

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 488

An Act to amend and reenact §§ 38.2-1306.1, 38.2-1320.5, and 38.2-4319 of the Code of Virginia, relating to the confidentiality of financial analyses of insurance companies.

[H 2394]

Approved March 19, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1306.1, 38.2-1320.5, and 38.2-4319 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1306.1. Insurance companies' analyses confidential.

A. All regulatory or financial analyses, ratios and examination synopses concerning insurance companies or insurance transactions that are submitted to the Commission by the National Association of Insurance Commissioners (NAIC), including information generated by any NAIC databases developed for use by regulators, ~~are not open to public inspection and shall receive confidential treatment by the Commission~~ *shall be given confidential treatment, are not subject to subpoena, and may not be made public by the Commission or any other person.*

B. Financial analyses and test ratios generated by the Commission, pursuant to the NAIC's Insurance Regulatory Information System (IRIS) or Financial Analysis and Solvency Tracking (FAST) System, any successor program, or any similar program developed by the Commission, ~~are not public records, shall not be subject to subpoena, and shall receive confidential treatment~~ *shall be given confidential treatment, are not subject to subpoena, and may not be made public by the Commission or any other person.*

C. *All working papers, recorded information, documents and copies thereof produced by, obtained by, or disclosed to the Commission or any other person pursuant to this article shall be given confidential treatment, are not subject to subpoena, and may not be made public by the Commission or any other person, except to the extent provided in § 38.2-1306.*

D. Notwithstanding other provisions to the contrary, nothing contained in this chapter shall prevent or be construed as prohibiting the Commission from disclosing otherwise confidential information, administrative or judicial orders, or the content of any analysis or any matter related thereto, at any time to (i) a regulatory official of any state or country; (ii) the NAIC, its affiliate or its subsidiary; or (iii) a law-enforcement authority of any state or country, provided that those officials are required under their law to maintain its confidentiality. Any such disclosure by the Commission shall not constitute a waiver of confidentiality of any such documents or information. *Any parties receiving such papers shall agree in writing prior to receiving the information to provide it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.*

Ð E. Documents or information received from the insurance regulatory officials of any state or country which are confidential in those jurisdictions are not open to public inspection and shall receive confidential treatment by the Commission.

§ 38.2-1320.5. Confidentiality of ancillary information.

All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the Commission or any other person in the course of an examination made under this article shall be given confidential treatment, are not subject to subpoena, and may not be made public by the Commission or any other person, except to the extent provided in § 38.2-1320.4. Access may also be granted to (i) a regulatory official of any state or country; (ii) the NAIC, its affiliate or its subsidiary; or (iii) a law-enforcement authority of any state or country, *provided that those officials are required under their law to maintain its confidentiality.* Any such disclosure by the Commission shall not constitute a waiver of confidentiality of such papers, recorded information, documents or copies thereof. Any parties receiving such papers must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

§ 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.), § 38.2-1306.1, § 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. For plans administered by the Department of Medical Assistance Services that provide benefits pursuant to Title XIX or Title XXI of the Social Security Act, as amended, 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, 38.2-322, 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, § 38.2-1306.1, 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, §§ 38.2-3401, 38.2-3405, 38.2-3407.2 through 38.2-3407.5, 38.2-3407.6 ~~through and 38.2-3407.6:1, 38.2-3407.9 through, 38.2-3407.9:01, and 38.2-3407.09:02~~, subdivisions 1, 2, and 3 of subsection F of § 38.2-3407.10, 38.2-3407.11, 38.2-3407.11:3, 38.2-3407.13 ~~through, 38.2-3407.13:1, and 38.2-3407.14~~, 38.2-3411.2, 38.2-3418.1, 38.2-3418.2, 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, 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 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.

C. 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.

D. 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.

E. 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.

F. For purposes of applying this section, "insurer" when used in a section cited in subsections A and B 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.