

VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

CHAPTER 503

An Act to amend and reenact § 38.2-3541 of the Code of Virginia, relating to conversion or continuation of group health coverage upon termination of eligibility.

[H 315]

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3541 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-3541. Continuation on termination of eligibility.

Each group hospital policy, group medical and surgical policy or group major medical policy delivered or issued for delivery in this Commonwealth or renewed, reissued or extended if already issued, shall contain, subject to the policyholder's selection, one of the options set forth in this section. ~~These options~~ *Option 1* shall apply if the insurance on a person covered under such a policy ceases because of the termination of the person's eligibility for coverage, prior to that person becoming eligible for Medicare or Medicaid benefits unless such termination is due to termination of the group policy under circumstances in which the insured person is insurable under other replacement group coverage or health care plan without waiting periods or preexisting conditions under the replacement coverage or plan. *Option 2* shall apply if the insurance on a person covered under such a policy that remains in force ceases because of the termination of the person's eligibility for coverage prior to that person becoming eligible for Medicare or Medicaid benefits. *Option 2* shall not be applicable if the group policyholder is required by federal law to provide for continuation of coverage under its group health plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

1. Option 1: To have the insurer issue him, without evidence of insurability, an individual accident and sickness insurance policy in the event that the insurer is not exempt under § 38.2-3416 and offers such policy, subject to the following requirements:

a. The application for the policy shall be made, and the first premium paid to the insurer within thirty-one days after ~~the termination~~ *issuance of the written notice required in subdivision 3, but in no event beyond the 60 day period following the date of the termination of the person's eligibility;*

b. The premium on the policy shall be at the insurer's then customary rate applicable: (i) to such policies, (ii) to the class of risk to which the person then belongs, and (iii) to his or her age on the effective date of the policy;

c. The policy will not result in over-insurance on the basis of the insurer's underwriting standards at the time of issue;

d. The benefits under the policy shall not duplicate any benefits paid for the same injury or same sickness under the prior policy;

e. The policy shall extend coverage to the same family members that were insured under the group policy; and

f. Coverage under this option shall be effected in such a way as to result in continuous coverage ~~during the thirty-one day period~~ *from the date of the insured's termination of eligibility for such insured if requested and paid for by the insured.*

2. Option 2: To have his present coverage under the policy continued for a period of ~~ninety days~~ *12 months* immediately following the date of the termination of the person's eligibility, without evidence of insurability, subject to the following requirements:

a. The application *and payment* for the extended coverage is made to the group policyholder ~~and the total premium for the ninety-day period is paid to the group policyholder prior to the termination within 31 days after issuance of the written notice required in subdivision 3, but in no event beyond the 60 day period following the date of the termination of the person's eligibility;~~

b. *Each premium for such extended coverage is timely paid to the group policyholder on a monthly basis during the twelve-month period;*

c. The premium for continuing the group coverage shall be at the insurer's current rate applicable to the group policy *plus any applicable administrative fee not to exceed two percent of the current rate;* and

d. Continuation shall only be available to an employee or member who has been continuously insured under the group policy during the entire three months' period immediately preceding termination of eligibility.

3. *The group policyholder shall provide each employee or other person covered under such a policy written notice of the availability of the option chosen and the procedures and timeframes for obtaining continuation or conversion of the group policy. Such notice shall be provided within 14 days of the policyholder's knowledge of the employee's or other covered person's loss of eligibility under the policy.*