

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 475

An Act to amend and reenact §§ 38.2-325, 38.2-4214, and 38.2-4319 of the Code of Virginia and to repeal the second enactment of Chapter 257 of the Acts of Assembly of 2013, relating to electronic delivery of information relating to insurance policies.

[H 820]

Approved March 25, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-325, 38.2-4214, and 38.2-4319 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-325. Electronic delivery.

A. If parties have agreed to conduct business by electronic means, and the agent of record, if applicable, has been so notified by the insurer, any information that is required to be delivered in writing may be delivered by (i) placing such information within the body of the electronic message; (ii) placing such information as an attachment to the electronic message that may be opened through the use of software that is readily available; (iii) displaying the information, or a clear and conspicuous link to the information, as an essential step to completing the transaction to which the information relates; or (iv) placing such information on the insurer's secured server and an electronic message is provided advising that insurance information or, when appropriate, time-sensitive insurance information has been placed on the insurer's secured server and is available for retrieval. This section should be construed to be consistent with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.).

B. If parties have agreed to conduct business by electronic means, and notice is provided by the insurer to the named insured pursuant to § 38.2-231, 38.2-2113, 38.2-2114, 38.2-2208, or 38.2-2212, an electronic notification shall also be provided to the agent of record of the named insured, if the named insured has an agent of record. Such electronic notification shall be transmitted to the agent of record as soon as practicable, but in no case more than 72 hours after electronic notice is transmitted to the named insured.

C. The insurer shall retain evidence of electronic notification to the agent of record for at least one year from the date of transmittal. Failure to provide such notice to the agent of record shall not be deemed to invalidate any electronic notice otherwise properly provided to the named insured. For purposes of this section, an electronic notification to the agent of record shall mean a copy of the actual notice, as set forth herein, or in the alternative, shall include the named insured's name, policy number, and termination date. Electronic notice need not be given to the agent of record if the agent (i) is an employee of the insurer, (ii) is a non-employee exclusive agent of the insurer, or (iii) has waived the receipt of such notices in writing.

D. Notwithstanding any other provision of law, any property and casualty insurance forms and endorsements that do not contain personally identifiable information may be posted to the insurer's publicly available website in lieu of any other method of delivery, provided that:

1. Such forms and endorsements are readily accessible on the insurer's website and that once such forms or endorsements are no longer used in the Commonwealth they are stored in a readily accessible archive portion of the insurer's website;

2. Such forms and endorsements are posted in such a manner that they may be readily printed and downloaded without charge and without the use of any special program or application that is not readily available to the public without charge;

3. The insurer provides written notice at time of the issuance of the initial policy forms and any renewal forms of a method by which policyholders may obtain, upon request and without charge, a paper or electronic copy of their policy or contract; and

4. The insurer gives notice, in the manner it customarily communicates with a policyholder, of any changes to the forms or endorsements, and of the policyholder's right to obtain, upon request and without charge, a paper or electronic copy of such forms or endorsements.

E. (Expires December 31, 2016) The notification to an insurer of any change of the electronic address for the named insured shall be the sole responsibility of the named insured. The giving to the agent of record by any person of notice of such change of the named insured's electronic address shall not be deemed to be notice to the insurer unless it is specifically identified as a change and receipt has been accepted by the agent of record.

F. *Notwithstanding any other provision of law, any evidence of coverage or other forms that do not contain personally identifiable information that a health carrier is required to provide to a policyholder, subscriber, or enrollee may be delivered electronically to the policyholder, subscriber, or enrollee or*

posted to the health carrier's publicly available website in lieu of any other method of delivery, provided that:

1. Such evidence of coverage and endorsements, riders, or amendments to it are readily accessible on the health carrier's website and that once such evidence of coverage and endorsements, riders, or amendments to it are no longer used in the Commonwealth they will be made available electronically upon request;

2. Such evidence of coverage and endorsements, riders, or amendments to it are posted in such a manner that they may be readily printed and downloaded without charge and without the use of any special program or application that is not readily available to the public without charge;

3. The health carrier provides written notice at the time of the issuance of the initial evidence of coverage and any renewals of a method by which the policyholder, subscriber, or enrollee may obtain, upon request and without charge, a paper or electronic copy of such person's evidence of coverage or endorsements, riders, or amendments to it; and

4. The health carrier gives notice, in the manner in which it customarily communicates with a policyholder, subscriber, or enrollee, of any changes to the evidence of coverage or endorsements, riders, or amendments to it and of the right of such policyholder, subscriber, or enrollee to obtain a paper or electronic copy of such evidence of coverage or endorsements, riders, or amendments to it.

§ 38.2-4214. Application of certain provisions of law.

No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-230, 38.2-232, 38.2-305, 38.2-316, 38.2-316.1, 38.2-322, 38.2-325, 38.2-326, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-700 through 38.2-705, 38.2-900 through 38.2-904, 38.2-1017, 38.2-1018, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.) and 2 (§ 38.2-1306.2 et seq.) of Chapter 13, §§ 38.2-1312, 38.2-1314, 38.2-1315.1, 38.2-1317 through 38.2-1328, 38.2-1334, 38.2-1340, 38.2-1400 through 38.2-1442, 38.2-1446, 38.2-1447, 38.2-1800 through 38.2-1836, 38.2-3400, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3405.1, 38.2-3406.1, 38.2-3406.2, 38.2-3407.1 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.19, 38.2-3409, 38.2-3411 through 38.2-3419.1, 38.2-3430.1 through 38.2-3454, 38.2-3501, 38.2-3502, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, §§ 38.2-3516 through 38.2-3520 as they apply to Medicare supplement policies, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3541 through 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 35.1 (§ 38.2-3556 et seq.), §§ 38.2-3600 through 38.2-3607, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) of this title shall apply to the operation of a plan.

§ 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, 38.2-316.1, 38.2-322, 38.2-325, 38.2-326, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 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, 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 seq.), 5 (§ 38.2-1322 et seq.), and 5.1 (§ 38.2-1334.3 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14, §§ 38.2-1800 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, 38.2-3407.9 through 38.2-3407.19, 38.2-3411, 38.2-3411.2, 38.2-3411.3, 38.2-3411.4, 38.2-3412.1, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.17, 38.2-3419.1, 38.2-3430.1 through 38.2-3454, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 35.1 (§ 38.2-3556 et seq.), Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

B. For plans administered by the Department of Medical Assistance Services that provide benefits pursuant to Title XIX or Title XXI of the Social Security Act, as amended, 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, 38.2-322, 38.2-325, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 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, 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 seq.), 5 (§ 38.2-1322 et seq.), and 5.1 (§ 38.2-1334.3 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14, §§ 38.2-3401, 38.2-3405, 38.2-3407.2 through 38.2-3407.5, 38.2-3407.6, 38.2-3407.6:1, 38.2-3407.9, 38.2-3407.9:01, and 38.2-3407.9:02, subdivisions F 1, F 2, and F 3 of § 38.2-3407.10, §§ 38.2-3407.11, 38.2-3407.11:3,

38.2-3407.13, 38.2-3407.13:1, 38.2-3407.14, 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, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

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

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

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

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

2. That the second enactment of Chapter 257 of the Acts of Assembly of 2013 is repealed.