

# VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

## CHAPTER 579

*An Act to amend and reenact § 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 10 of Title 38.2 an article numbered 2.1, consisting of a section numbered 38.2-1016.1, relating to the conversion of health maintenance organizations to accident and sickness insurers.*

[S 1303]

Approved March 19, 2007

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

**1. That § 38.2-4319 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 10 of Title 38.2 an article numbered 2.1, consisting of a section numbered 38.2-1016.1, as follows:**

### *Article 2.1.*

#### *Conversion of Health Maintenance Organization to Accident and Sickness Insurer.*

*§ 38.2-1016.1. Conversion of a health maintenance organization to an accident and sickness insurer.*

*A. Any health maintenance organization domiciled in the Commonwealth and subject to the provisions of Chapter 43 (§ 38.2-4300 et seq.) may, at its option and without reincorporation, convert to an insurer licensed to write accident and sickness insurance, hereinafter referred to as the "converted insurer," by following the procedures set forth in this section. A health maintenance organization that becomes a converted insurer under this section shall have all of the rights to and titles and interests in the assets of the original health maintenance organization, as well as all of its liabilities and obligations.*

*B. A health maintenance organization eligible to become a converted insurer under subsection A may effect such conversion by (i) complying with the requirements for formation of a domestic insurer under Article 1 (§ 38.2-1000 et seq.); (ii) promptly filing with the Commission any necessary amendments to its articles of incorporation, bylaws, and other corporate documents pursuant to the provisions of Chapter 9 (§ 13.1-601 et seq.) of Title 13.1; and (iii) filing with the Commission such other information as the Commission may require to meet all of the requirements of an insurer in Virginia. When those requirements have been met, the Commission shall issue a license in accordance with the provisions of Article 5 (§ 38.2-1024 et seq.) to permit the converted insurer to conduct the business of accident and sickness insurance in the Commonwealth. Upon the issuance of the converted insurer's license, and except as provided in this section, the converted insurer shall be subject to all of the provisions of this title that pertain to insurers licensed pursuant to Article 5 (§ 38.2-1024 et seq.) of this chapter and the business of accident and sickness insurance.*

*C. After the effective date of the health maintenance organization's conversion to and licensure as an insurer, all of the converted insurer's individual and group health care plans, contracts, and evidences of coverage shall remain valid and in force in accordance with their terms until the earlier of (i) the expiration or termination of the plans, contracts, or evidences of coverage; or (ii) the last day of the eighteenth month after the effective date of conversion. For the period during which the converted insurer continues to provide or arrange for health care services under such health care plan or plans, the insurer's obligation to pay license taxes under Chapter 25 (§ 58.1-2500 et seq.) of Title 58.1 and fees for maintaining the Bureau of Insurance under Chapter 4 (§ 38.2-400 et seq.), which are, in all cases, attributable to such health care plan or plans, shall be the same as the license taxes and fees required of health maintenance organizations generally.*

*D. Except as provided herein, a converted insurer shall not, after the effective date of its conversion, use in its accident and sickness insurance policies, contracts or other literature (i) the words "health maintenance organization" or "HMO" or (ii) any other words descriptive of a health maintenance organization or deceptively similar to the name or description of any health maintenance organization then doing business in the Commonwealth in any manner that misrepresents the benefits, advantages, conditions, or terms of the converted insurer's insurance policies, contracts, or other literature.*

*E. For the purposes of handling the rehabilitation, liquidation, or conservation of a converted insurer, the provisions of Chapter 15 (§ 38.2-1500 et seq.) shall apply. Whenever an order has been entered pursuant to Chapter 15 authorizing the Commission or other receiver to proceed with the rehabilitation, liquidation, or conservation of a converted insurer, the Commission may utilize the provisions of §§ 38.2-4310, 38.2-4317, and 38.2-4317.1 to protect the interests of enrollees in the converted insurer's health care plans. If a receivership occurs in a converted insurer that continues to provide or arrange for health care services under such health care plan or plans, contracts, or policies, the receiver shall consider these plans, contracts, or policies as existing in the converted insurer. The Commission or other receiver appointed pursuant to Chapter 15 shall allocate the assets, liabilities, and*

*obligations of the insolvent converted insurer in the manner that the Commission or other receiver determines is fair and equitable to the insurer's accident and sickness insurance policyholders, health care plan enrollees, and other creditors. The accident and sickness insurance contracts and policies issued by the converted insurer shall be governed by the provisions applicable to the Virginia Life, Accident and Sickness Insurance Guaranty Association pursuant to Chapter 17 (§ 38.2-1700 et seq.). The health care plans, contracts, or policies of the converted insurer, associated with the business written as a health maintenance organization, shall be governed by the provisions of §§ 38.2-4310, 38.2-4317, and 38.2-4317.1.*

§ 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~~ 38.2-1016.1 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. 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~~ 38.2-1016.1 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, §§ 38.2-3401, 38.2-3405, 38.2-3407.2 through 38.2-3407.5, 38.2-3407.6 through 38.2-3407.6:1, 38.2-3407.9 through 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 38.2-3407.14, 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.