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## SENATE BILL NO. 224

Offered January 14, 2004

Prefiled January 13, 2004

*A BILL to amend and reenact § 38.2-3405 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 54.1-2963.1 relating to physician disclosure of medical treatment options.*

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Patron—Marsh

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Referred to Committee on Education and Health

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

**1. That § 38.2-3405 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 54.1-2963.1 as follows:**

§ 38.2-3405. Certain subrogation provisions and limitations upon recovery in hospital, medical, etc., policies forbidden; limitations on disclosure of medical treatment options prohibited.

A. No insurance contract providing hospital, medical, surgical and similar or related benefits, and no subscription contract or health services plan delivered or issued for delivery or providing for payment of benefits to or on behalf of persons residing in or employed in this Commonwealth shall contain any provision providing for subrogation of any person's right to recovery for personal injuries from a third person.

B. No such contract, subscription contract or health services plan shall contain any provision requiring the beneficiary of any such contract or plan to sign any agreement to pay back to any company issuing such a contract or creating a health services plan any benefits paid pursuant to the terms of such contract or plan from the proceeds of a recovery by such a beneficiary from any other source; provided, that this provision shall not prohibit an exclusion of benefits paid or payable under workers' compensation laws or federal or state programs, nor shall this provision prohibit coordination of benefits provisions when there are two or more such accident and sickness insurance contracts or plans providing for the payment of the same benefits. Coordination of benefits provisions may not operate to reduce benefits because of any benefits paid, payable, or provided by any liability insurance contract or any benefits paid, payable, or provided by any medical expense or medical payments insurance provided in conjunction with liability coverage.

C. No insurance contract providing hospital, medical, surgical and similar or related benefits, and no subscription contract or health services plan delivered or issued for delivery or providing for payment of benefits to or on behalf of persons residing in or employed in this Commonwealth shall contain any provision limiting, restricting, or prohibiting a physician from disclosing fully all medical treatment options to patients whether or not such treatment options are (i) experimental or covered services, (ii) services that the health insurer will not authorize, or (iii) the costs of the treatment will be borne by the health insurer or the patient to facilitate an informed decision by the patient, if the physician determines that such an option is in the best interest of the patient. For the purposes of this subsection, "medical treatment options" means any alternative or experimental therapeutic, psychiatric, medical treatment or procedure, health care service, drug, or remedy.

ED. Whenever benefits paid or payable under workers' compensation are excluded from coverage under the terms of any such contract, subscription contract or health services plan, the issuer thereof shall not exclude coverage for any medical condition pursuant to such exclusion if (i) an award of the Workers' Compensation Commission pursuant to § 65.2-704 denies compensation benefits relating to such medical condition and no request for review of such award is made pursuant to and within the time prescribed by § 65.2-705 or (ii) an award of the Workers' Compensation Commission, after review by the full Commission pursuant to § 65.2-705, denies compensation benefits relating to such medical condition. Following the entry of a workers' compensation award pursuant to clause (i) or (ii) having the effect of prohibiting the application of any such exclusion, the issuer shall immediately provide coverage for such medical condition to the extent otherwise covered under the contract, subscription contract or health services plan. If, upon appeal to the Court of Appeals or the Supreme Court, such medical condition is held to be compensable under the Virginia Workers' Compensation Act (Title 65.2), the issuer may recover from the applicable employer or workers' compensation insurance carrier the costs of coverage for medical conditions found to be compensable under the Act.

§ 54.1-2963.1. Disclosure of medical treatment options.

Any physician shall have the authority to disclose fully all medical treatment options to patients whether or not such treatment options are (i) experimental or covered services, (ii) services that the

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59 *health insurer will not authorize, or (iii) the costs of the treatment will be borne by the health insurer*  
60 *or the patient to facilitate an informed decision by the patient, if the physician determines that such an*  
61 *option is in the best interest of the patient. Any physician who discloses information concerning other*  
62 *medical treatment options to a person with whom he has established a physician-patient relationship*  
63 *shall not be liable for any civil damages resulting from the disclosure of such information.*

64 *For the purposes of this section, "medical treatment options" means any alternative or experimental*  
65 *therapeutic, psychiatric, medical treatment or procedure, health care service, drug, or remedy.*