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HOUSE BILL NO. 720

Offered January 13, 2010
Prefiled January 12, 2010

A BILL to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6406, relating to the offering for sale within the Commonwealth by health insurers licensed in other states of health benefits plans approved by another state.

Patrons—Peace, Byron, Carrico, Cox, J.A., Lohr and Purkey; Senator: Obenshain

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6406, as follows:

CHAPTER 64.

HEALTH INSURANCE CHOICE.

§ 38.2-6400. Definitions.

As used in this chapter, unless the context requires otherwise:

"Covered person" means an individual, whether a policyholder, subscriber, enrollee, or member of a health benefits plan, who is entitled to health care services provided, arranged for, paid for, or reimbursed pursuant to a health benefits plan.

"Domestic health insurer" means an insurer licensed to sell, offer, or provide health benefits plans in the Commonwealth.

"Foreign health insurer" means an insurer licensed to sell, offer, or provide health benefits plans in any other state.

"Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a foreign health insurer is unlikely to be able to meet obligations to policyholders with respect to known claims or to any other obligations in the normal course of business.

"Health benefits plan" means an arrangement for the delivery of health care, on an individual or group basis, in which a health carrier undertakes to provide, arrange for, pay for, or reimburse any of the costs of health care services for a covered person that is offered in accordance with the laws of any state. "Health benefits plan" does not include short-term travel, accident only, limited or specified disease, or individual conversion policies or contracts, nor policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

"Health care services" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

"Insurer" means any entity that is authorized to sell, offer, or provide a health benefits plan, including an entity providing a plan of health insurance, health benefits or health services, an accident and sickness insurance company, a health maintenance organization, a corporation offering a health benefits plan, a multiple-employer welfare organization, a fraternal benefit society, or other entity that provides health benefits plans subject to state insurance regulation. "Insurer" shall not include a multiple employer welfare arrangement.

"Provider" or "health care provider" means any hospital, physician, or other person authorized by statute, licensed, or certified to furnish health care services.

"Resident" means an individual whose primary residence is in the Commonwealth and who is present in the Commonwealth for at least six months of the calendar year.

§ 38.2-6401. When foreign health insurers may offer health benefits plans to residents in the Commonwealth.

A. Notwithstanding any other law, rule, or regulation to the contrary, a foreign health insurer may sell, offer, and provide a health benefits plan to residents in the Commonwealth, if that insurer:

1. Offers the same health benefits plan in its domiciliary state and is in compliance with all applicable laws, regulations, and other requirements of its domiciliary state;

2. Obtains a certificate of authority to do business as a foreign health insurer in the Commonwealth pursuant to § 38.2-6402; and

3. Participates, on a nondiscriminatory basis, in the Virginia Life, Accident and Sickness Insurance Guaranty Association created under § 38.2-1702.

B. Except as provided in this chapter, a health benefits plan sold, offered, or provided by a foreign

health insurer in the Commonwealth in accordance with the provisions of this chapter shall not be subject to laws applicable to the sale, offering, or provision of accident and sickness insurance, including, but not limited to, requirements imposed by Articles 1.2 (§ 32.1-137.7 et seq.) and 2.1 (§ 32.1-138.6 et seq.) of Chapter 5 of Title 32.1, §§ 38.2-232 and 38.2-316, and Chapters 34 (§ 38.2-3400 et seq.), 35 (§ 38.2-3500 et seq.), 37.1 (§ 38.2-3717 et seq.), 42 (§ 38.2-4200 et seq.), 43 (§ 38.2-4300 et seq.), 45 (§ 38.2-4500 et seq.), 58 (§ 38.2-5800 et seq.), and 59 (§ 38.2-5900 et seq.).

§ 38.2-6402. Certificate of authority to do business as a foreign health insurer.

A. A foreign health insurer may apply for a certificate that authorizes the foreign health insurer to do business as a foreign health insurer in the Commonwealth, using a form prescribed by the Commission. Upon application, the Commission shall issue such a certificate to the foreign health insurer unless the Commission determines that the foreign health insurer:

1. Will not provide a health benefits plan in compliance with the provisions of this chapter;

2. Is in a hazardous financial condition, as determined by an examination by the Commissioner conducted in accordance with the Financial Analysis Handbook of the National Association of Insurance Commissioners; or

3. Has not adopted procedures to ensure compliance with all applicable laws governing the confidentiality of its records with respect to providers and covered persons.

B. A certificate of authority issued pursuant to this section shall be valid for three years from the date of issuance by the Commission.

C. The Commission shall establish by regulation:

1. Procedures for a foreign health insurer to renew a certificate of authority, pursuant to and consistent with the provisions of this chapter; and

2. Certificate of authority application and renewal fees, the amount of which shall be no greater than is reasonably necessary to enable the Bureau to carry out the provisions of this chapter.

§ 38.2-6403. Required disclosure.

A. Each health benefits plan provided by a foreign health insurer to a resident of the Commonwealth, and each application for the plan, shall disclose in plain language the following:

1. The differences between the health benefits plan issued by the foreign health insurer and a policy in accordance with the requirements of this title applicable to an accident and sickness insurance policy issued by a domestic health insurer pursuant to Chapter 34 (§ 38.2-3400 et seq.), using at least 14-point bold type to describe the differences that relate to underwriting standards, premium rating, preexisting conditions, renewability, portability, and cancellation; and

2. An explanation of which state's laws govern the issuance of, and requirements under, the health benefits plan offered under this chapter.

B. A foreign health insurer shall not offer a health benefits plan to a resident of the Commonwealth until the Commission determines that the disclosures required by subsection A are provided.

§ 38.2-6404. Revocation of certificate of authority; marketing materials.

A. The Commission may deny, revoke, or suspend, after notice and opportunity to be heard, a certificate of authority issued to a foreign health insurer pursuant to this chapter for a violation of the provisions of this chapter, including any finding by the Commission that a foreign health insurer is no longer in compliance with any of the conditions for issuance of a certificate of authority set forth in § 38.2-6402, or the regulations adopted pursuant to this chapter. The Commission shall provide for an appropriate and timely right of appeal for the foreign health insurer whose certificate is denied, revoked, or suspended.

B. The Commission shall establish fair marketing standards for marketing materials used by foreign health insurers to market health benefits plans to residents in the Commonwealth, which standards shall be consistent with those applicable to health benefits plans offered by a domestic health insurer pursuant to Chapter 34 (§ 38.2-3400 et seq.).

C. The procedures and standards established under subsection B shall be applied on a nondiscriminatory basis so as not to place greater responsibilities on foreign health insurers than the responsibilities placed on domestic health insurers doing business in the Commonwealth.

§ 38.2-6405. Applicability of certain requirements.

A foreign health insurer offering health benefits plans pursuant to this chapter shall comply with:

1. Protections for covered persons from unfair trade practices applicable to accident and sickness insurance pursuant to Chapter 5 (§ 38.2-500 et seq.);

2. Applicable provisions of Chapter 17 (§ 38.2-1700 et seq.);

3. The capital and surplus requirements for licensure specified in § 38.2-1028 or 38.2-1029, as determined to be applicable to foreign health insurers by the Commission;

4. Applicable requirements of this title and Title 58.1 pertaining to taxes and assessments imposed on domestic health insurers selling individual and group health insurance policies in the Commonwealth; and

5. Applicable requirements of Title 13.1 regarding the obtaining of authority to transact business in

the Commonwealth and the maintenance of a registered office and registered agent.

§ 38.2-6406. Regulations.

The Commission shall adopt regulations to effectuate the purposes of this chapter, provided, however, that the regulations shall not:

1. Directly or indirectly require a foreign health insurer to, directly or indirectly, modify coverage or benefit requirements, or restrict underwriting requirements or premium ratings, in any way that conflicts with the insurer's domiciliary state's laws or regulations;

2. Provide for regulatory requirements that are more stringent than those applicable to carriers that are licensed by the Commissioner to provide health benefits plans in the Commonwealth; or

3. Require any health benefits plan issued by the foreign health insurer to be countersigned by an insurance agent or broker residing in the Commonwealth.

2. That the provisions of this act shall become effective on January 1, 2011.

INTRODUCED