CHAPTER 187

An Act to amend and reenact §§ 38.2-510, 38.2-1331, 38.2-1411.2, 38.2-4214, and 38.2-4319 as it is currently effective and as it may become effective of the Code of Virginia, relating to insurance laws of the Commonwealth generally.

[S 78]

Approved March 24, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-510, 38.2-1331, 38.2-1411.2, 38.2-4214, and 38.2-4319 as it is currently effective and as it may become effective of the Code of Virginia are amended and reenacted as follows:

§ 38.2-510. Unfair claim settlement practices.

A. No person shall commit or perform with such frequency as to indicate a general business practice any of the following:

1. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

2. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

3. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

4. Refusing arbitrarily and unreasonably to pay claims;

5. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

6. Not attempting in good faith to make prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

7. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

8. Attempting to settle claims for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

9. Attempting to settle claims on the basis of an application that was altered without notice to, or knowledge or consent of, the insured;

10. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

11. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

12. Delaying the investigation or payment of claims by requiring an insured, a claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, when both contain substantially the same information;

13. Failing to promptly settle claims where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

14. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

15. Failing to comply with ~~§ 38.2-3407.13~~ *§ 38.2-3407.15*, or to perform any provider contract provision required by that section.

B. No violation of this section shall of itself be deemed to create any cause of action in favor of any person other than the Commission; but nothing in this subsection shall impair the right of any person to seek redress at law or equity for any conduct for which action may be brought.

C. 1. No insurer shall prepare or use an estimate of the cost of automobile repairs based on the use of an after market part, as defined herein, unless:

The insurer discloses to the claimant in writing either on the estimate or in a separate document attached to the estimate the following information:

"THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. PARTS USED IN THE REPAIR OF YOUR VEHICLE BY OTHER THAN THE ORIGINAL MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUAL IN LIKE KIND AND QUALITY IN TERMS OF FIT, QUALITY AND PERFORMANCE TO THE ORIGINAL MANUFACTURER PARTS THEY ARE REPLACING."

2. "After market part" as used in this section shall mean an automobile part which is not made by

the original equipment manufacturer and which is a sheet metal or plastic part generally constituting the exterior of a motor vehicle, including inner and outer panels.

§ 38.2-1331. Commission approval required for certain transactions.

A. Prior written approval of the Commission shall be required for:

1. Any material transaction between a domestic insurer and any of its affiliates involving (i) more than either three percent of the insurer's admitted assets or twenty-five percent of the insurer's surplus *to policyholders*, whichever is less, as of the immediately preceding December 31 and/or (ii) any reinsurance treaty or risk-sharing arrangement, or modifications thereto, in which the reinsurance premium or anticipated change in the insurer's liabilities equals or exceeds five percent of the insurer's surplus to policyholders reported on the immediately preceding December 31; and/or

2. Any investment in affiliated companies if on the date of investment, the sum of the insurer's investments in affiliated companies exceeds or will exceed one or more of the following: fifty percent of the surplus to policyholders reported on the immediately preceding December 31, ten percent of admitted assets reported on the immediately preceding December 31, or fifty percent of the surplus to policyholders at the time application is made to the Commission for approval of the transaction.

For the purpose of this section, an insurer's investment in affiliated companies is the sum of (i) the assets held by the insurer that represent securities issued by or, if not in security form, equity or debt interests in companies of the affiliate system; (ii) loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or such extensions of credit; (iii) the assets of the insurer that are pledged on behalf of companies in the holding company system; and (iv) the aggregate guarantees for loans or extensions of credit made to affiliates which result in an actual contingent exposure of the insurer's assets to liability. To the extent not already provided in this paragraph, the sum shall include for all affiliated companies other than domestic and foreign insurance company subsidiaries and health maintenance organization subsidiaries (i) total net moneys or other considerations expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities and (ii) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.

For the purposes of this section, a "transaction between a domestic insurer and any of its affiliates" includes any transaction between a domestic insurer and a nonaffiliate if such transaction involves (i) any loan or extension of credit where the insurer makes such loan or extension of credit with the agreement or understanding that the proceeds of such transaction, in whole or substantial part, are to be used to make any loan or extension of credit to, to purchase assets of, or to make investments in any affiliate of the insurer or (ii) a reinsurance agreement or risk-sharing arrangement, or modifications thereto, which requires as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and the nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer.

Failure of the Commission to act within sixty days after notification by the insurer shall constitute approval of the transaction.

B. Nothing contained in this section shall authorize or permit any transaction that would be otherwise contrary to law.

C. The Commission, in reviewing any material transaction under this section, shall consider whether the material transaction complies with the standards set forth in § 38.2-1330 and whether it may adversely affect the interest of policyholders. The Commission shall set forth the specific reasons for the disapproval of any material transactions.

D. The approval of any material transaction under this section shall be deemed an amendment under subsection E of § 38.2-1329 to an insurer's registration statement without further filing.

E. This section shall not apply to a material transaction that is a dividend or distribution.

§ 38.2-1411.2. Investment limits in medium grade and lower grade obligations.

A. No domestic insurer shall acquire, directly or indirectly, any medium grade or lower grade obligations of any business entity if, after giving effect to any such acquisition, the aggregate amount of all medium grade and lower grade obligations then held by the domestic insurer would exceed twenty percent of its admitted assets, provided that:

1. No more than ten percent of its admitted assets consists of lower grade obligations;

2. No more than three percent of its admitted assets consists of lower grade obligations rated five or six by the Securities Valuation Office of the National Association of Insurance Commissioners; and

3. No more than one percent of its admitted assets consists of lower grade obligations rated six by the Securities Valuation Office of the National Association of Insurance Commissioners.

Attaining or exceeding the limit of any one category shall not preclude an insurer from acquiring obligations in other categories subject to the specific and multi-category limits.

B. No domestic insurer may invest more than an aggregate of one percent of its admitted assets in medium grade obligations issued, guaranteed or insured by any one ~~institution~~ *business entity* nor may it invest more than one-half of one percent of its admitted assets in lower grade obligations issued, guaranteed or insured by any one business entity. In no event may a domestic insurer invest more than one percent of its admitted assets in any medium or lower grade obligations issued, guaranteed or insured by any one business entity.

C. Nothing contained in this section shall prohibit a domestic insurer from acquiring any obligation which it has committed to acquire if the insurer would have been permitted to acquire that obligation pursuant to the provisions of this chapter on the date on which such insurer committed to purchase that obligation.

D. Notwithstanding the foregoing, a domestic insurer may acquire any obligation of a business entity in which the insurer already has one or more obligations, if the obligation is acquired in order to protect an investment previously made in the obligations of the business entity; however, all such acquired obligations shall not exceed one-half of one percent of the insured's admitted assets.

E. Nothing contained in this section shall prohibit a domestic insurer from acquiring any obligation as a result of a restructuring of any obligation already held.

F. Nothing contained in this section shall require a domestic insurer to sell or otherwise dispose of any obligations legally acquired prior to July 1, 1992.

G. The Board of Directors of any domestic insurer which acquires or invests, directly or indirectly, more than two percent of its admitted assets in medium grade or lower grade obligations of any individual business entity, shall adopt a written plan for the making of such investments. The plan shall contain, in addition to guidelines with respect to the quality of the issues invested in, diversification standards including, but not limited to, standards for issuer, industry, duration, liquidity and geographic location.

H. If the Commission finds that economic or other conditions render any rating of any obligation by the Securities Valuation Office of the National Association of Insurance Commissioners obsolete or unreflective of a diminished creditworthiness of the business entity issuing such obligations, the Commission may assign the obligations to a lower grade based on the findings of a national rating agency recognized by the Commission.

§ 38.2-4214. Application of certain provisions of law.

No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-230, 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-700 through 38.2-705, 38.2-900 through 38.2-904, 38.2-1017, 38.2-1018, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.) and 2 (§ 38.2-1306.2 et seq.) of Chapter 13, §§ 38.2-1312, 38.2-1314, 38.2-1317 through 38.2-1328, 38.2-1334, 38.2-1340, 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3400, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3405.1, 38.2-3407.1 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.16, 38.2-3409, 38.2-3411 through 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3501, 38.2-3502, 38.2-3514.1, 38.2-3514.2, 38.2-3516 through 38.2-3520 as they apply to Medicare supplement policies, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3541, 38.2-3542, 38.2-3543.2, 38.2-3600 through 38.2-3607, ~~Chapter 53 (§ 38.2-5300 et seq.),~~ Chapter 58 (§ 38.2-5800 et seq.) and Chapter 59 (§ 38.2-5900 et seq.) of this title shall apply to the operation of a plan.

§ 38.2-4319. (Effective until July 1, 2004) Statutory construction and relationship to other laws.

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1057, 38.2-1306.2 through 38.2-1309, Articles 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.16, 38.2-3411.2, 38.2-3412.1:01, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.11, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, 38.2-3514.1, 38.2-3514.2, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3542, 38.2-3543.2, ~~Chapter 53 (§ 38.2-5300 et seq.),~~ Chapter 58 (§ 38.2-5800 et seq.) and Chapter 59 (§ 38.2-5900 et seq.) of this title shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) of this title except with respect to the activities of its health maintenance organization.

B. Solicitation of enrollees by a licensed health maintenance organization or by its representatives shall not be construed to violate any provisions of law relating to solicitation or advertising by health professionals.

C. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful practice of medicine. All health care providers associated with a health maintenance organization shall

be subject to all provisions of law.

D. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to offer coverage to or accept applications from an employee who does not reside within the health maintenance organization's service area.

§ 38.2-4319. (Effective July 1, 2004) Statutory construction and relationship to other laws.

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1057, 38.2-1306.2 through 38.2-1309, Articles 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.16, 38.2-3411.2, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.11, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, 38.2-3514.1, 38.2-3514.2, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3542, 38.2-3543.2, ~~Chapter 53 (§ 38.2-5300 et seq.),~~ Chapter 58 (§ 38.2-5800 et seq.) and Chapter 59 (§ 38.2-5900 et seq.) of this title shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) of this title except with respect to the activities of its health maintenance organization.

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