage.

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

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

(a) Section 111 (D.C. Official Code § 31-3311.10) is amended as follows:

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

(2) New subsections (b) and (c) are added to read as follows:

"(b) Small group market requirements under this title shall apply to a health benefit plan offered by a multiple employer welfare arrangement, including an association or any other entity, if the plan covers an employee of a small employer, as that term is defined in section 101(42) of 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 § 31-3301.01(42)), in the District.

"(c) Individual market requirements under this title shall apply to a health benefit plan offered by a multiple employer welfare arrangement, including an association or any other entity, if the plan covers an individual in the District who is not an employee or dependent of a participating employer.".

(b) Section 112(1) (D.C. Official Code § 31-3311.11(1)) is amended by striking the phrase "§ 18001, note)." and inserting the phrase "§ 18001, note), as the law and its implementing regulations were in effect on December 15, 2017." in its place.

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

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

"(a) Sections 1251, 1252, and 1304 of the Patient Protection and Affordable Care Act, approved March 23, 2010 (124 Stat. 119; 42 U.S.C. §§ 18011, 18021, and 18024), and sections 2701 through 2709, 2711 through 2719A, and 2794 of the Public Health Service Act, approved July 1, 1944 (58 Stat. 682; 42 U.S.C. §§ 300gg, 300gg-1, 300gg-2, 300gg-3, 300gg-4, 300gg-5, 300gg-6, 300gg-7, 300gg-8, 300gg-9, 300gg-11, 300gg-12, 300gg-13, 300gg-14, 300gg-15, 300gg-15A, 300gg-16, 300gg-17, 300gg-18, 300gg-19, 300gg-19A, and 300gg-94), (collectively "federal health acts") and any rules issued pursuant to the federal health acts, as the sections and implementing regulations were in effect on December 15, 2017, are incorporated by reference and shall apply to all insurers, hospital and medical services corporations, health maintenance organizations, and multiple employer welfare arrangements, including associations or any other

entities providing a health benefit plan to a small employer, as that term is defined in section 101(42) of 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 § 31-3301.01(42)), or an individual, that deliver or issue for delivery individual or group health insurance policies, contracts, or certificates of coverage in the District.".

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

"Sec. 101a. Applicability of federal health acts to multiple employer welfare arrangements.

"(a) Requirements in the federal health acts incorporated by reference in section 101(a) that apply to the small group market apply to health benefit plans offered by multiple employer welfare arrangements including associations or any other entity, if the plan covers an employee of a small employer, that term is defined in section 101(42) of 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 § 31-3301.01(42)), in the District.

"(b) Requirements in the federal health acts incorporated by reference in section 101(a) that apply to insurers in the individual market apply to health benefit plans offered by multiple employer welfare arrangements, including associations or any other entities, if the plan covers an individual in the District who is not an employee or dependent of a participating employer.".

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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

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Chairman
Council of the District of Columbia

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Mayor
District of Columbia