

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 427

An Act to amend and reenact §§ 38.2-4214, 38.2-4319, and 38.2-4509 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 35 of Title 38.2 an article numbered 5, consisting of sections numbered 38.2-3551 through 38.2-3555, relating to small employer health insurance pooling.

[H 761]

Approved March 31, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 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 in Chapter 35 of Title 38.2 an article numbered 5, consisting of sections numbered 38.2-3551 through 38.2-3555, as follows:

Article 5.

Small Employer Health Insurance Pooling.

§ 38.2-3551. Definitions.

As used in this article:

"Eligible dependent" means an individual who may be covered as a dependent under a group health policy or policies and who is eligible, as determined by a small employer health group cooperative, for coverage as a dependent of an eligible employee under a group health policy or policies issued to or through such small employer health group cooperative.

"Eligible employee" means an employee who works for a small employer on a full-time basis, has a normal work week of 30 or more hours, has satisfied applicable waiting period requirements, and is not a part-time, temporary, or substitute employee.

"Employer-member" means a small employer participating in a small employer health group cooperative.

"Group health policy" or "policy" means a group insurance policy providing hospital, medical and surgical or major medical coverage on an expense-incurred basis, a group accident and sickness insurance policy or subscription contract, and a group health care plan for health care services or limited health care services provided by a health maintenance organization. For the purposes of this article, a group health policy or policy shall also mean a policy or plan provided by a dental or optometric services plan, dental plan organization, and a health maintenance organization offering limited health care services as defined in § 38.2-4300.

"Health insurance issuer" or "issuer" means a company authorized to issue coverage under Article 3 (§ 38.2-3521.1 et seq.) of Chapter 35, Chapter 42 (§ 38.2-4200 et seq.), Chapter 43 (§ 38.2-4300 et seq.), Chapter 45 (§ 38.2-4500 et seq.), or Chapter 61 (§ 38.2-6100 et seq.) of this title.

"Health status-related factor" means the following in relation to the individual or a dependent eligible for coverage under a group health plan or health insurance coverage offered by a health insurance issuer:

1. Health status;
2. Medical condition, including both physical and mental illnesses;
3. Claims experience;
4. Receipt of health care;
5. Medical history;
6. Genetic information;
7. Evidence of insurability, including conditions arising out of acts of domestic violence; or
8. Disability.

"Service area" means the geographic area within which a health insurance issuer is authorized to sell a group health policy or policies.

"Small employer" means, in connection with a group health policy with respect to a calendar year and a plan year, an employer who employed an average of at least two but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.

"Small employer health group cooperative" or "cooperative" means an entity authorized by its employer-members to negotiate with health insurance issuers on their behalf as to the terms, including premium rates, under which a group health policy or policies may be issued, providing coverage for the eligible employees of such employer-members and their eligible dependents.

§ 38.2-3552. Small employer health group cooperatives.

A. 1. Any person or persons may organize and maintain a small employer health group cooperative for the purpose of offering, providing, or facilitating the provision of coverage for health care services

to its employer-members.

2. The membership of the small employer health group cooperative shall consist only of small employers. To participate as an employer-member of a small employer health group cooperative, an employer shall be a small employer.

3. A person or persons organizing a small employer health group cooperative and the small employers who propose to become employer-members of such cooperative shall jointly execute a small employer health group cooperative agreement. Such agreement shall identify the duties, rights and obligations of the parties, and may include terms addressing (i) the length of time an employer-member shall be enrolled through the cooperative and (ii) the conditions under which an employer-member may withdraw from the cooperative. If a small employer health group cooperative opts to be deemed the policyholder under subdivision 1 a of subsection B of this section, the small employer health group cooperative agreement shall include provisions addressing the collection of funds from employer-members for the payment of all premiums due under the group health policy. Such provisions shall specifically address all rights and obligations of each employer-member within the cooperative when one or more employer-members fails to remit its respective share of any premium due. Such provisions shall also describe the circumstances under which the group health policy will lapse for nonpayment of premiums and shall identify the grace period requirements applicable to group accident and sickness insurance, pursuant to § 38.2-3527. Nothing in this subsection nor in the small employer health group cooperative agreement shall preclude or operate to prevent enforcement by the issuer of the provisions of the group health policy addressing the payment of premiums and termination of the policy due to nonpayment of premium.

B. A small employer health group cooperative shall be treated as, and given the same consideration and privileges as, a single entity for purposes of negotiating the terms, including premium rates, under which coverage may be issued or provided to the employer-members of the cooperative by a health insurance issuer proposing to issue a group health policy or policies for such purpose covering employer-members of the cooperative within the service area of the issuer, as follows:

1. At the option of the small employer health group cooperative, the cooperative shall either:

a. Be deemed the policyholder of such group health policy or policies covering its employer-members within the service area of the issuer; or

b. Be deemed only a sponsoring entity facilitating the acquisition of separate group health policies for its employer-members within the service area of the issuer, which may be made available through the cooperative by the issuer at terms mutually agreed upon by the cooperative and the issuer; and

2. A small employer health group cooperative opting to be deemed the policyholder under subdivision 1 a of this subsection shall obtain authorization acceptable to the health insurance issuer from each of its employer-members to act on behalf of the employer-members in this capacity. Such authorization:

a. Shall be included in the terms of the agreement referenced in subdivision 3 of subsection A;

b. Shall identify the specific representatives of the cooperative who shall be permitted to enter into insurance contracts on behalf of the employer-members; and

c. Shall specify the extent and limits of such authority.

C. To the extent that the activities of the cooperative or its representatives constitute selling, soliciting, or negotiating contracts of insurance, as those terms are defined in § 38.2-1800, the provisions of Chapter 18 (§ 38.2-1800 et seq.) of this title shall apply.

D. To the extent a small employer health group cooperative is a multiple employer welfare arrangement as that term is defined in regulations promulgated pursuant to § 38.2-3420, it shall be subject to all provisions of this title to the extent that such provisions are applicable to multiple employer welfare arrangements.

§ 38.2-3553. Membership in a small employer health group cooperative.

A. A small employer health group cooperative:

1. Shall not limit, restrict, or condition a small employer's membership in the small employer health group cooperative on any health status-related factor relating to an individual, including an employee of a small employer or a dependent of an employee; and

2. Shall make group health policies offered through the small employer health group cooperative available to all eligible employees of its employer-members and their eligible dependents, regardless of any health status-related factor relating to individuals eligible for coverage through a member.

B. Notwithstanding subdivision 2 of subsection A, nothing in this article shall be construed as requiring (i) an issuer to provide coverage outside its service area or (ii) a small employer health group cooperative to make such coverage available to employer-members located outside the service area of the issuer.

C. A small employer health group cooperative shall not make group health policies offered through the cooperative available other than to the eligible employees of its employer-members and their eligible dependents.

§ 38.2-3554. Provisions relating to health insurance issuers.

A. No group health policy shall be offered to a small employer group health cooperative that will

cover a resident of the Commonwealth unless the Commission finds that:

1. The issuance of such group health policy is not contrary to Virginia's public policy and is in the best interest of the citizens of the Commonwealth;

2. The issuance of the group health policy would result in economies of acquisition or administration; and

3. The benefits are reasonable in relation to the premiums charged.

B. Issuers filing policy forms seeking approval under the provisions of this subsection shall provide with the forms a certification, signed by the officer of the company with the responsibility for forms compliance, in which the company certifies that each such policy form will be issued only when the requirements set forth in subdivisions 1 through 3 of subsection A have been satisfied.

C. If a small employer health group cooperative has elected, under subdivision B 1 a of § 38.2-3552, to be deemed the policyholder of a group health policy covering the eligible employees and eligible dependents of its employer-members within the service area of an issuer and has furnished the authorization required under subdivision B 2 of § 38.2-3552, the issuer of such policy shall deem the small employer health group cooperative to be the policyholder in all respects permissible under applicable state and federal laws and regulations.

D. If a small employer health group cooperative has elected, under subdivision B 1 b of § 38.2-3552, to be deemed only a sponsoring entity facilitating the acquisition of separate group health policies for its employer-members within the service area of an issuer, the issuer shall issue a separate policy to each such employer-member of the cooperative. Each such policy shall conform to the benefit and premium specifications and other policy terms mutually agreed upon by the issuer and the small employer health group cooperative in accordance with subsection B of § 38.2-3552.

E. An issuer providing a group health policy or policies to or through a small employer health group cooperative shall make such policy or policies available to every eligible employee of an employer-member within its service area who applies for such policy or policies, and their eligible dependents, subject to an individual employee's right to reject coverage in writing. No coverage may be offered only to certain eligible employees or their eligible dependents, and no eligible employees or their eligible dependents may be excluded or charged additional premiums, because of health status-related factors.

F. The premiums for the policy or policies issued to or through a small employer health group cooperative shall be paid from funds contributed by the small employer health group cooperative, its employer-members, or both; or from funds contributed by the covered persons, or from both the covered persons and the employer-members or small employer health group cooperative.

§ 38.2-3555. Authority of the Commission.

Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and regulations as it may deem necessary to implement this article.

§ 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, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, §§ 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, 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, 38.2-3412.1:01, 38.2-3414.1, 38.2-3418.1 through 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,

38.2-3540.1, 38.2-3542, 38.2-3543.2, *Article 5* (§ 38.2-3551 *et seq.*) of Chapter 35, 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, *Article 5* (§ 38.2-3551 *et seq.*) of Chapter 35, §§ 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.