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## HOUSE BILL NO. 3138

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Education and Health  
on February 15, 2007)

(Patron Prior to Substitute—Delegate Hall)

A *BILL to amend and reenact § 32.1-325.2 of the Code of Virginia, relating to the Department of Medical Assistance Service's recovery of third party liability payments.*

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

**1. That § 32.1-325.2 of the Code of Virginia is amended and reenacted as follows:**

§ 32.1-325.2. Department is payor of last resort.

A. Insurers, including group health plans as defined in § 607(1) of the Employee Retirement Income Security Act of 1974, *self-insured plans*, health services plans, service benefit plans ~~and~~, health maintenance organizations, *managed care organizations*, *pharmacy benefits managers*, or other parties that are, by statute, contract, or agreement legally responsible for payment of a claim for a health care item or service, are prohibited from including any clause in health care contracts which would exclude enrolling an individual or in making any payment for benefits to the individual or on the individual's behalf for health care when the individual is eligible for medical assistance.

B. The Department of Medical Assistance Services shall be the payor of last resort to any insurer, including a group health plan as defined in § 607(1) of the Employee Retirement Income Security Act of 1974, *a self-insured plan*, a health services plan, a service benefit plan ~~and~~, a health maintenance organization, *a managed care organization*, *a pharmacy benefits manager*, or other party that is, by statute, contract, or agreement legally responsible for payment of a claim for a health care item or service ~~which contracts to pay health care costs~~ for persons eligible for medical assistance in the Commonwealth. *The above entities, as a condition of doing business in the Commonwealth, shall comply with the requirements set forth in 42 U.S.C. 1396a(a)(25)(I)(i)-(iv).*

C. To the extent the Department of Medical Assistance Services has made payment for medical services where a third party has a legal obligation to make payment for such services, the Commonwealth shall automatically acquire all rights to such payment from the third party.

D. To the extent the Department of Medical Assistance Services is permitted by law to obtain recoveries from third parties, actions at law for such recoveries shall be decided under the same laws, rules and standards including applicable bases of liability and defenses as would apply if the individual receiving the services had brought the action directly; provided that nothing herein shall affect the sovereign immunity of the Commonwealth.

E. The term "insurer" as used herein shall be deemed to include without limitation "insurance carriers."

SENATE SUBSTITUTE

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