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HOUSE BILL NO. 317

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 4, 2010)

(Patron Prior to Substitute—Delegate McClellan)

A *BILL to amend and reenact § 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3541.2, relating to enrollment in a group health insurance plan upon change in eligibility status under certain assistance programs; notices and disclosures.*

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 a section numbered 38.2-3541.2 as follows:

§ 38.2-3541.2. *Enrollment following change in eligibility status under assistance programs.*

A. *As used in this section, "assistance program" means the Commonwealth's medical assistance services program, established pursuant to § 32.1-325, or the Family Access to Medical Insurance Security Plan, established pursuant to § 32.1-351, including under any waiver or demonstration project conducted under or in relation thereto.*

B. *Any employer providing health insurance coverage for his employees under a group accident and sickness insurance policy, or subscription contract, or other evidence of coverage shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the policy, contract or plan, or a dependent of such an employee, if the dependent is eligible but not enrolled, for coverage under such terms, to enroll for coverage under the terms of the policy, contract or plan, if either of the following conditions is met:*

1. *The employee or dependent has received health insurance coverage under an assistance program, coverage of the employee or dependent under the assistance program is terminated as a result of loss of eligibility for such coverage, and the employee requests coverage under the group policy, contract or plan not later than 60 days after the date of termination of coverage under the assistance program; or*

2. *The employee or dependent becomes eligible under an assistance program for premium assistance for the purchase of coverage under the group policy, contract or plan, including contributions to the cost of employer-sponsored health insurance pursuant to subsection C of § 32.1-351.1, and the employee requests coverage under the group policy, contract or plan not later than 60 days after the date the employee or dependent is determined to be eligible for such premium assistance.*

C. *Any employer providing health insurance coverage for his employees under a group accident and sickness insurance policy, or subscription contract, or other evidence of coverage within the Commonwealth, shall provide to each employee a written notice informing the employee of premium assistance opportunities currently available for the employee or the employee's dependents through the Commonwealth's assistance programs. For purposes of compliance with this subsection, for employees residing within the Commonwealth, the employer may use a Virginia-specific model notice developed in accordance with section 701(f)(3)(B)(i)(II) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1181(f)(3)(B)(i)(II)). An employer may provide the Virginia-specific model notice concurrent with (i) the furnishing of materials notifying the employee of health plan eligibility; (ii) materials provided to the employee in connection with an open season or election process conducted under the plan; or (iii) the furnishing of the summary plan description as provided in section 104(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1024).*

D. *If an employee or the employee's dependents are covered under an assistance program and potentially eligible for premium assistance for the purchase of coverage under the employer's group health plan, the plan administrator of the group health plan shall disclose to the Department of Medical Assistance Services, upon request, information about the benefits available under the group health plan in sufficient specificity, as determined under regulations of the Secretary of Health and Human Services in consultation with the Secretary, that require use of the model coverage coordination disclosure form developed under § 311(b)(1)(C) of the Children's Health Insurance Program Reauthorization Act of 2009, so as to permit the Department of Medical Assistance Services to make a determination concerning the cost-effectiveness of the provision by the Commonwealth of contributions to the cost of employer-sponsored health insurance, through premium assistance for the purchase of coverage under such group health plan, and in order for the Department of Medical Assistance Services to provide any required supplemental benefits under an assistance program.*

§ 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*

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60 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.),
61 §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1306.1,
62 § 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
63 Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800
64 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
65 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
66 through 38.2-3418.15, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, subdivision 13 of
67 § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through
68 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3541.1, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Article 5
69 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.),
70 Chapter 58 (§ 38.2-5800 et seq.) and § 38.2-5903 of this title shall be applicable to any health
71 maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer
72 or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42
73 (§ 38.2-4200 et seq.) of this title except with respect to the activities of its health maintenance
74 organization.

75 B. For plans administered by the Department of Medical Assistance Services that provide benefits
76 pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title
77 except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136,
78 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,
79 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
80 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,
81 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
82 seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et
83 seq.) of Chapter 14, §§ 38.2-3401, 38.2-3405, 38.2-3407.2 through 38.2-3407.5, 38.2-3407.6 and
84 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
85 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,
86 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,
87 subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1
88 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Chapter 52
89 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and § 38.2-5903
90 shall be applicable to any health maintenance organization granted a license under this chapter. This
91 chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with
92 the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) of this title except with respect to the activities of
93 its health maintenance organization.

94 C. Solicitation of enrollees by a licensed health maintenance organization or by its representatives
95 shall not be construed to violate any provisions of law relating to solicitation or advertising by health
96 professionals.

97 D. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful
98 practice of medicine. All health care providers associated with a health maintenance organization shall
99 be subject to all provisions of law.

100 E. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health
101 maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to
102 offer coverage to or accept applications from an employee who does not reside within the health
103 maintenance organization's service area.

104 F. For purposes of applying this section, "insurer" when used in a section cited in subsections A and
105 B of this section shall be construed to mean and include "health maintenance organizations" unless the
106 section cited clearly applies to health maintenance organizations without such construction.