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SENATE BILL NO. 403

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor
on February 7, 1994)

(Patron Prior to Substitute—Senator Holland, C.A.)

A BILL to amend and reenact §§ 38.2-4214 and 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding in article 1 of chapter 34 of Title 38.2 a section numbered 38.2-3407.2, relating to accident and sickness insurance; denial of benefits for certain prescription drugs prohibited.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-4214 and 38.2-4319 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in article 1 of chapter 34 of Title 38.2 a section numbered 38.2-3407.2 as follows:

§ 38.2-3407.2. Denial of benefits for certain prescription drugs prohibited.

A. Each (i) insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical or major medical coverage on an expense incurred basis, (ii) corporation providing individual or group accident and sickness subscription contracts, and (iii) health maintenance organization providing a health care plan for health care services, whose policy, contract or plan, including any certificate or evidence of coverage issued in connection with such policy, contract or plan, includes coverage for prescription drugs, whether on an inpatient basis, outpatient basis, or both, shall provide in each such policy, contract, plan, certificate, and evidence of coverage that such benefits will not be denied for any drug approved by the United States Food and Drug Administration for use in the treatment of cancer on the basis that the drug has not been approved by the United States Food and Drug Administration for the treatment of the specific type of cancer for which the drug has been prescribed, provided the drug has been recognized as safe and effective for treatment of that specific type of cancer in any of the following standard reference compendia or medical literature:

1. The American Medical Association Drug Evaluations;
2. The American Hospital Formulary Service Drug Information; or
3. The United States Pharmacopoeia Dispensing Information;

B. Coverage, as described in subsection A, includes medically necessary services associated with the administration of the drug.

C. Subsection A shall not be construed to do any of the following:

1. Require coverage for any drug if the United States Food and Drug Administration has determined its use to be contraindicated for the treatment of the specific type of cancer for which the drug has been prescribed;

2. Require coverage for experimental drugs not otherwise approved for any indication by the United States Food and Drug Administration;

3. Alter any law with regard to provisions limiting the coverage of drugs that have not been approved by the United States Food and Drug Administration;

4. Create, impair, alter, limit, modify, enlarge, abrogate, or prohibit reimbursement for drugs used in the treatment of any other disease or condition.

5. Require coverage for prescription drugs in any contract, policy or plan that does not otherwise provide such coverage.

D. The provisions of this section shall not apply to short-term travel, or accident-only policies, or to short-term nonrenewable policies of not more than six months' duration.

E. The provisions of this section are applicable to contracts, policies or plans delivered, issued for delivery or renewed in this Commonwealth on and after July 1, 1994.

§ 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, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-230, 38.2-232, 38.2-316, 38.2-322, 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, 38.2-1317 through 38.2-1328, 38.2-1334, 38.2-1340, 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3400, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3407.1, 38.2-3407.2, 38.2-3409, 38.2-3411 through 38.2-3419.1, 38.2-3425 through 38.2-3429, 38.2-3431, 38.2-3432, 38.2-3500, 38.2-3501, 38.2-3502, 38.2-3516 through 38.2-3520 as they apply to Medicare supplement policies, §§ 38.2-3525, 38.2-3540.1, 38.2-3541, 38.2-3542, 38.2-3600 through 38.2-3607 and Chapter 53 of this title shall apply to the operation of a plan.

60 § 38.2-4319. Statutory construction and relationship to other laws.

61 A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this
62 chapter, §§ 38.2-100, 38.2-200, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229,
63 38.2-232, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600
64 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.) of this title, 38.2-1057, 38.2-1306.2 through 38.2-1310,
65 Article 4 (§ 38.2-1317 et seq.) of Chapter 13, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405,
66 38.2-3407.2, 38.2-3411.2, 38.2-3418.1, 38.2-3419.1, 38.2-3431, 38.2-3432, 38.2-3500, 38.2-3525,
67 38.2-3542, and Chapter 53 (§ 38.2-5300 et seq.) of this title shall be applicable to any health
68 maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer
69 or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42
70 (§ 38.2-4200) of this title except with respect to the activities of its health maintenance organization.

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

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

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