090285508

HOUSE BILL NO. 2209

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact §§ 38.2-4214 and 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 34 of Title 38.2 an article numbered 2.1, consisting of sections numbered 38.2-3419.2 through 38.2-3419.10, relating to insurance policies to protect the uninsured.

Patron—Frederick

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-4214 and 38.2-4319 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 34 of Title 38.2 an article numbered 2.1, consisting of sections numbered 38.2-3419.2 through 38.2-3419.10, as follows:

Article 2.1.

Policies to Protect the Uninsured.

§ 38.2-3419.2. Definitions.

As used in this article:

"Dependent" means the spouse or child of a PTU-eligible individual, subject to the applicable terms of the policy, contract, or plan covering the PTU-eligible individual.

"Group health plan" means an employee welfare benefit plan (as defined in section 3 (1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (1)), to the extent that the plan provides medical care and includes items and services paid for as medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

"Health insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract.

"Health insurer" means any insurance company that issues accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis, a corporation that provides accident and sickness subscription contracts, or a health maintenance organization that provides a health care plan for health care services, which is licensed to engage in such business in the Commonwealth and which is subject to the laws of the Commonwealth that regulate insurance within the meaning of § 514 (b) (2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1144 (b) (2)).

"Protect the uninsured policy" or "PTU policy" means an insurance policy that provides PTU coverage, and includes any plan providing PTU coverage that is offered by a health services plan or health maintenance organization.

"PTU coverage" means coverage for such of the procedures, services, and other items provided under a group accident or sickness insurance policy or plan issued under any provision of this title other than this article, including any state-mandated health benefits, that the issuer of the PTU policy elects, in its sole discretion, to provide in a PTU policy.

"PTU-eligible individual" means an individual who is uninsured, is employed by a small employer, and has satisfied applicable waiting period requirements.

"Small employer" means, 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.

"State-mandated health benefits" means coverage required under this title or other laws of the Commonwealth to be provided in an individual or group policy for accident and sickness insurance or a contract for a health-related condition that (i) includes coverage for specific health care services or benefits; (ii) places limitations or restrictions on deductibles, coinsurance, copayments, or any annual or lifetime maximum benefit amounts; or (iii) includes a specific category of licensed health care practitioners from whom an insured is entitled to receive care. For purposes of this article, "state-mandated health benefits" does not include benefits that are mandated by federal law.

"Uninsured individual" means an individual who does not have, is not eligible for, and has not had at any time within the six months preceding the date of application for coverage under a policy

authorized by this article, either in his individual capacity or as a dependent of another person, coverage under any of the following:

1. A group health plan;

2. Health insurance coverage;

3. Part A or B of Title XVIII of the Social Security Act (42 U.S.C. § 1395c or § 1395);

4. Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), other than coverage consisting solely of benefits under section 1928;

5. Chapter 55 of Title 10, United States Code (10 U.S.C. § 1071 et seq.);

6. A medical care program of the Indian Health Service or of a tribal organization;

7. A federal employee health plan offered under Chapter 89 of Title 5, United States Code (5 U.S.C. § 8901 et seq.);

8. A public health plan, as defined in federal regulations; or

9. A health benefit plan under section 5 (e) of the Peace Corps Act (22 U.S.C. § 2504(e)).

In addition, "uninsured individual" includes any individual who does not have individual health insurance coverage on, and has not had individual health insurance coverage at any time within the six months preceding, the date of application for a PTU policy.

§ 38.2-3419.3. Offering PTU policies.

A. A health insurer may offer a PTU policy to small employers in the Commonwealth as provided in this article. If a PTU policy is offered to small employers in the Commonwealth, such policy shall be offered to all small employers. No coverage under this article shall exclude an employer based solely on the nature of the employer's business.

B. Prior to offering a PTU policy, an insurer shall determine the elements of the PTU coverage to be provided by the policy and shall provide the Commission with a description of the elements of the PTU coverage as required by subsection A of § 38.2-3419.5. A health insurer shall not change the elements of PTU coverage in its PTU policy more frequently than annually.

C. PTU policies shall not be offered to anyone other than a small employer in the Commonwealth.

§ 38.2-3419.4. Availability.

A. If a health insurer offers a PTU policy in the Commonwealth, the PTU policy shall be offered and made available to all the PTU-eligible individuals employed by the small employer purchasing such coverage and their dependents, including late enrollees, who apply for such coverage. No coverage may be offered only to certain PTU-eligible individuals or their dependents, and no PTU-eligible individuals or their dependents may be excluded or charged additional premiums because of health status.

B. Nothing in this article shall be construed to preclude a health insurer from establishing requirements relating to the minimum level or amount of employer contribution toward the premium for enrollment of PTU-eligible individuals or requirements relating to the minimum number of eligible employees that must be enrolled in relation to a specified percentage or number of eligible employees in connection with a PTU policy.

§ 38.2-3419.5. Form of policies.

A. All PTU policies issued to small employers shall use a policy form approved by the Commission. Coverages providing benefits greater than and in addition to the filed PTU policy may be provided by rider or separate policy or plan. A health insurer shall submit a description of the elements of the PTU coverage to be provided in the policy and all policy forms, including applications, enrollment forms, policies, subscription contracts, certificates, evidences of coverage, riders, amendments, endorsements, and disclosure forms to the Commission for approval in the same manner as required by § 38.2-316. Each rider or separate policy or plan providing benefits greater than the PTU policy may require a specific premium for the benefits provided in such rider or separate policy or plan. The premium for such riders shall be determined in the same manner as the premiums are determined for the PTU policy.

B. The Commission at any time may, after providing notice and an opportunity for a hearing to a health insurer, disapprove the continued use by the health insurer of a PTU policy on the grounds that such policy does not meet the requirements of this article.

§ 38.2-3419.6. Policy provisions.

A. A PTU policy may include cost-containment and cost-sharing features such as, but not limited to, utilization review of health care services including review of medical necessity of hospital and physician services; case management; selective contracting with hospitals, physicians, and other health care providers; reasonable benefit differentials applicable to providers that participate or do not participate in arrangements using restricted network provisions; co-payment, co-insurance, deductible, or other cost-sharing arrangements as those terms are defined in § 38.2-3407.12; or other managed care provisions.

B. PTU policies offered by health maintenance organizations shall contain benefits and cost-sharing levels that are consistent with the basic method of operation and benefit plans of federally qualified health maintenance organizations, if a health maintenance organization is federally qualified, and of

nonfederally qualified health maintenance organizations, if a health maintenance organization is not federally qualified.

C. No law requiring the coverage or offering of coverage of a benefit or provider pursuant to § 38.2-3408 or 38.2-4221 shall apply to PTU policies or riders thereof.

D. No health insurer is required to offer coverage or accept applications for PTU policies:

1. From a small employer already covered under a health benefit plan except for coverage that is to commence on the group's anniversary date, but this subsection shall not be construed to prohibit a group from seeking coverage, or a health insurer offering group health insurance coverage from issuing coverage, to a group prior to its anniversary date; or

2. If the Commission determines that acceptance of an application or applications would result in a reasonable expectation that the insurer's continued operation in the Commonwealth would be hazardous to policyholders, creditors, and the public in the Commonwealth.

§ 38.2-3419.7. Notices; disclosures.

A. Each written application for a PTU policy plan shall include a statement notifying the applicant that the PTU policy is not required to provide state-mandated health benefits normally required in accident and sickness insurance policies or health maintenance organization plans in Virginia.

B. A health insurer issuing a PTU policy shall provide to a proposed or current policyholder and to each plan participant a written disclosure statement that lists any state-mandated health benefits that the PTU policy does not provide.

C. Each applicant for initial coverage, and each policyholder on renewal of coverage, shall sign the disclosure statement provided by the health insurer, and return the statement to the health insurer.

D. The health insurer shall retain the signed disclosure statement in the insurer's records.

§ 38.2-3419.8. Premium rates.

Premium rates for PTU policies shall be filed for informational purposes. Nothing in this section shall be construed as granting the Commission any power or authority to determine, fix, prescribe, or promulgate the rates to be charged for any policy issued pursuant to this article.

§ 38.2-3419.9. Commission rules.

The Commission may adopt rules as necessary to implement this article.

§ 38.2-3419.10. Application of other laws.

Except as provided in this article, PTU policies shall be subject to the requirements of this title applicable to group accident and sickness insurance policies, accident and sickness subscription contracts, or health care plans for health care services. This article does not authorize the offering or sale of a health care plan for health care services without a state-mandated health benefit if the failure to include the state-mandated health benefit would result in the failure of the health care plan to provide basic health care services as defined in § 38.2-4300.

§ 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, *Article 2.1 (§ 38.2-3419.2 et seq.) of Chapter 34, §§* 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.), §§ 38.2-1016.1 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, *Article 2.1 (§ 38.2-3419.2 et seq.) of Chapter 34, §§* 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.), §§ 38.2-1016.1 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 and 38.2-3407.6:1, 38.2-3407.9, 38.2-3407.9:01, and 38.2-3407.9:02, 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, 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, *Article 2.1 (§ 38.2-3419.2 et seq.) of Chapter 34, §§* 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.