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HOUSE BILL NO. 1240

Offered January 8, 2020

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A BILL to amend and reenact §§ 38.2-316, 38.2-1300, 38.2-1301, 38.2-1315.1, 38.2-1317, 38.2-4402.1, and 59.1-441.2 of the Code of Virginia, relating to the regulation of legal services plans.

 Patron—Wilt

 Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-316, 38.2-1300, 38.2-1301, 38.2-1315.1, 38.2-1317, 38.2-4402.1, and 59.1-441.2 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-316. Policy forms to be filed with Commission; notice of approval or disapproval; exceptions.

A. No policy of life insurance, industrial life insurance, variable life insurance, modified guaranteed life insurance, group life insurance, accident and sickness insurance, or group accident and sickness insurance; no annuity, modified guaranteed annuity, pure endowment, variable annuity, group annuity, group modified guaranteed annuity, or group variable annuity contract; no health services plan, legal services plan, dental or optometric services plan, or health maintenance organization contract; no dental plan organization dental benefit contract; and no fraternal benefit certificate nor any certificate or evidence of coverage issued in connection with such policy, contract, or plan issued or issued for delivery in Virginia shall be delivered or issued for delivery in this Commonwealth unless a copy of the form has been filed with the Commission. In addition to the above requirement, no policy of accident and sickness insurance shall be delivered or issued for delivery in this Commonwealth unless the rate manual showing rates, rules, and classification of risks applicable thereto has been filed with the Commission.

B. Except as provided in this section, no application form shall be used with the policy or contract and no rider or endorsement shall be attached to or printed or stamped upon the policy or contract unless the form of such application, rider or endorsement has been filed with the Commission. No individual certificate and no enrollment form shall be used in connection with any group life insurance policy, group accident and sickness insurance policy, group annuity contract, or group variable annuity contract unless the form for the certificate and enrollment form have been filed with the Commission.

C. 1. None of the policies, contracts, and certificates specified in subsection A of this section shall be delivered or issued for delivery in this Commonwealth and no applications, enrollment forms, riders, and endorsements shall be used in connection with the policies, contracts, and certificates unless the forms thereof have been approved in writing by the Commission as conforming to the requirements of this title and not inconsistent with law.

2. In addition to the above requirement, no premium rate change applicable to individual accident and sickness insurance policies, subscriber contracts of health services plans, dental or optometric services plans, or fraternal benefit contracts providing individual accident and sickness coverage as authorized in § 38.2-4116 shall be used unless the premium rate change has been approved in writing by the Commission. No premium rate change applicable to individual or group Medicare supplement policies shall be used unless the premium rate change has been approved in writing by the Commission.

D. The Commission may disapprove or withdraw approval of the form of any policy, contract or certificate specified in subsection A of this section, or of any application, enrollment form, rider or endorsement, if the form:

1. Does not comply with the laws of this Commonwealth;
2. Has any title, heading, backing or other indication of the contents of any or all of its provisions that is likely to mislead the policyholder, contract holder or certificate holder; or
3. Contains any provisions that encourage misrepresentation or are misleading, deceptive or contrary to the public policy of this Commonwealth.

E. Within 30 days after the filing of any form requiring approval, the Commission shall notify the organization filing the form of its approval or disapproval of the form which has been filed, and, in the event of disapproval, its reason therefor. The Commission, at its discretion, may extend for up to an additional 30 days the period within which it shall approve or disapprove the form. Any form received but neither approved nor disapproved by the Commission shall be deemed approved at the expiration of the 30 days if the period is not extended, or at the expiration of the extended period, if any; however, no organization shall use a form deemed approved under the provisions of this section until the

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59 organization has filed with the Commission a written notice of its intent to use the form together with a
60 copy of the form and the original transmittal letter thereof. The notice shall be filed in the offices of the
61 Commission at least 10 days prior to the organization's use of the form.

62 F. If the Commission proposes to withdraw approval previously given or deemed given to the form
63 of any policy, contract or certificate, or of any application, rider or endorsement, it shall notify the
64 insurer in writing at least 15 days prior to the proposed effective date of withdrawal giving its reasons
65 for withdrawal.

66 G. Any insurer or fraternal benefit society aggrieved by the disapproval or withdrawal of approval of
67 any form may proceed as indicated in § 38.2-1926.

68 H. This section shall not apply to any special rider or endorsement on any policy, except an accident
69 and sickness insurance policy that relates only to the manner of distribution of benefits or to the
70 reservation of rights and benefits under such policy, and that is used at the request of the individual
71 policyholder, contract holder or certificate holder.

72 I. The Commission may exempt any categories of such policies, contracts, and certificates and any
73 applicable rate manuals from (i) the filing requirements, (ii) the approval requirements of this section, or
74 (iii) both such requirements. The Commission may modify such requirements, subject to such limitations
75 and conditions which the Commission finds appropriate. In promulgating an exemption, the Commission
76 may consider the nature of the coverage, the person or persons to be insured or covered, the competence
77 of the buyer or other parties to the contract, and other criteria the Commission considers relevant.

78 J. *In lieu of complying with the requirements of subsections A, B, and C, any legal services*
79 *organization operating, conducting, or administering a legal services plan may request a waiver of those*
80 *requirements. Requests for waivers of such requirements shall be made in a form and manner*
81 *prescribed by the Commission. A legal services organization seeking a waiver of such requirements shall*
82 *submit all documentation specified by the Commission, which may include an informational filing*
83 *regarding a subscription contract, enrollment form, rider, or endorsement used by the legal services*
84 *organization in connection with a legal services plan offered in the Commonwealth. The Commission*
85 *shall approve or disapprove the waiver request within 30 calendar days of receipt thereof and shall*
86 *provide written notice of its decision to the applicant for waiver within five calendar days of rendering*
87 *its decision. Upon obtaining a waiver under this subsection, the legal services organization may use the*
88 *subscription contract, enrollment form, rider, or endorsement without its prior approval by the*
89 *Commission. This subsection shall not limit the authority of the Commission to review a legal services*
90 *plan and any subscription contract, enrollment form, rider, or endorsement used in connection therewith*
91 *and to disapprove the use of such form for any of the grounds set forth in subsection D.*

92 K. Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and
93 regulations as it may deem necessary to set standards for policy and other form submissions required by
94 this section or § 38.2-3501.

95 **§ 38.2-1300. Annual statements.**

96 A. Each domestic, foreign, and alien insurer licensed to transact the business of insurance in this
97 Commonwealth shall file with the Commission annually, on or before March 1, an annual statement
98 showing its financial condition on December 31 of the previous year. The annual statement shall be
99 considered filed on the date the statement was sent by mail as shown by the postmark or on the date it
100 is received electronically by the National Association of Insurance Commissioners (NAIC) in accordance
101 with subsection D. The Commission shall prescribe the type of filing required for each type of insurer.
102 The annual statement shall contain a detailed report of the insurer's assets and liabilities, the investment
103 of its assets, its income and disbursements during the previous year, and all other information which the
104 Commission considers necessary to secure a full and accurate knowledge of the affairs and condition of
105 the insurer. The annual statement of every domestic or foreign insurer shall be signed by at least two of
106 its principal officers subject to § 38.2-1304. No publication of the annual statement shall be required.

107 B. The annual statement of an alien insurer shall relate only to its transactions and affairs in the
108 United States unless the Commission requires otherwise. The annual statement shall be verified by the
109 alien insurer's United States manager, assistant manager, or by any of its duly authorized officers.

110 C. The Commission may prescribe the form of the annual statement and supplemental schedules and
111 exhibits to include additional copies in machine-readable format, and may vary the form for different
112 types of insurers. However, as far as practicable, the form for annual statements, supplementary
113 schedules, and exhibits shall be the same as other such forms in general use in the United States. Unless
114 otherwise prescribed by the Commission, such annual statements shall be prepared using an annual
115 statement convention blank developed by the NAIC. The annual statement, and supplementary schedules
116 and exhibits required by this section, shall be prepared in accordance with the appropriate annual
117 statement instructions and the accounting practices and procedures manuals adopted by the NAIC, or any
118 other successor publications. *However, a foreign insurer operating, conducting, or administering a legal*
119 *services plan may, in lieu of submitting an annual financial statement in the form prescribed by the*
120 *Commission, submit an annual financial statement in the form filed by the foreign insurer in its state of*

domicile.

D. Each insurer that is authorized to transact insurance in this Commonwealth shall annually on or before March 1 of each year, file electronically with the NAIC a copy of its annual statement convention blank, along with such additional filings as prescribed by the Commission for the preceding year. The information filed with the NAIC shall be in the same format and scope as that required by the Commission and shall include any actuarial certification required by the Commission. Any amendments and addenda to the annual statement filing subsequently filed with the Commission shall also be filed with the NAIC. However, an insurer may apply to the Commission for an exemption from this subsection.

E. Foreign insurers that are domiciled in a state, which has a law substantially similar to subsection D of this section, shall be deemed to be in compliance with subsection D of this section.

§ 38.2-1301. Additional reports.

A. In addition to the annual statement, the Commission may require a licensed insurer to file additional reports, exhibits or statements considered necessary to secure complete information concerning the condition, solvency, experience, transactions or affairs of the insurer. The Commission shall establish deadlines for filing these additional reports, exhibits or statements and may require verification by any officers of the insurer designated by the Commission.

B. The Commission may require a domestic, foreign or alien insurer that is authorized to transact insurance in this Commonwealth to file with the National Association of Insurance Commissioners (NAIC) a copy of the insurer's financial statement required to be filed pursuant to § 38.2-1301-38.2-1300, on a quarterly basis. Unless otherwise prescribed by the Commission, all such financial statements, whether filed with the Commission or the NAIC, shall be prepared in accordance with applicable provisions of the annual statement instructions and the accounting practices and procedures manuals adopted by the NAIC, or any successor publications. The Commission may prescribe that additional copies of financial statements and other reports be filed in machine-readable format. *However, a foreign insurer operating, conducting, or administering a legal services plan may, in lieu of submitting quarterly financial statements or other reports in the form prescribed by the Commission, submit such financial statement or other reports in the form filed by the foreign insurer in its state of domicile.*

C. Notwithstanding any provision of this section or § 38.2-1300 to the contrary, a legal services organization operating, conducting, or administering a legal services plan shall not be required to include in any financial statement filed with the Commission any management discussion and analysis of financial condition and results of operations that may have been filed by the legal services organization in any form prepared in accordance with § 13 or 15(d) of the Securities Exchange Act of 1934, as amended.

§ 38.2-1315.1. Actuarial statements of opinion, reports, memoranda, and summaries.

A. Effective December 31, 2004, and except as otherwise provided by this section or Article 10 (§ 38.2-1365 et seq.) of Chapter 13, every insurer doing business in the Commonwealth shall annually submit an actuarial opinion that has been prepared by an appointed actuary and that satisfies at a minimum the standards set forth in the appropriate National Association of Insurance Commissioners (NAIC) annual statement instructions. *This section shall not apply to any legal services organization operating, conducting, or administering a legal services plan.*

B. Every insurer domiciled in the Commonwealth that is required to submit an actuarial opinion pursuant to subsection A shall annually submit an actuarial opinion summary, also written by the insurer's appointed actuary. Every insurer domiciled in the Commonwealth that is required to submit an actuarial opinion pursuant to subsection A or § 38.2-1367, at the request of the Commission, shall submit underlying work papers and an actuarial report or memorandum that satisfies the minimum standards set forth in the appropriate NAIC annual statement instructions and complies with all additional standards or requirements established by statute or by the Commission in accordance with the provisions of this section or Article 10 (§ 38.2-1365 et seq.) of Chapter 13. A company licensed but not domiciled in the Commonwealth shall provide such summary, work papers, report, and memorandum upon request of the Commission. Any summary, work papers, report, or memorandum filed in accordance with the appropriate NAIC annual statement 13 instructions shall be considered as a document supporting the actuarial opinion required by subsection A or § 38.2-1367.

C. If the insurer fails to provide supporting work papers or a required report or memorandum at the request of the Commission, or the Commission determines that the work papers or report or memorandum are unacceptable, the Commission may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and to prepare supporting work papers, or a report or memorandum.

D. The appointed actuary shall not be liable for damages to any person, other than the insurer and the Commission for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the actuary.

182 E. An actuarial opinion provided with the annual statement in accordance with the appropriate NAIC
183 annual statement instructions shall be open to public inspection in accordance with § 38.2-1306.

184 F. Documents, materials, or other information in the possession or control of the Commission that
185 are considered an actuarial report, work papers, an actuarial opinion summary, or an actuarial opinion
186 report or memorandum provided in support of the opinion, and any other material provided by the
187 insurer to the Commission in connection with the report, work papers, or summary, shall be confidential
188 by law and privileged, shall not be subject to inspection or review by the general public, shall not be
189 subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil
190 action. However, this provision shall not be construed to limit the Commission's authority to release the
191 documents to any actuarial board established for counseling or discipline so long as the material is
192 required for the purpose of professional disciplinary proceedings and such board establishes procedures
193 satisfactory to the Commission for preserving the confidentiality of the documents. Moreover, the
194 Commission is authorized to use the documents, materials, or other information in furtherance of any
195 regulatory or legal action brought as part of the Commission's official duties.

196 1. Neither the Commission nor any person who received documents, materials, or other information
197 while acting under the authority of the Commission shall be permitted or required to testify in any
198 private civil action concerning any confidential documents, materials, or information subject to this
199 subsection.

200 2. In order to assist in the performance of the Commission's duties under this section, the
201 Commission:

202 a. May share documents, material, or other information, including the confidential and privileged
203 documents, materials, or information subject to this subsection, with other state, federal, and
204 international regulatory agencies, with the NAIC, its affiliates, or subsidiaries, and with state, federal,
205 and international law enforcement authorities, provided that the recipient agrees to maintain the
206 confidentiality and privileged status of the document, material, or other information.

207 b. May receive documents, materials, or information, including otherwise confidential and privileged
208 documents, materials, or information, from the NAIC, its affiliates, or subsidiaries and from regulatory
209 and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as
210 confidential or privileged any document, material, or information received with notice or the
211 understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of
212 the document, material, or information.

213 G. The Commission may waive or modify submission requirements for a foreign insurer that has
214 been exempted by its domiciliary commissioner from filing an actuarial opinion under a substantially
215 similar law in its state of domicile. The Commission may modify requirements in any year for an
216 insurer that makes application, with good cause shown, for exemption due to the nature of business
217 written or the size and volume of business activity, or because the insurer is under supervision or an
218 order of conservation, or if the imposition of an annual filing requirement would create a financial
219 hardship.

220 **§ 38.2-1317. Examinations; when authorized or required.**

221 A. Whenever the Commission considers it expedient for the protection of the interests of the people
222 of this Commonwealth, it may make or direct to be made an examination into the affairs of any person
223 licensed to transact any insurance business in this Commonwealth or any other person subject to the
224 jurisdiction of the Commission pursuant to provisions of this title. The Commission may also make or
225 direct to be made, whenever necessary or advisable an examination into the affairs of:

226 1. Any person having a contract under which he has the exclusive or dominant right to manage or
227 control any licensed insurer,

228 2. Any person holding the shares of capital stock or policyholder proxies of any domestic insurer
229 amounting to control as defined in § 38.2-1322 either as voting trustee or otherwise,

230 3. Any person engaged or assisting in, or proposing or claiming to engage or assist in the promotion
231 or formation of a domestic insurer, or

232 4. Any person seeking a license to transact any insurance business in this Commonwealth.

233 B. The Commission shall examine or cause to be examined every domestic insurer at least once in
234 every five years; however, on or after January 1, 1993, the Commission shall examine every insurer
235 licensed in this Commonwealth at least once in every five years. *However, any legal services*
236 *organization operating, conducting, or administering a legal services plan that provides the Commission*
237 *with a copy of its most recent audited financial statement may request the Commission to waive the*
238 *requirement that it be examined at least once in every five years.*

239 C. The examination of any foreign or alien insurer or any other foreign or alien person subject to
240 examination shall be made to the extent practicable in cooperation with the insurance departments of
241 other states.

242 D. Instead of making its own examination, the Commission may accept a full report of the
243 examination of a foreign or alien person, duly authenticated by the insurance supervisory official of the

state of domicile or of entry until January 1, 1994. Thereafter, such reports may only be accepted if:

1. The insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' (NAIC) Financial Regulation Standards and Accreditation Program;

2. The examination is performed under the supervision of such an accredited insurance department or with the participation of one or more examiners who are employed by an accredited insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department; or

3. The Commission determines, in its sole discretion, that the examination was performed in a manner consistent with standards and procedures employed by the Commission in the examination of domestic insurers, and the report of examination is duly authenticated by the insurance supervisory official of the insurer's state of domicile or entry.

§ 38.2-4402.1. Corporate organization required.

Each plan shall be conducted by or through (i) a nonstock or stock corporation organized pursuant to the laws of this Commonwealth or (ii) a foreign corporation that is ~~subject to regulation and licensing authorized to operate, conduct, or administer a legal services plan~~ under the laws of its domiciliary ~~another jurisdiction that are substantially similar to those provided by this chapter.~~

§ 59.1-441.2. Registration; fees.

A. It shall be unlawful for any legal services plan seller to offer, advertise, or execute, or cause to be executed by the subscriber, any subscription contract in the Commonwealth unless the legal services plan seller at the time of the offer, advertisement, sale, or execution of a subscription contract has been properly registered with the Commissioner. The registration shall (i) disclose the address, ownership, and affiliation with the legal services organization and such other information as the Commissioner may require consistent with the purposes of this chapter, (ii) be renewed annually on July 1, and (iii) be accompanied by the appropriate registration fee of \$50 per each annual registration. Further, the registration shall be accompanied by a late fee of \$25 if the registration renewal is neither postmarked nor received on or before July 1. *A legal services plan seller's initial or renewal registration may be accomplished either by the legal services plan seller or on behalf of such seller by the legal services organization for which the seller offers subscription contracts, and the Commissioner shall accept any registration information or fee required to be submitted pursuant to this chapter that is submitted to the Commission on a monthly basis by the organization on behalf of such a legal services plan seller.*

B. Any legal services plan seller that sells a subscription contract prior to registering pursuant to this section shall pay a late filing fee of \$100 for each 30-day period the registration is late. This fee shall be in addition to all other penalties allowed by law.

C. A registration shall be amended within 21 days if there is a change in the information included in the registration.

D. Any matter subject to the insurance regulatory authority of the State Corporation Commission pursuant to Title 38.2 shall not be subject to the provisions of this chapter.

E. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

F. All insurance agent licenses issued by the State Corporation Commission including authority to sell legal services plan subscription contracts shall continue in effect for a period of 90 days following the effective date of this chapter, during which time those holding such authority from the State Corporation Commission shall apply for registration with the Department. At the end of the 90-day period, no insurance agent license shall include the authority to sell legal services plan subscription contracts.