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SENATE BILL NO. 642

Offered January 19, 2010

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.

Patron—Reynolds

Referred to Committee on Commerce and Labor

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

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SB642

59 employer shall agree.

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

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

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

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

76 § 38.2-4319. Statutory construction and relationship to other laws.

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

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

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

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

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

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

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SB642