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**HOUSE BILL NO. 556**

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Commerce and Labor  
on January 21, 2010)

(Patron Prior to Substitute—Delegate Marshall, D.W.)

*A BILL to amend and reenact §§ 38.2-3406.1 and 38.2-4319 of the Code of Virginia, relating to health insurance policies offered by small employers; application to health maintenance organizations.*

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

**1. That §§ 38.2-3406.1 and 38.2-4319 of the Code of Virginia are amended and reenacted as follows:**

§ 38.2-3406.1. Application of requirements that policies offered by small employers include state-mandated health benefits.

A. As used in this section:

"Eligible individual" means an individual who is employed by a small employer and has satisfied applicable waiting period requirements.

"Health insurance coverage" means benefits consisting of coverage for costs of medical care, whether directly, through insurance or reimbursement, or otherwise, and including items and services paid for as medical care under a group policy of accident and sickness insurance, hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract, which coverage is subject to this title or is provided under a plan regulated under the Employee Retirement Income Security Act of 1974.

"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 ~~or~~, a corporation that provides accident and sickness subscription contracts, *or any health maintenance organization that provides a health care plan that provides, arranges for, pays for, or reimburses any part of the cost of any health care services*, that is licensed to engage in such business in the Commonwealth, and that 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)).

"Small employer" means, with respect to a calendar year and a plan year, an employer located in the Commonwealth that employed at least two but not more than 50 eligible individuals on business days during the preceding calendar year and who employs at least two eligible individuals on the date a policy under this section becomes effective.

"State-mandated health benefit" means coverage required under this title or other laws of the Commonwealth to be provided in a policy of 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. "State-mandated health benefit" includes, without limitation, any coverage, or the offering of coverage, of a benefit or provider pursuant to §§ 38.2-3407.5 through 38.2-3407.6:1, 38.2-3407.9:01, 38.2-3407.9:02, 38.2-3407.11 through 38.2-3407.11:3, 38.2-3407.16, 38.2-3408, 38.2-3411 through 38.2-3414.1, 38.2-3418 through 38.2-3418.14, or § 38.2-4221. For purposes of this article, "state-mandated health benefit" does not include a benefit that is mandated by federal law.

B. ~~For~~ *Notwithstanding any statute, rule, or regulation to the contrary, and for the purposes of this section, a group accident and sickness insurance policy providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; and, a group accident and sickness subscription contract providing health insurance coverage for eligible individuals; and a health care plan that provides, arranges for, pays for, or reimburses any part of the cost of any health care services that is offered, sold, or issued by a health insurer to a small employer:*

1. Shall not be required to include coverage, or the offer of coverage, for any state-mandated health benefit, except for:

- a. Coverage for mammograms pursuant to § 38.2-3418.1;
- b. Coverage for pap smears pursuant to § 38.2-3418.1:2;
- c. Coverage for PSA testing pursuant to § 38.2-3418.7; and
- d. Coverage for colorectal cancer screening pursuant to § 38.2-3418.7:1.

2. May include any, or none, of the state-mandated health benefits as the health insurer and the small employer shall agree.

Notwithstanding any provision of this section to the contrary, if any plan authorized by this section

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60 includes and offers health care services covered by the plan that may be legally rendered by a health  
61 care provider listed in § 38.2-3408, that plan shall allow for the reimbursement of such covered services  
62 when rendered by such provider. Unless otherwise provided in this section, this provision shall not  
63 require any benefit be provided as a covered service.

64 C. Any application and any enrollment form used in connection with coverage under this section  
65 shall prominently disclose that the policy ~~or~~, contract, *or evidence of coverage* is not required to provide  
66 state-mandated health benefits, shall prominently disclose any and all state-mandated health benefits that  
67 the policy ~~or~~, subscription contract, *or evidence of coverage* does not provide, and shall clearly describe  
68 all eligibility requirements.

69 D. A policy form ~~or~~, subscription contract, *or evidence of coverage* issued under this section to a  
70 small employer shall prominently disclose any and all state-mandated health benefits that the policy ~~or~~,  
71 subscription contract, *or evidence of coverage* does not provide. Such disclosure shall also be included  
72 in certificate forms or other evidences of coverage furnished to each participant. Health insurers  
73 proposing to issue forms providing coverage under this section shall clearly disclose the intended  
74 purposes for such policies ~~or~~, contracts, *or evidences of coverage* when submitting the forms to the  
75 Commission for approval in accordance with § 38.2-316.

76 E. The Commission shall adopt any regulations necessary to implement this section.

77 § 38.2-4319. Statutory construction and relationship to other laws.

78 A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this  
79 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  
80 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  
81 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.),  
82 §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1306.1,  
83 § 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  
84 Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800  
85 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3406.1, 38.2-3407.2 through 38.2-3407.6:1,  
86 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,  
87 38.2-3418.1 through 38.2-3418.15, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, subdivision  
88 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through  
89 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3541.1, 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et  
90 seq.) of Chapter 35, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), Chapter 58  
91 (§ 38.2-5800 et seq.) and § 38.2-5903 ~~of this title~~ shall be applicable to any health maintenance  
92 organization granted a license under this chapter. This chapter shall not apply to an insurer or health  
93 services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200  
94 et seq.) ~~of this title~~ except with respect to the activities of its health maintenance organization.

95 B. For plans administered by the Department of Medical Assistance Services that provide benefits  
96 pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title  
97 except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136,  
98 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,  
99 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  
100 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,  
101 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  
102 seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et  
103 seq.) of Chapter 14, §§ 38.2-3401, 38.2-3405, 38.2-3407.2 through 38.2-3407.5, 38.2-3407.6 and  
104 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  
105 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,  
106 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,  
107 subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1  
108 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.),  
109 Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and § 38.2-5903 shall be applicable to  
110 any health maintenance organization granted a license under this chapter. This chapter shall not apply to  
111 an insurer or health services plan licensed and regulated in conformance with the insurance laws or  
112 Chapter 42 (§ 38.2-4200 et seq.) ~~of this title~~ except with respect to the activities of its health  
113 maintenance organization.

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

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

120 E. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health  
121 maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to

122 offer coverage to or accept applications from an employee who does not reside within the health  
123 maintenance organization's service area.  
124 F. For purposes of applying this section, "insurer" when used in a section cited in subsections A and  
125 B of ~~this section~~ shall be construed to mean and include "health maintenance organizations" unless the  
126 section cited clearly applies to health maintenance organizations without such construction.