

# VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

## CHAPTER 377

*An Act to amend and reenact §§ 38.2-3503 and 38.2-3504 of the Code of Virginia, relating to health insurance policy provisions; refunds of unearned premiums.*

[S 944]

Approved March 16, 2003

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 38.2-3503 and 38.2-3504 of the Code of Virginia are amended and reenacted as follows:**

§ 38.2-3503. Required accident and sickness policy provisions.

Except as provided in § 38.2-3505, each individual accident and sickness insurance policy delivered or issued for delivery in this Commonwealth shall contain the provisions specified in this section using the same words which appear in this section. *Provisions 1 through 12 shall apply to all such policies. In addition, provision 13 shall apply to all such policies that are delivered, issued for delivery, renewed, or extended in this Commonwealth on or after January 1, 2001.* An insurer may substitute corresponding provisions of different wording approved by the Commission that are in each instance not less favorable in any respect to the insured or the beneficiary. These provisions shall be preceded individually by the caption "REQUIRED PROVISIONS" or by such appropriate individual or group captions or subcaptions as the Commission may approve.

1. Provision 1:

ENTIRE CONTRACT; CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the Company and unless such approval is endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

2. Provision 2:

TIME LIMIT ON CERTAIN DEFENSES: (a) Misstatements in the application: After two years from the date of this policy, only fraudulent misstatements in the application may be used to void the policy or deny any claim for loss incurred or disability (as defined in the policy) that starts after the two-year period.

Provision 2 shall not be construed to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of subdivisions 1, 2, 3, 4 and 5 of § 38.2-3504 in the event of misstatement with respect to age, occupation or other insurance.

Instead of Provision 2, a policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (i) until at least age ~~forty-four~~ <sup>fifty</sup> 50 or, (ii) for a policy issued after age ~~forty-four~~ 44, for at least five years from its date of issue, may contain the following provision, from which the clause in parentheses may be omitted at the insurer's option:

INCONTESTABLE:

(a) Misstatements in the application: After this policy has been in force for two years during the Insured's lifetime (excluding any period during which the Insured is disabled), the Company cannot contest the statements in the application.

PREEXISTING CONDITIONS:

(b) No claim for loss incurred or disability (as defined in the policy) that starts after one year from the date of issue of this policy will be reduced or denied because a sickness or physical condition, not excluded by name or specific description before the date of loss, had existed before the effective date of coverage.

3. Provision 3:

GRACE PERIOD: This policy has a ..... day grace period. This means that if a renewal premium is not paid on or before the date it is due, it may be paid during the following ..... days. During the grace period the policy shall continue in force.

In Provision 3 a number not less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies shall be inserted between the words "a" and "day," and between "following" and "days."

A policy that contains a cancellation provision may add, at the end of Provision 3: "subject to the right of the Company to cancel in accordance with the cancellation provision."

A policy in which the insurer reserves the right to refuse any renewal shall have, in Provision 3, the following sentence:

The grace period will not apply if, at least.....days before the premium due date, the Company has delivered or has mailed to the Insured's last address shown in the Company's records written notice of the Company's intent not to renew this policy.

In the above sentence a number not less than "7" for weekly premium policies, "10" for monthly

premium policies and "31" for all other policies shall be inserted between the words "least" and "days."

4. Provision 4:

REINSTATEMENT: If the renewal premium is not paid before the grace period ends, the policy will lapse. Later acceptance of the premium by the Company or by an agent authorized to accept payment, without requiring an application for reinstatement, will reinstate the policy. If the Company or its agent requires an application for reinstatement, the Insured will be given a conditional receipt for the premium. If the application is approved the policy will be reinstated as of the approval date. Lacking such approval, the policy will be reinstated on the forty-fifth day after the date of the conditional receipt unless the Company has previously written the Insured of its disapproval. The reinstated policy will cover only loss that results from an injury sustained after the date of reinstatement and sickness that starts more than ~~ten~~ 10 days after such date. In all other respects the rights of the Insured and the Company will remain the same, subject to any provisions noted or attached to the reinstated policy. Any premiums the Company accepts for a reinstatement will be applied to a period for which premiums have not been paid. No premiums will be applied to any period more than ~~sixty~~ 60 days prior to the date of reinstatement.

The last sentence of Provision 4 may be omitted from any policy that the Insured has the right to continue in force subject to its terms by the timely payment of premiums (i) until at least age ~~fifty~~ 50, or (ii) for a policy issued after age ~~forty-four~~ 44, for at least five years from its effective date.

5. Provision 5:

NOTICE OF CLAIM: Written notice of claim must be given within ~~twenty~~ 20 days after a covered loss starts or as soon as reasonably possible. The notice can be given to the Company at ..... (insert the location of such office as the insurer may designate for the purpose), or to the Company's agent. Notice should include the name of the Insured, and Claimant if other than the Insured, and the policy number.

Optional paragraph: If the Insured has a disability for which benefits may be payable for at least two years, at least once in every six months after the Insured has given notice of claim, the Insured must give the Company notice that the disability has continued. The Insured need not do this if legally incapacitated. The first six months after any filing of proof by the Insured or any payment or denial of a claim by the Company will not be counted in applying this provision. If the Insured delays in giving this notice, the Insured's right to any benefits for the six months before the date the Insured gives notice will not be impaired.

6. Provision 6:

CLAIM FORMS: When the Company receives the notice of claim, it will send the Claimant forms for filing proof of loss. If these forms are not given to the Claimant within ~~fifteen~~ 15 days after the giving of such notice, the Claimant shall meet the proof of loss requirements by giving the Company a written statement of the nature and extent of the loss within the time limit stated in the Proofs of Loss Section.

7. Provision 7:

PROOFS OF LOSS: If the policy provides for periodic payment for a continuing loss, written proof of loss must be given the Company within ~~ninety~~ 90 days after the end of each period for which the Company is liable. For any other loss, written proof must be given within ~~ninety~~ 90 days after such loss. If it was not reasonably possible to give written proof in the time required, the Company shall not reduce or deny the claim for this reason if the proof is filed as soon as reasonably possible. In any event, except in the absence of legal capacity, the proof required must be given no later than one year from the time specified.

8. Provision 8:

TIME OF PAYMENT OF CLAIMS: After receiving written proof of loss, the Company will pay ..... (Insert period for payment which must not be less frequently than monthly) all benefits then due for .... (Insert type of loss). Benefits for any other loss covered by this policy will be paid as soon as the Company receives proper written proof.

9. Provision 9:

PAYMENT OF CLAIMS: Benefits will be paid to the Insured. Loss of life benefits are payable in accordance with the beneficiary designation in effect at the time of payment. If none is then in effect, the benefits will be paid to the Insured's estate. Any other benefits unpaid at death may be paid, at the Company's option, either to the Insured's beneficiary or the Insured's estate.

Optional paragraph: If benefits are payable to the Insured's estate or a beneficiary who cannot execute a valid release, the Company can pay benefits up to \$..... (insert an amount which shall not exceed \$2,000), to someone related to the Insured or beneficiary by blood or by marriage whom the Company considers to be entitled to the benefits. The Company will be discharged to the extent of any payment made in good faith.

Optional paragraph: The Company may pay all or a portion of any indemnities provided for health care services to the health care services provider, unless the Insured directs otherwise in writing by the time proofs of loss are filed. The Company cannot require that the services be rendered by a particular health care services provider.

10. Provision 10:

PHYSICAL EXAMINATIONS AND AUTOPSY: The Company at its own expense has the right to have the Insured examined as often as reasonably necessary while a claim is pending. It may also have an autopsy made unless prohibited by law.

11. Provision 11:

LEGAL ACTIONS: No legal action may be brought to recover on this policy within ~~sixty~~ 60 days after written proof of loss has been given as required by this policy. No legal action may be brought after three years from the time written proof of loss is required to be given.

12. Provision 12:

CHANGE OF BENEFICIARY: The Insured can change the beneficiary at any time by giving the Company written notice. The beneficiary's consent is not required for this or any other change in the policy, unless the designation of the beneficiary is irrevocable.

13. Provision 13:

CANCELLATION BY INSURED: The Insured may cancel this policy at any time by written notice delivered or mailed to the Company effective upon receipt or on such later date as may be specified in the notice. In the event of cancellation, the Company shall return promptly the unearned portion of any premium paid. The earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

§ 38.2-3504. Other provisions.

Except as provided in § 38.2-3505, no individual accident and sickness insurance policy delivered or issued for delivery in this Commonwealth shall contain provisions respecting the matters set forth below unless such provisions use the same words which appear in this section. *Provisions 1 through 7, 8 a, and 9 through 11 shall apply to all such policies that are issued for delivery or delivered in this Commonwealth prior to January 1, 2001. Provisions 1 through 7, 8 b, and 9 through 11 shall apply to all such policies that are issued for delivery, delivered, renewed, or extended in this Commonwealth on or after January 1, 2001.* The insurer may use a corresponding provision of different wording approved by the Commission that is not less favorable in any respect to the Insured or the beneficiary. Any such provision shall be preceded individually by the appropriate caption OTHER PROVISIONS or by such appropriate individual or group captions or subcaptions as the Commission may approve.

1. Provision 1:

CHANGE OF OCCUPATION: If the Insured is injured or contracts sickness after having changed his occupation to one classified by the Company as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the Company will pay only the portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the Company for the more hazardous occupation. If the Insured changes his occupation to one classified by the Company as less hazardous than that stated in this policy, the Company, upon receipt of proof of the change of occupation, will reduce the premium rate accordingly and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the Company prior to the occurrence of the loss for which the Company is liable or prior to the date of proof of change in occupation with the state insurance supervisory official in the state where the Insured resided at the time this policy was issued; but if the filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the Company in the state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

2. Provision 2:

MISSTATEMENT OF AGE: If the Insured's age has been misstated, the benefits will be those the premium paid would have purchased at the correct age.

3. Provision 3:

OTHER INSURANCE IN THIS COMPANY: If an accident or sickness or accident and sickness policy or policies previously issued by the Company to the Insured is in force concurrently herewith, making the aggregate indemnity for ..... (insert type of coverage or coverages) in excess of \$..... (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the Insured or to his estate.

Instead of Provision 3, the following provision may be used:

Insurance effective at any one time on the Insured under a like policy or policies in this Company is limited to the one such policy elected by the Insured, his beneficiary or his estate, as the case may be, and the Company will return all premiums paid for all other such policies.

4. Provision 4:

INSURANCE WITH OTHER COMPANIES: If there is other valid coverage, not with this Company, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this Company has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of

the loss as the amount which would otherwise have been payable under this policy plus the total of the like amounts under all such other valid coverages for the same loss of which this Company had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

If Provision 4 is included in a policy that also contains Provision 5, the phrase "EXPENSE INCURRED BENEFITS" shall be added to the caption of Provision 4. The insurer may include in this provision a definition of "other valid coverage," approved by the Commission. The definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this Commonwealth or any other jurisdiction of the United States or Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the Commission. In the absence of such definition the term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations, by union welfare plans, or employer or employee benefit organizations.

For the purpose of applying Provision 4, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, whether provided by a governmental agency or otherwise, shall in all cases be deemed to be "other valid coverage" of which the company has had notice. In applying Provision 4 no third party liability coverage shall be included as "other valid coverage."

5. Provision 5:

**INSURANCE WITH OTHER COMPANIES:** If there is other valid coverage, not with this Company, providing benefits for the same loss on other than an expense incurred basis and of which this Company has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided under this policy for such loss as the like indemnities of which the Company had notice, including the indemnities under this policy, bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

If Provision 5 is included in a policy that also contains Provision 4, the phrase "OTHER BENEFITS" shall be added to the caption of Provision 5. The insurer may include in this provision a definition of "other valid coverage," approved by the Commission. The definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this Commonwealth or any other jurisdiction of the United States or Canada, and to any other coverage approved by the Commission. In the absence of such definition the term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying Provision 5, any amount of benefit provided for the insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, whether provided by a governmental agency or otherwise, shall in all cases be deemed to be "other valid coverage" of which the Company has had notice. In applying Provision 5 no third party liability coverage shall be included as "other valid coverage."

6. Provision 6:

**RELATION OF EARNINGS TO INSURANCE:** If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the Insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the Insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which a claim is made, whichever is greater, the Company will be liable only for the proportionate amount of the benefits under this policy as the amount of the monthly earnings or the average monthly earnings of the Insured bears to the total amount of monthly benefits for the same loss under all the coverage upon the insured at the time the disability commences and for the return of the part of the premiums paid during such two years that exceeds the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all the coverage upon the Insured below the sum of \$200 or the sum of the monthly benefits specified in the coverages, whichever is less, nor shall it operate to reduce benefits other than those payable for loss of time.

Provision 6 may be inserted only in a policy that the insured has the right to continue in force subject to its terms by the timely payment of premiums (i) until at least age ~~forty four~~ 50 or (ii) for a policy issued after age ~~forty four~~ 44, for at least five years from its date of issue. The insurer may include in this provision a definition of "valid loss of time coverage" approved by the Commission. The definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this Commonwealth or any other jurisdiction of the United States or Canada, or to any other coverage the inclusion of which may be approved by the Commission or any combination of coverages. In the absence of such definition the

term shall not include any coverage provided for the Insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, or benefits provided by union welfare plans or by employer or employee benefit organizations.

7. Provision 7:

UNPAID PREMIUM: When a claim is paid, any premium due and unpaid may be deducted from the claim payment.

8. Provision 8 a:

*CANCELLATION BY COMPANY: The Company may cancel this policy at any time by written notice delivered to the Insured, or mailed to his last address as shown by the records of the Company, stating when, no less than . . . . . days thereafter, the cancellation shall be effective; and after the policy has been continued beyond its original term the Insured may cancel this policy at any time by written notice delivered or mailed to the Company effective upon receipt or on such later date as may be specified in the notice. In the event of cancellation, the Company will return promptly the unearned portion of any premium paid. If the Insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state insurance supervisory official in the state where the Insured resided when the policy was issued. If the Company cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.*

Provision 8 b:

CANCELLATION BY COMPANY: The Company may cancel this policy at any time by written notice delivered to the Insured, or mailed to his last address as shown by the records of the Company, stating when, no less than.....days thereafter, the cancellation shall be effective. In the event of cancellation, the Company will return promptly the unearned portion of any premium paid. The earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

In ~~Provision~~ Provisions 8 a and 8 b, a number no less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies shall be inserted between the words "than" and "days."

9. Provision 9:

CONFORMITY WITH STATE STATUTES: Any provision of this policy that on its effective date is in conflict with the laws of the state in which the Insured resides on that date is hereby amended to conform to the minimum requirements of the laws.

10. Provision 10:

ILLEGAL OCCUPATION: The Company will not be liable for any loss that results from the Insured's committing or attempting to commit a felony or from the Insured's engaging in an illegal occupation.

11. Provision 11:

INTOXICANTS AND NARCOTICS: The Company will not be liable for any loss resulting from the Insured's being drunk, or under the influence of any narcotic unless taken on the advice of a physician.