

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 68

An Act to amend and reenact § 38.2-3405 of the Code of Virginia, relating to accident and sickness insurance; coordination of benefits.

[S 806]

Approved March 7, 1995

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3405 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-3405. Certain subrogation provisions and limitations upon recovery in hospital, medical, etc., policies forbidden.

A. No insurance contract providing hospital, medical, surgical and similar or related benefits, and no subscription contract or health services plan delivered or issued for delivery or providing for payment of benefits to or on behalf of persons residing in or employed in this Commonwealth shall contain any provision providing for subrogation of any person's right to recovery for personal injuries from a third person.

B. No such contract, subscription contract or health services plan shall contain any provision requiring the beneficiary of any such contract or plan to sign any agreement to pay back to any company issuing such a contract or creating a health services plan any benefits paid pursuant to the terms of such contract or plan from the proceeds of a recovery by such a beneficiary from any other source; provided, that this provision shall not prohibit an exclusion of benefits paid or payable under workers' compensation laws or federal or state programs, nor shall this provision prohibit coordination of benefits provisions when there are two or more such *accident and sickness insurance* contracts or plans providing for the payment of the same benefits. *Coordination of benefits provisions may not operate to reduce benefits because of any benefits paid, payable, or provided by any liability insurance contract or any benefits paid, payable, or provided by any medical expense or medical payments insurance provided in conjunction with liability coverage.*

C. Whenever benefits paid or payable under workers' compensation are excluded from coverage under the terms of any such contract, subscription contract or health services plan, the issuer thereof shall not exclude coverage for any medical condition pursuant to such exclusion if (i) an award of the Workers' Compensation Commission pursuant to § 65.2-704 denies compensation benefits relating to such medical condition and no request for review of such award is made pursuant to and within the time prescribed by § 65.2-705 or (ii) an award of the Workers' Compensation Commission, after review by the full Commission pursuant to § 65.2-705, denies compensation benefits relating to such medical condition. Following the entry of a workers' compensation award pursuant to clause (i) or (ii) having the effect of prohibiting the application of any such exclusion, the issuer shall immediately provide coverage for such medical condition to the extent otherwise covered under the contract, subscription contract or health services plan. If, upon appeal to the Court of Appeals or the Supreme Court, such medical condition is held to be compensable under the Virginia Workers' Compensation Act (Title 65.2), the issuer may recover from the applicable employer or workers' compensation insurance carrier the costs of coverage for medical conditions found to be compensable under the Act.