

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 315

An Act to amend and reenact §§ 38.2-4123, 38.2-4214, 38.2-4319, and 38.2-4509 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-1315.1, relating to actuarial statements.

[H 1186]

Approved March 31, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-4123, 38.2-4214, 38.2-4319, and 38.2-4509 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 38.2-1315.1 as follows:

§ 38.2-1315.1. Actuarial statements of opinion, reports, memoranda, and summaries.

A. Effective December 31, 2004, and except as otherwise provided by this section or Article 3 (§ 38.2-3126 et seq.) of Chapter 31 of this title, every insurer doing business in the Commonwealth shall annually submit an actuarial opinion that has been prepared by an appointed actuary and that satisfies at a minimum the standards set forth in the appropriate National Association of Insurance Commissioners (NAIC) annual statement instructions.

B. Every insurer domiciled in the Commonwealth that is required to submit an actuarial opinion pursuant to subsection A of this section or § 38.2-3127.1 shall annually submit a summary of opinion or issues, also written by the insurer's appointed actuary, and, at the request of the Commission, shall submit underlying work papers and an actuarial report or memorandum that satisfies the minimum standards set forth in the appropriate NAIC annual statement instructions and complies with all additional standards or requirements established by statute or by the Commission in accordance with the provisions of this section or Article 3 (§ 38.2-3126 et seq.) of Chapter 31 of this title. A company licensed but not domiciled in the Commonwealth shall provide such summary, work papers, report, and memorandum upon request of the Commission. Any summary, work papers, report, or memorandum filed in accordance with the appropriate NAIC annual statement instructions shall be considered as a document supporting the actuarial opinion required by subsection A of this section or § 38.2-3127.1.

C. If the insurer fails to provide supporting work papers or a required report or memorandum at the request of the Commission, or the Commission determines that the work papers or report or memorandum are unacceptable, the Commission may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and to prepare supporting work papers, or a report or memorandum.

D. The appointed actuary shall not be liable for damages to any person, other than the insurer and the Commission for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the actuary.

E. An actuarial opinion provided with the annual statement in accordance with the appropriate NAIC annual statement instructions shall be open to public inspection in accordance with § 38.2-1306.

F. Documents, materials, or other information in the possession or control of the Commission that are considered an actuarial report, work papers, a summary of opinion or issues, or an actuarial opinion report or memorandum provided in support of the opinion, and any other material provided by the insurer to the Commission in connection with the report, work papers, or summary, shall be confidential by law and privileged, shall not be subject to inspection or review by the general public, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, this provision shall not be construed to limit the Commission's authority to release the documents to any actuarial board established for counseling or discipline so long as the material is required for the purpose of professional disciplinary proceedings and such board establishes procedures satisfactory to the Commission for preserving the confidentiality of the documents. Moreover, the Commission is authorized to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the Commission's official duties.

1. Neither the Commission nor any person who received documents, materials, or other information while acting under the authority of the Commission shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to this subsection.

2. In order to assist in the performance of the Commission's duties under this section, the Commission:

a. May share documents, material, or other information, including the confidential and privileged documents, materials, or information subject to this subsection, with other state, federal, and international regulatory agencies, with the NAIC, its affiliates, or subsidiaries, and with state, federal,

and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information.

b. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC, its affiliates, or subsidiaries and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

G. The Commission may waive or modify submission requirements for a foreign insurer that has been exempted by its domiciliary commissioner from filing an actuarial opinion under a substantially similar law in its state of domicile. The Commission may modify requirements in any year for an insurer that makes application, with good cause shown, for exemption due to the nature of business written or the size and volume of business activity, or because the insurer is under supervision or an order of conservation, or if the imposition of an annual filing requirement would create a financial hardship.

§ 38.2-4123. Exemptions.

Except as herein provided, societies shall be governed by this chapter and §§ 38.2-100 through 38.2-134, Chapters 2 through 9, §§ 38.2-1300 through 38.2-1315, 38.2-1315.1, and 38.2-1317 through 38.2-1340, Chapters 14, 15 and 18, §§ 38.2-3100 through 38.2-3125, 38.2-3127.1 and 38.2-3300 through 38.2-3317, Chapter 34, §§ 38.2-3500 through 38.2-3520, Chapter 36, and Chapter 52 (§ 38.2-5200 et seq.) and shall be exempt from all other provisions of this title unless expressly designated therein, or unless they are specifically made applicable by this chapter.

§ 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, 38.2-209 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, 38.2-1315.1, 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, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 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 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and § 38.2-5903 of this title shall apply to the operation of a plan.

§ 38.2-4319. 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, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 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.), §§ 38.2-1017 through 38.2-1023, 38.2-1057, ~~Articles~~ Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§§ 38.2-1316.1 et seq.), 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, 38.2-3411.3, 38.2-3411.4, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.12, 38.2-3418.14, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 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 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and § 38.2-5903 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.

E. For purposes of applying this section, "insurer" when used in a section cited in subsection A of this section shall be construed to mean and include "health maintenance organizations" unless the section cited clearly applies to health maintenance organizations without such construction.

§ 38.2-4509. Application of certain laws.

A. No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-316, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-900 through 38.2-904, 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, 38.2-1315.1, Article 4 (§ 38.2-1317 et seq.) of Chapter 13, §§ 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3407.10, 38.2-3407.13, 38.2-3407.14, 38.2-3407.15, 38.2-3415, 38.2-3541, 38.2-3600 through 38.2-3603, Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and § 38.2-5903 of this title shall apply to the operation of a plan.

B. The provisions of subsection A of § 38.2-322 shall apply to an optometric services plan. The provisions of subsection C of § 38.2-322 shall apply to a dental services plan.

C. The provisions of Article 1.2 (§ 32.1-137.7 et seq.) of Chapter 5 of Title 32.1 shall not apply to either an optometric or dental services plan.