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HOUSE BILL NO. 1784

House Amendments in [ ] — February 4, 2013

A BILL to amend and reenact §§ 32.1-352, 38.2-508, 38.2-3432.3, as it is currently effective and as it shall become effective, 38.2-3444, 38.2-4229.1, and 58.1-2501 of the Code of Virginia and to repeal § 38.2-4216.1 of the Code of Virginia, as it is currently effective and as it may become effective, relating to individual accident and sickness contracts; open enrollment program.

Patron Prior to Engrossment—Delegate Kilgore

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-352, 38.2-508, 38.2-3432.3, as it is currently effective and as it shall become effective, 38.2-3444, 38.2-4229.1, and 58.1-2501 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-352. Virginia Family Access to Medical Insurance Security Plan Trust Fund.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Family Access to Medical Insurance Security Plan Trust Fund, hereinafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller and shall be administered by the Director of the Department of Medical Assistance Services. The Fund shall consist of the premium differential, any and all employer contributions which may be solicited or received by the Department of Medical Assistance Services, grants, donations, gifts, and bequests, or any and all moneys designated for the Fund, from any source, public or private. As used in this section, "premium differential" means an amount equal to the difference between (i) 0.75 percent of the direct gross subscriber fee income derived from eligible contracts and (ii) the amount of license tax revenue generated pursuant to former subdivision A 4 of § 58.1-2501 with respect to eligible contracts. As used in this section, "eligible contract" means any subscription contract for any kind of plan classified and defined in § 38.2-4201 or 38.2-4501 issued other than to (i) an individual or (ii) a primary small group employer if income from the contract is subject to license tax at the rate of 2.25 percent pursuant to former subsection D of § 38.2-4229.1. The Department of Taxation shall annually, on or before June 30, calculate the premium differential for the immediately preceding taxable year and notify the Comptroller of the Commonwealth to transfer such amount to the Virginia Family Access to Medical Insurance Security Plan Trust Fund as established on the books of the Comptroller.

B. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to support the Virginia Family Access to Medical Insurance Security Plan in accordance with the requirements of Title XXI of the Social Security Act, as amended, the Commonwealth's plan for the State Children's Health Insurance Program (SCHIP), as established in Subtitle J of the federal Balanced Budget Act of 1997 (P. L. 105-33), and any conditions set forth in the appropriation act.

C. The Director of the Department of Medical Assistance Services shall report annually on December 1 to the Governor, the General Assembly, and the Joint Commission on Health Care on the status of the Fund, the number of children served by this program, the costs of such services, and any issues related to the Virginia Family Access to Medical Insurance Security Plan that may need to be addressed.

§ 38.2-508. Unfair discrimination.

No person shall:

1. Unfairly discriminate or permit any unfair discrimination between individuals of the same class and equal expectation of life (i) in the rates charged for any life insurance or annuity contract, or (ii) in the dividends or other benefits payable on the contract, or (iii) in any other of the terms and conditions of the contract;

2. Unfairly discriminate or permit any unfair discrimination between individuals of the same class and of essentially the same hazard (i) in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance, (ii) in the benefits payable under such policy or contract, (iii) in any of the terms or conditions of such policy or contract, or (iv) in any other manner;

3. Refuse to insure, refuse to continue to insure, or limit the amount, extent or kind of insurance coverage available to an individual, or charge an individual a different rate for the same coverage solely because of blindness, or partial blindness, or mental or physical impairments, unless the refusal, limitation or rate differential is based on sound actuarial principles. This paragraph shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance or renewal of any insurance policy or contract;

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59 4. Unfairly discriminate or permit any unfair discrimination between individuals or risks of the same  
60 class and of essentially the same hazards by refusing to issue, refusing to renew, cancelling or limiting  
61 the amount of insurance coverage solely because of the geographic location of the individual or risk,  
62 unless:

63 a. The refusal, cancellation or limitation is for a business purpose that is not a mere pretext for unfair  
64 discrimination; or

65 b. The refusal, cancellation or limitation is required by law or regulatory mandate;

66 5. Make or permit any unfair discrimination between individuals or risks of the same class and of  
67 essentially the same hazards by refusing to issue, refusing to renew, cancelling or limiting the amount of  
68 insurance coverage on a residential property risk, or the personal property contained in a residential  
69 property risk, solely because of the age of the residential property, unless:

70 a. The refusal, cancellation or limitation is for a business purpose that is not a mere pretext for unfair  
71 discrimination; or

72 b. The refusal, cancellation or limitation is required by law or regulatory mandate;

73 6. Refuse to issue or renew any individual accident and sickness insurance policy or contract for  
74 coverage over and above any lifetime benefit of a group accident and sickness policy or contract solely  
75 because an individual is insured under a group accident and sickness insurance policy or contract,  
76 provided that medical expenses covered by both individual and group coverage shall be paid first by the  
77 group policy or contract to the extent of the group coverage. ~~This subsection shall not apply to~~  
78 ~~individual policies or contracts issued or renewed pursuant to § 38.2-4216.1; or~~

79 7. Consider the status of a victim of domestic violence as a criterion in any decision with regard to  
80 insurance underwriting, pricing, renewal, scope of coverage, or payment of claims on any and all  
81 insurance defined in § 38.2-100 and further classified in Article 2 (§ 38.2-101 et seq.) of Chapter 1 of  
82 this title, other than (i) legal services plans as provided for in Chapter 44 (§ 38.2-4400 et seq.) of this  
83 title and (ii) the insurance classified in §§ 38.2-110 through 38.2-133. The term "domestic violence"  
84 means the occurrence of one or more of the following acts by a current or former family member,  
85 household member as defined in § 16.1-228, person against whom the victim obtained a protective order  
86 or caretaker:

87 a. Attempting to cause or causing or threatening another person physical harm, severe emotional  
88 distress, psychological trauma, rape or sexual assault;

89 b. Engaging in a course of conduct or repeatedly committing acts toward another person, including  
90 following the person without proper authority, under circumstances that place the person in reasonable  
91 fear of bodily injury or physical harm;

92 c. Subjecting another person to false imprisonment; or

93 d. Attempting to cause or causing damage to property so as to intimidate or attempt to control the  
94 behavior of another person.

95 Nothing in this subsection shall prohibit an insurer or insurance professional from asking about a  
96 medical condition or from using medical information to underwrite or to carry out its duties under an  
97 insurance policy even if the medical information is related to a medical condition that the insurer or  
98 insurance professional knows or has reason to know resulted from domestic violence, to the extent  
99 otherwise permitted under this section and other applicable law.

100 **§ 38.2-3432.3. (Effective until July 1, 2014) Limitation on preexisting condition exclusion period.**

101 A. Subject to subsection B, a health insurer offering health insurance coverage may, with respect to a  
102 participant or beneficiary, impose a preexisting limitation only if:

103 1. For group health insurance coverage, such exclusion relates to a condition (whether physical or  
104 mental), regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment  
105 was recommended or received within the six-month period ending on the enrollment date;

106 2. For individual health insurance coverage, such exclusion relates to a condition that, during a  
107 12-month period immediately preceding the effective date of coverage, had manifested itself in such a  
108 manner as would cause an ordinarily prudent person to seek diagnosis, care, or treatment, or for which  
109 medical advice, diagnosis, care or treatment was recommended or received within 12 months  
110 immediately preceding the effective date of coverage;

111 3. Such exclusion extends for a period of not more than 12 months (or 12 months in the case of a  
112 late enrollee) after the enrollment date; and

113 4. The period of any such preexisting condition exclusion is reduced by the aggregate of the periods  
114 of creditable coverage, if any, applicable to the participant or beneficiary as of the enrollment date.

115 B. Exceptions:

116 1. Subject to subdivision 4 of this subsection, a health insurance issuer offering health insurance  
117 coverage may not impose any preexisting condition exclusion in the case of an individual who, as of the  
118 last day of the 30-day period beginning with the date of birth, is covered under creditable coverage;

119 2. Subject to subdivision 4 of this subsection, a health insurance issuer offering health insurance  
120 coverage may not impose any preexisting condition exclusion in the case of a child who is adopted or

121 placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period  
122 beginning on the date of the adoption or placement for adoption, is covered under creditable coverage.  
123 The previous sentence shall not apply to coverage before the date of such adoption or placement for  
124 adoption;

125 3. A health insurance issuer offering health insurance coverage may not impose any preexisting  
126 condition exclusion relating to pregnancy as a preexisting condition, except in the case of individual  
127 health insurance coverage for a person who is not considered an eligible individual, as defined in  
128 § 38.2-3430.2, in which case the health insurance issuer may impose a preexisting condition exclusion  
129 for a pregnancy existing on the effective date of coverage;

130 4. Subdivisions 1 and 2 of this subsection shall no longer apply to an individual after the end of the  
131 first 63-day period during all of which the individual was not covered under any creditable coverage;  
132 and

133 5. Subdivision A 4 shall not apply to health insurance coverage offered in the individual market on a  
134 "guarantee issue" basis without regard to health status including ~~open enrollment policies or contracts~~  
135 ~~issued pursuant to § 38.2-4216.1~~ and policies, contracts, certificates, or evidences of coverage issued  
136 through a bona fide association or to students through school sponsored programs at a college or  
137 university unless the person is an eligible individual as defined in § 38.2-3430.2.

138 C. A period of creditable coverage shall not be counted, with respect to enrollment of an individual  
139 under a health benefit plan, if, after such period and before the enrollment date, there was a 63-day  
140 period during all of which the individual was not covered under any creditable coverage.

141 D. For purposes of subdivision B 4 and subsection C, any period that an individual is in a waiting  
142 period for any coverage under a group health plan (or for group health insurance coverage) or is in an  
143 affiliation period shall not be taken into account in determining the continuous period under subsection  
144 C.

145 E. Methods of crediting coverage:

146 1. Except as otherwise provided under subdivision 2 of this subsection, a health insurance issuer  
147 offering group health coverage shall count a period of creditable coverage without regard to the specific  
148 benefits covered during the period;

149 2. A health insurance issuer offering group health insurance coverage may elect to count a period of  
150 creditable coverage based on coverage of benefits within each of several classes or categories of benefits  
151 rather than as provided under subdivision 1 of this subsection. Such election shall be made on a uniform  
152 basis for all participants and beneficiaries. Under such election a health insurance issuer shall count a  
153 period of creditable coverage with respect to any class or category of benefits if any level of benefits is  
154 covered within such class or category;

155 3. In the case of an election with respect to a group plan under subdivision 2 of this subsection  
156 (whether or not health insurance coverage is provided in connection with such plan), the plan shall: (i)  
157 prominently state in any disclosure statements concerning the plan, and state to each enrollee at the time  
158 of enrollment under the plan, that the plan has made such election and (ii) include in such statements a  
159 description of the effect of this election; and

160 4. In the case of an election under subdivision 2 of this subsection with respect to health insurance  
161 coverage offered by a health insurance issuer in the small or large group market, the health insurance  
162 issuer shall: (i) prominently state in any disclosure statements concerning the coverage, and to each  
163 employer at the time of the offer or sale of the coverage, that the health insurance issuer has made such  
164 election and (ii) include in such statements a description of the effect of such election.

165 F. Periods of creditable coverage with respect to an individual shall be established through  
166 presentation of certifications described in subsection G or in such other manner as may be specified in  
167 federal regulations.

168 G. A health insurance issuer offering group health insurance coverage shall provide for certification  
169 of the period of creditable coverage:

170 1. At the time an individual ceases to be covered under the plan or otherwise becomes covered under  
171 a COBRA continuation provision;

172 2. In the case of an individual becoming covered under a COBRA continuation provision, at the time  
173 the individual ceases to be covered under such provision; and

174 3. At the request, or on behalf of, an individual made not later than 24 months after the date of  
175 cessation of the coverage described in subdivision 1 or 2 of this subsection, whichever is later. The  
176 certification under subdivision 1 of this subsection may be provided, to the extent practicable, at a time  
177 consistent with notices required under any applicable COBRA continuation provision.

178 H. To the extent that medical care under a group health plan consists of group health insurance  
179 coverage, the plan is deemed to have satisfied the certification requirement under this section if the  
180 health insurance issuer offering the coverage provides for such certification in accordance with this  
181 section.

182 I. In the case of an election described in subdivision E 2 by a health insurance issuer, if the health  
183 insurance issuer enrolls an individual for coverage under the plan and the individual provides a  
184 certification of coverage of the individual under subsection F:

185 1. Upon request of such health insurance issuer, the entity which issued the certification provided by  
186 the individual shall promptly disclose to such requesting group insurance issuer information on coverage  
187 of classes and categories of health benefits available under such entity's plan or coverage; and

188 2. Such entity may charge the requesting health insurance issuer for the reasonable cost of disclosing  
189 such information.

190 J. A health insurance issuer offering group health insurance coverage shall permit an employee who  
191 is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an  
192 employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for  
193 coverage under the terms of the plan if each of the following conditions is met:

194 1. The employee or dependent was covered under a group health plan or had health insurance  
195 coverage at the time coverage was previously offered to the employee or dependent;

196 2. The employee stated in writing at such time that coverage under a group health plan or health  
197 insurance coverage was the reason for declining enrollment, but only if the plan sponsor or health  
198 insurance issuer (if applicable) required such a statement at such time and provided the employee with  
199 notice of such requirement (and the consequences of such requirement) at such time;

200 3. The employee's or dependent's coverage described in subdivision 1 of this subsection: (i) was  
201 under a COBRA continuation provision and the coverage under such provision was exhausted or (ii) was  
202 not under such a provision and either the coverage was terminated as a result of loss of eligibility for  
203 the coverage (including as a result of legal separation, divorce, death, termination of employment, or  
204 reduction in the number of hours of employment) or employer contributions towards such coverage were  
205 terminated; and

206 4. Under the terms of the plan, the employee requests such enrollment not later than 30 days after  
207 the date of exhaustion of coverage described in clause (i) of subdivision 3 of this subsection or  
208 termination of coverage or employer contribution described in clause (ii) of subdivision 3 of this  
209 subsection.

210 K. If: (i) a health insurance issuer makes coverage available with respect to a dependent of an  
211 individual; (ii) the individual is a participant under the plan (or has met any waiting period applicable to  
212 becoming a participant under the plan and is eligible to be enrolled under the plan but for a failure to  
213 enroll during a previous enrollment period); and (iii) a person becomes such a dependent of the  
214 individual through marriage, birth, or adoption or placement for adoption, the health insurance issuer  
215 shall provide for a dependent special enrollment period described in subsection L during which the  
216 person (or, if not otherwise enrolled, the individual) may also be enrolled under the plan as a dependent  
217 of the individual, and in the case of the birth or adoption of a child, the spouse of the individual may  
218 also be enrolled as a dependent of the individual if such spouse is otherwise eligible for coverage.

219 L. A dependent special enrollment period under this subsection shall be a period of not less than 30  
220 days and shall begin on the later of:

221 1. The date dependent coverage is made available; or

222 2. The date of the marriage, birth, or adoption or placement for adoption (as the case may be)  
223 described in subsection K.

224 M. If an individual seeks to enroll a dependent during the first 30 days of such a dependent special  
225 enrollment period, the coverage of the dependent shall become effective:

226 1. In the case of marriage, not later than the first day of the first month beginning after the date the  
227 completed request for enrollment is received;

228 2. In the case of a dependent's birth, as of the date of such birth; or

229 3. In the case of a dependent's adoption or placement for adoption, the date of such adoption or  
230 placement for adoption.

231 N. A late enrollee may be excluded from coverage for up to 12 months or may have a preexisting  
232 condition limitation apply for up to 12 months; however, in no case shall a late enrollee be excluded  
233 from some or all coverage for more than 12 months. An eligible employee or dependent shall not be  
234 considered a late enrollee if all of the conditions set forth below in subdivisions 1 through 4 are met or  
235 one of the conditions set forth below in subdivision 5 or 6 is met:

236 1. The individual was covered under a public or private health benefit plan at the time the individual  
237 was eligible to enroll.

238 2. The individual certified at the time of initial enrollment that coverage under another health benefit  
239 plan was the reason for declining enrollment.

240 3. The individual has lost coverage under a public or private health benefit plan as a result of  
241 termination of employment or employment status eligibility, the termination of the other plan's entire  
242 group coverage, death of a spouse, or divorce.

243 4. The individual requests enrollment within 30 days after termination of coverage provided under a

244 public or private health benefit plan.

245 5. The individual is employed by a small employer that offers multiple health benefit plans and the  
246 individual elects a different plan offered by that small employer during an open enrollment period.

247 6. A court has ordered that coverage be provided for a spouse or minor child under a covered  
248 employee's health benefit plan, the minor is eligible for coverage and is a dependent, and the request for  
249 enrollment is made within 30 days after issuance of such court order.

250 However, such individual may be considered a late enrollee for benefit riders or enhanced coverage  
251 levels not covered under the enrollee's prior plan.

252 O. The provisions of this section shall not apply in any instance in which the provisions of this  
253 section are inconsistent or in conflict with a provision of Article 6 (§ 38.2-3438 et seq.) of Chapter 34.

254 **§ 38.2-3432.3. (Effective July 1, 2014) Limitation on preexisting condition exclusion period.**

255 A. Subject to subsection B, a health insurer offering health insurance coverage may, with respect to a  
256 participant or beneficiary, impose a preexisting limitation only if:

257 1. For group health insurance coverage, such exclusion relates to a condition (whether physical or  
258 mental), regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment  
259 was recommended or received within the six-month period ending on the enrollment date;

260 2. For individual health insurance coverage, such exclusion relates to a condition that, during a  
261 12-month period immediately preceding the effective date of coverage, had manifested itself in such a  
262 manner as would cause an ordinarily prudent person to seek diagnosis, care, or treatment, or for which  
263 medical advice, diagnosis, care or treatment was recommended or received within 12 months  
264 immediately preceding the effective date of coverage;

265 3. Such exclusion extends for a period of not more than 12 months (or 12 months in the case of a  
266 late enrollee) after the enrollment date; and

267 4. The period of any such preexisting condition exclusion is reduced by the aggregate of the periods  
268 of creditable coverage, if any, applicable to the participant or beneficiary as of the enrollment date.

269 B. Exceptions:

270 1. Subject to subdivision 4 of this subsection, a health insurance issuer offering health insurance  
271 coverage may not impose any preexisting condition exclusion in the case of an individual who, as of the  
272 last day of the 30-day period beginning with the date of birth, is covered under creditable coverage;

273 2. Subject to subdivision 4 of this subsection, a health insurance issuer offering health insurance  
274 coverage may not impose any preexisting condition exclusion in the case of a child who is adopted or  
275 placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period  
276 beginning on the date of the adoption or placement for adoption, is covered under creditable coverage.  
277 The previous sentence shall not apply to coverage before the date of such adoption or placement for  
278 adoption;

279 3. A health insurance issuer offering health insurance coverage may not impose any preexisting  
280 condition exclusion relating to pregnancy as a preexisting condition, except in the case of individual  
281 health insurance coverage for a person who is not considered an eligible individual, as defined in  
282 § 38.2-3430.2, in which case the health insurance issuer may impose a preexisting condition exclusion  
283 for a pregnancy existing on the effective date of coverage;

284 4. Subdivisions 1 and 2 of this subsection shall no longer apply to an individual after the end of the  
285 first 63-day period during all of which the individual was not covered under any creditable coverage;  
286 and

287 5. Subdivision A 4 of this section shall not apply to health insurance coverage offered in the  
288 individual market on a "guarantee issue" basis without regard to health status including open enrollment  
289 policies or contracts issued pursuant to ~~§ 38.2-4216.1~~ and policies, contracts, certificates or evidences of  
290 coverage issued through a bona fide association or to students through school sponsored programs at a  
291 college or university unless the person is an eligible individual as defined in § 38.2-3430.2.

292 C. A period of creditable coverage shall not be counted, with respect to enrollment of an individual  
293 under a health benefit plan, if, after such period and before the enrollment date, there was a 63-day  
294 period during all of which the individual was not covered under any creditable coverage.

295 D. For purposes of subdivision B 4 and subsection C, any period that an individual is in a waiting  
296 period for any coverage under a group health plan (or for group health insurance coverage) or is in an  
297 affiliation period shall not be taken into account in determining the continuous period under subsection  
298 C.

299 E. Methods of crediting coverage:

300 1. Except as otherwise provided under subdivision 2 of this subsection, a health insurance issuer  
301 offering group health coverage shall count a period of creditable coverage without regard to the specific  
302 benefits covered during the period;

303 2. A health insurance issuer offering group health insurance coverage may elect to count a period of  
304 creditable coverage based on coverage of benefits within each of several classes or categories of benefits

305 rather than as provided under subdivision 1 of this subsection. Such election shall be made on a uniform  
306 basis for all participants and beneficiaries. Under such election a health insurance issuer shall count a  
307 period of creditable coverage with respect to any class or category of benefits if any level of benefits is  
308 covered within such class or category;

309 3. In the case of an election with respect to a group plan under subdivision 2 of this subsection  
310 (whether or not health insurance coverage is provided in connection with such plan), the plan shall: (i)  
311 prominently state in any disclosure statements concerning the plan, and state to each enrollee at the time  
312 of enrollment under the plan, that the plan has made such election and (ii) include in such statements a  
313 description of the effect of this election; and

314 4. In the case of an election under subdivision 2 of this subsection with respect to health insurance  
315 coverage offered by a health insurance issuer in the small or large group market, the health insurance  
316 issuer shall: (i) prominently state in any disclosure statements concerning the coverage, and to each  
317 employer at the time of the offer or sale of the coverage, that the health insurance issuer has made such  
318 election and (ii) include in such statements a description of the effect of such election.

319 F. Periods of creditable coverage with respect to an individual shall be established through  
320 presentation of certifications described in subsection G or in such other manner as may be specified in  
321 federal regulations.

322 G. A health insurance issuer offering group health insurance coverage shall provide for certification  
323 of the period of creditable coverage:

324 1. At the time an individual ceases to be covered under the plan or otherwise becomes covered under  
325 a COBRA continuation provision;

326 2. In the case of an individual becoming covered under a COBRA continuation provision, at the time  
327 the individual ceases to be covered under such provision; and

328 3. At the request, or on behalf of, an individual made not later than 24 months after the date of  
329 cessation of the coverage described in subdivision 1 or 2 of this subsection, whichever is later. The  
330 certification under subdivision 1 of this subsection may be provided, to the extent practicable, at a time  
331 consistent with notices required under any applicable COBRA continuation provision.

332 H. To the extent that medical care under a group health plan consists of group health insurance  
333 coverage, the plan is deemed to have satisfied the certification requirement under this section if the  
334 health insurance issuer offering the coverage provides for such certification in accordance with this  
335 section.

336 I. In the case of an election described in subdivision E 2 by a health insurance issuer, if the health  
337 insurance issuer enrolls an individual for coverage under the plan and the individual provides a  
338 certification of coverage of the individual under subsection F:

339 1. Upon request of such health insurance issuer, the entity which issued the certification provided by  
340 the individual shall promptly disclose to such requesting group insurance issuer information on coverage  
341 of classes and categories of health benefits available under such entity's plan or coverage; and

342 2. Such entity may charge the requesting health insurance issuer for the reasonable cost of disclosing  
343 such information.

344 J. A health insurance issuer offering group health insurance coverage shall permit an employee who  
345 is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an  
346 employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for  
347 coverage under the terms of the plan if each of the following conditions is met:

348 1. The employee or dependent was covered under a group health plan or had health insurance  
349 coverage at the time coverage was previously offered to the employee or dependent;

350 2. The employee stated in writing at such time that coverage under a group health plan or health  
351 insurance coverage was the reason for declining enrollment, but only if the plan sponsor or health  
352 insurance issuer (if applicable) required such a statement at such time and provided the employee with  
353 notice of such requirement (and the consequences of such requirement) at such time;

354 3. The employee's or dependent's coverage described in subdivision 1 of this subsection: (i) was  
355 under a COBRA continuation provision and the coverage under such provision was exhausted or (ii) was  
356 not under such a provision and either the coverage was terminated as a result of loss of eligibility for  
357 the coverage (including as a result of legal separation, divorce, death, termination of employment, or  
358 reduction in the number of hours of employment) or employer contributions towards such coverage were  
359 terminated; and

360 4. Under the terms of the plan, the employee requests such enrollment not later than 30 days after  
361 the date of exhaustion of coverage described in subdivision 3 (i) of this subsection or termination of  
362 coverage or employer contribution described in subdivision 3 (ii) of this subsection.

363 K. If: (i) a health insurance issuer makes coverage available with respect to a dependent of an  
364 individual; (ii) the individual is a participant under the plan (or has met any waiting period applicable to  
365 becoming a participant under the plan and is eligible to be enrolled under the plan but for a failure to  
366 enroll during a previous enrollment period); and (iii) a person becomes such a dependent of the

367 individual through marriage, birth, or adoption or placement for adoption, the health insurance issuer  
368 shall provide for a dependent special enrollment period described in subsection L of this section during  
369 which the person (or, if not otherwise enrolled, the individual) may also be enrolled under the plan as a  
370 dependent of the individual, and in the case of the birth or adoption of a child, the spouse of the  
371 individual may also be enrolled as a dependent of the individual if such spouse is otherwise eligible for  
372 coverage.

373 L. A dependent special enrollment period under this subsection shall be a period of not less than 30  
374 days and shall begin on the later of:

375 1. The date dependent coverage is made available; or

376 2. The date of the marriage, birth, or adoption or placement for adoption (as the case may be)  
377 described in subsection K.

378 M. If an individual seeks to enroll a dependent during the first 30 days of such a dependent special  
379 enrollment period, the coverage of the dependent shall become effective:

380 1. In the case of marriage, not later than the first day of the first month beginning after the date the  
381 completed request for enrollment is received;

382 2. In the case of a dependent's birth, as of the date of such birth; or

383 3. In the case of a dependent's adoption or placement for adoption, the date of such adoption or  
384 placement for adoption.

385 N. A late enrollee may be excluded from coverage for up to 12 months or may have a preexisting  
386 condition limitation apply for up to 12 months; however, in no case shall a late enrollee be excluded  
387 from some or all coverage for more than 12 months. An eligible employee or dependent shall not be  
388 considered a late enrollee if all of the conditions set forth below in subdivisions 1 through 4 are met or  
389 one of the conditions set forth below in subdivision 5 or 6 is met:

390 1. The individual was covered under a public or private health benefit plan at the time the individual  
391 was eligible to enroll.

392 2. The individual certified at the time of initial enrollment that coverage under another health benefit  
393 plan was the reason for declining enrollment.

394 3. The individual has lost coverage under a public or private health benefit plan as a result of  
395 termination of employment or employment status eligibility, the termination of the other plan's entire  
396 group coverage, death of a spouse, or divorce.

397 4. The individual requests enrollment within 30 days after termination of coverage provided under a  
398 public or private health benefit plan.

399 5. The individual is employed by a small employer that offers multiple health benefit plans and the  
400 individual elects a different plan offered by that small employer during an open enrollment period.

401 6. A court has ordered that coverage be provided for a spouse or minor child under a covered  
402 employee's health benefit plan, the minor is eligible for coverage and is a dependent, and the request for  
403 enrollment is made within 30 days after issuance of such court order.

404 However, such individual may be considered a late enrollee for benefit riders or enhanced coverage  
405 levels not covered under the enrollee's prior plan.

406 **§ 38.2-3444. (Expires July 1, 2014) Preexisting condition exclusions for individuals under the**  
407 **age of 19.**

408 A. Notwithstanding any provision of § 38.2-3432.3, ~~38.2-4216.1~~, or any other section of this title to  
409 the contrary, a health carrier providing individual or group health insurance coverage shall not limit or  
410 exclude coverage for an individual under the age of 19 by imposing a preexisting condition exclusion on  
411 that individual.

412 B. Where a health carrier offers individual health insurance coverage that only covers individuals  
413 under the age of 19, such health carrier may offer coverage continuously throughout the year or during  
414 an open enrollment period in January and July of each calendar year.

415 C. During an open enrollment period, a health carrier shall not deny or unreasonably delay the  
416 issuance of a policy or refuse to issue a policy to an individual who is under the age of 19 on the basis  
417 of a preexisting condition.

418 D. Coverage shall be effective for an individual applying during an open enrollment period on the  
419 same basis as any applicant qualifying for coverage on an underwritten basis.

420 E. Each health carrier shall provide a prominent public notice on its website and written notice to  
421 each covered person at least 90 days prior to the open enrollment period of the open enrollment rights  
422 for individuals under the age of 19 and provide information as to how an individual eligible for this  
423 open enrollment right may apply for coverage with the health carrier during an open enrollment period.

424 F. This section shall apply to any health carrier providing individual or group health insurance  
425 coverage, including a grandfathered plan for group health insurance coverage, but not including a  
426 grandfathered plan for individual health insurance coverage.

427 **§ 38.2-4229.1. Conversion to domestic mutual insurer.**

428 A. Any domestic nonstock corporation subject to the provisions of this chapter that has the surplus  
429 required by § 38.2-1030 for domestic mutual insurers issuing policies without contingent liability may, at  
430 its option and without reincorporation, convert to a domestic mutual insurer by following the procedure  
431 set forth in this section.

432 B. Any nonstock corporation eligible to convert to a domestic mutual insurer under subsection A of  
433 this section may effect such conversion by amending its articles of incorporation to delete any reference  
434 to this chapter and to comply with the provisions of § 38.2-1002 relating to the articles of incorporation  
435 of a domestic mutual insurer. Upon the issuance of a certificate of amendment by the Commission, the  
436 conversion shall be effective, such nonstock corporation shall become subject to all of the provisions of  
437 this title relating to domestic mutual insurers, and except as provided in subsection D of this section,  
438 such nonstock corporation shall no longer be subject to the provisions of this chapter.

439 C. If any nonstock corporation converts from a health services plan organized under this chapter to a  
440 domestic mutual insurer, then at least ninety 90 days prior to the effective date of conversion, the  
441 nonstock corporation shall comply with § 38.2-316 by filing with the Commission copies of all policies  
442 of insurance that it proposes to issue after the effective date of conversion. All subscription contracts  
443 issued and outstanding as of the effective date of conversion shall remain in force in accordance with  
444 their terms until the expiration or termination of such contracts.

445 D. Any nonstock corporation that offers an open enrollment program under § 38.2-4216.1 shall,  
446 directly or through a subsidiary, continue to offer such program notwithstanding its conversion to a  
447 domestic mutual insurer. If any such domestic mutual insurer converts to a stock insurer, it shall,  
448 directly or through a subsidiary, continue to offer such program notwithstanding its conversion to a  
449 stock insurer. No such insurer shall discontinue the open enrollment program required by § 38.2-4216.1  
450 without first giving the Commission twenty-four months' prior written notice. For so long as the insurer  
451 continues to offer such open enrollment program, the license tax imposed on the direct gross premium  
452 income of the insurer and its subsidiaries from accident and sickness insurance shall be two and  
453 one-fourth percent (2.25%) on premium income from accident and sickness insurance issued to primary  
454 small employers as defined in § 38.2-3431 and three-fourths of one percent (.75%) on other premium  
455 income from accident and sickness insurance for taxable year 1997; and shall thereafter be three-fourths  
456 of one percent on premium income derived from individual accident and sickness insurance policies and  
457 from open enrollment contracts as defined in § 38.2-4216.1, and two and one-fourth percent on other  
458 premium income from accident and sickness insurance.

459 E. No policy of accident and sickness insurance issued by a nonstock corporation after its conversion  
460 to a domestic mutual insurer shall deny the policyholder the right to assign his benefit, except that  
461 denial may be made where the benefit is eighty 80 percent of covered charges or greater.

462 **§ 58.1-2501. Levy of license tax.**

463 A. For the privilege of doing business in the Commonwealth, there is hereby levied on every  
464 insurance company defined in § 38.2-100 which issues policies or contracts for any kind of insurance  
465 classified and defined in §§ 38.2-102 through 38.2-134 and on every corporation which issues  
466 subscription contracts for any kind of plan classified and defined in §§ 38.2-4201 and 38.2-4501, an  
467 annual license tax as follows:

468 1. For any kind of insurance classified and defined in §§ 38.2-109 through 38.2-134 or Chapters 44  
469 (§ 38.2-4400 et seq.) and 61 (§ 38.2-6100 et seq.) of Title 38.2, except workers' compensation insurance  
470 on which a premium tax is imposed under the provisions of § 65.2-1000, such company shall pay a tax  
471 of two and three-fourths percent of its subscriber fee income or direct gross premium income on such  
472 insurance for each taxable year through 1988. For taxable year 1989 and each taxable year thereafter,  
473 such company shall pay a tax of two and one-fourth percent of its subscriber fee income or direct gross  
474 premium income on such insurance.;

475 2. For policies or contracts for life insurance as defined in § 38.2-102, such company shall pay a tax  
476 of two and one-fourth percent of its direct gross premium income on such insurance. However, with  
477 respect to premiums paid for additional benefits in the event of death, dismemberment or loss of sight  
478 by accident or accidental means, or to provide a special surrender value, special benefit or an annuity in  
479 the event of total and permanent disability, the rate of tax shall be two and three-fourths percent for  
480 each taxable year beginning January 1, 1987, through December 31, 1988, and two and one-fourth  
481 percent for taxable year beginning January 1, 1989, and each taxable year thereafter; and

482 3. For policies or contracts providing industrial sick benefit insurance as defined in § 38.2-3544, such  
483 company shall pay a tax of one percent of its direct gross premium income on such insurance. No  
484 company, however, doing business on the legal reserve plan, shall be required to pay any licenses, fees  
485 or other taxes in excess of those required by this section on such part of its business as is industrial sick  
486 benefit insurance as defined in § 38.2-3544; but any such company doing business on the legal reserve  
487 plan shall pay on all industrial sick benefit policies or contracts on which the sick benefit portion has  
488 been cancelled as provided in § 38.2-3546, or which provide a greater death benefit than \$250 or a  
489 greater weekly indemnity than \$10, and on all other life, accident and sickness insurance, the same

490 license or other taxes as are required by this section.

491 4. For subscription contracts for any kind of plan classified and defined in § 38.2-4201 or  
492 § 38.2-4501, such corporation shall pay a tax of two and one-fourth percent of its direct gross subscriber  
493 fee income derived from subscription contracts issued to primary small groups as defined in § 38.2-3431  
494 and three-fourths of one percent of its direct gross subscriber fee income derived from other subscription  
495 contracts for taxable year 1997. For each *of taxable year thereafter years 1998 through [ ~~2012~~ 2013 ]* ,  
496 such corporation shall pay a tax of three-fourths of one percent of its direct gross subscriber fee income  
497 derived from subscription contracts issued to individuals and from open enrollment contracts as defined  
498 in § 38.2-4216.1, and two and one-fourth percent of its direct gross subscriber fee income derived from  
499 other subscription contracts. *For each taxable year thereafter, such corporation shall pay a tax of two*  
500 *and one-fourth percent of its direct gross subscriber fee income derived from all subscription contracts.*  
501 The declaration of estimated tax pursuant to this subsection shall commence on or before April 15,  
502 1988.

503 B. Notwithstanding any other provisions of this section, any domestic insurance company doing  
504 business solely in the Commonwealth which is purely mutual, has no capital stock and is not designed  
505 to accumulate profits for the benefit of or pay dividends to its members, and any domestic insurance  
506 company doing business solely in the Commonwealth, with a capital stock not exceeding \$25,000 and  
507 which pays losses with assessments against its policyholders or members, shall pay an annual license tax  
508 of one percent of its direct gross premium income.

509 **2. That § 38.2-4216.1 of the Code of Virginia, as it is currently effective and as it may become**  
510 **effective, is repealed.**

511 **3. That the provisions of this act shall become effective on January 1, 2014.**

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