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HOUSE BILL NO. 935

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact § 38.2-4319 and 38.2-4214 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 34 of Title 38.2 an article numbered 2.1, consisting of sections numbered 38.2-3419.2 through 38.2-3419.8, relating to state-mandated health benefits.

Patrons—Marshall, D.W., Albo, Byron, Cosgrove, Drake, Hargrove, Hogan, Hugo, Hurt, May, Nixon, O'Bannon, Oder, Saxman, Sherwood, Ware, R.L. and Wright

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-4319 and 38.2-4214 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 34 of Title 38.2 an article numbered 2.1, consisting of sections numbered 38.2-3419.2 through 38.2-3419.8, as follows:

*Article 2.1.**Consumer Choice Benefits Plan Act.**§ 38.2-3419.2. Definitions.**As used in this article:*

"Consumer choice benefits plan" means an accident or sickness insurance policy or plan, issued on either an individual or group basis, that, in whole or in part, does not offer or provide state-mandated health benefits, but that provides creditable coverage as defined in § 38.2-3431. Consumer choice benefits plan includes any such plan offered by a health services plan or health maintenance organization.

"State-mandated health benefits" means coverage required under this title or other laws of the Commonwealth to be provided in an individual or group policy for accident and sickness insurance or a contract for a health-related condition that:

- 1. Includes coverage for specific health care services or benefits;*
- 2. Places limitations or restrictions on deductibles, coinsurance, copayments, or any annual or lifetime maximum benefit amounts; or*
- 3. Includes a specific category of licensed health care practitioner from whom an insured is entitled to receive care. For purposes of this article, "state-mandated health benefits" does not include benefits that are mandated by federal law or standard provisions or rights required under this title or other laws of the Commonwealth to be provided in an individual, or group policy for accident and sickness insurance that are unrelated to specific health illnesses, injuries, or conditions of an insured.*

§ 38.2-3419.3. Consumer choice benefits plans authorized; minimum requirement.

A. An insurer, health services plan, or health maintenance organization may offer one or more consumer choice benefits plans.

B. Any consumer choice benefits plan shall include:

- 1. Coverage for services of providers pursuant to §§ 38.2-3408 and 38.2-3410.*
- 2. Coverage of cancer screenings pursuant to §§ 38.2-3418.1, 38.2-3418.1:2, 38.2-3418.7, and 38.2-3418.7:1.*
- 3. The prohibition against discrimination in § 38.2-508.4.*
- 4. The certificate of quality assurance requirements set forth in to § 32.1-137.2.*
- 5. Coverage of newborn, adopted, and dependent children pursuant to §§ 38.2-3409, 38.2-3411, and 38.2-3411.2.*
- 6. The offer of coverage pursuant to §§ 38.2-3411.1 and 38.2-3414.*
- 7. Coverage of mental health and substance abuse services pursuant to §§ 38.2-3412.1 and 38.2-3412.1:01.*
- 8. Coverage for diabetes pursuant to § 38.2-3418.10.*
- 9. The option relating to conversion coverage pursuant to § 38.2-3416 in consumer choice benefits plans issued on a group basis.*

§ 38.2-3419.4. Notice to policyholder or plan participant.

A. Each written application for participation in a consumer choice benefits plan shall contain the following language at the beginning of the document in bold type:

NOTICE

You have the option to choose this consumer choice benefits plan or health maintenance organization plan that, either in whole or in part, does not provide state-mandated health benefits

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58 *normally required in accident and sickness insurance policies or health maintenance organization*
59 *plans in Virginia. This consumer choice benefits plan may provide a more affordable health*
60 *insurance policy or plan for you although, at the same time, it may provide you with fewer health*
61 *benefits than those normally included as state-mandated health benefits in policies in Virginia. If you*
62 *choose this consumer choice benefits plan, please consult with your insurance agent or health*
63 *maintenance organization to discover which state-mandated health benefits are excluded in this*
64 *policy.*

65 *B. Each consumer choice benefits plan shall contain the following language at the beginning of the*
66 *document in bold type.*

67 *This consumer choice benefits plan or health maintenance organization plan, either in whole or in*
68 *part, does not provide state-mandated health benefits normally required in accident and sickness*
69 *insurance policies or health maintenance plans in Virginia. This consumer choice benefits plan may*
70 *provide a more affordable health insurance policy or plan for you although, at the same time, it may*
71 *provide you with fewer health benefits than those normally included as state-mandated health benefits*
72 *in policies in Virginia. Please consult with your insurance agent or health maintenance organization*
73 *to discover which state-mandated health benefits are excluded in this policy or plan.*

74 *§ 38.2-3419.5. Disclosure statement.*

75 *A. An insurer, health services plan, or health maintenance organization providing a consumer choice*
76 *benefits plan shall provide a proposed or current policyholder or plan participant with a written*
77 *disclosure statement that:*

78 *1. Acknowledges that the consumer choice benefits plan being purchased does not provide some or*
79 *all state-mandated health benefits;*

80 *2. Lists those state-mandated health benefits not included under the consumer choice benefits plan;*
81 *and*

82 *3. If the consumer choice benefits plan is issued to an individual policyholder, provides a notice that*
83 *purchase of the plan may limit the policyholder's future coverage options in the event the policyholder's*
84 *health changes and needed benefits are not available under the consumer choice benefits plan.*

85 *B. Each applicant for initial coverage and each policyholder on renewal of coverage shall sign the*
86 *disclosure statement provided by the insurer, health services plan, or health maintenance organization*
87 *under subsection A of this section and return the statement to the insurer, health services plan, or health*
88 *maintenance organization. Under a group policy or contract, the term "applicant" means the employer.*

89 *C. An insurer, health services plan, or health maintenance organization shall:*

90 *1. Retain the signed disclosure statement in the insurer's, health services plan's, or health*
91 *maintenance organization's records; and*

92 *2. On request from the Commissioner, provide the signed disclosure statement to the Bureau of*
93 *Insurance.*

94 *§ 38.2-3419.6. Commission may adopt rules.*

95 *The Commission may adopt rules as necessary to implement this article.*

96 *§ 38.2-3419.7. Additional policies.*

97 *An insurer or health services plan that offers one or more consumer choice benefits plans under this*
98 *article shall also offer at least one accident or sickness insurance policy with state-mandated health*
99 *benefits that is otherwise authorized by this title. A health maintenance organization that offers one or*
100 *more consumer choice benefits plans under this section shall also offer at least one evidence of*
101 *coverage that provides state-mandated health benefits and that is otherwise authorized by this title.*

102 *§ 38.2-3419.8. Premium rates.*

103 *1. Premium rates for consumer choice benefits plans issued as individual health insurance coverage*
104 *shall be subject to review and approval by the Commission to the same extent as other individual health*
105 *insurance coverage issued by the insurer, health services plan, or health maintenance organization.*

106 *2. Premium rates for consumer choice benefits plans issued as group health insurance coverage shall*
107 *be filed for informational purposes.*

108 *3. Except as stated above, nothing in this section shall be construed as granting the Commission any*
109 *power or authority to determine, fix, prescribe, or promulgate the rates to be charged for any individual*
110 *or group plan issued pursuant to this article.*

111 *§ 38.2-4214. Application of certain provisions of law.*

112 *No provision of this title except this chapter and, insofar as they are not inconsistent with this*
113 *chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-230,*
114 *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*
115 *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,*
116 *38.2-1018, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.) and 2*
117 *(§ 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,*
118 *38.2-1340, 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3400, 38.2-3401,*
119 *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, *Article 2.1* (§ 38.2-3419.2 *et seq.*) of Chapter 34, 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. (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, 38.2-136, 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 2 (§ 38.2-1306.2 *et seq.*), 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, *Article 2.1* (§ 38.2-3419.2 *et seq.*) of Chapter 34, 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.