

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 38.2-3503, 38.2-3605, 38.2-4214 and 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3514.1, relating to individual accident and sickness insurance policies; limitations on preexisting conditions provisions.

[H 2043]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3503, 38.2-3605, 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 a section numbered 38.2-3514.1 as follows:

§ 38.2-3503. Required accident and sickness policy provisions.

Except as provided in § 38.2-3505, each individual accident and sickness insurance policy delivered or issued for delivery in this Commonwealth shall contain the provisions specified in this section using the same words which appear in this section. An insurer may substitute corresponding provisions of different wording approved by the Commission that are in each instance not less favorable in any respect to the insured or the beneficiary. These provisions shall be preceded individually by the caption "REQUIRED PROVISIONS" or by such appropriate individual or group captions or subcaptions as the Commission may approve.

1. Provision 1:

ENTIRE CONTRACT; CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the Company and unless such approval is endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

2. Provision 2:

TIME LIMIT ON CERTAIN DEFENSES: (a) Misstatements in the application: After two years from the date of this policy, only fraudulent misstatements in the application may be used to void the policy or deny any claim for loss incurred or disability (as defined in the policy) that starts after the two-year period.

Provision 2 shall not be construed to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of subdivisions 1, 2, 3, 4 and 5 of § 38.2-3504 in the event of misstatement with respect to age, occupation or other insurance.

Instead of Provision 2, a policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (i) until at least age fifty or, (ii) for a policy issued after age forty-four, for at least five years from its date of issue, may contain the following provision, from which the clause in parentheses may be omitted at the insurer's option:

INCONTESTABLE:

(a) Misstatements in the application: After this policy has been in force for two years during the Insured's lifetime (excluding any period during which the Insured is disabled), the Company cannot contest the statements in the application.

PREEXISTING CONDITIONS:

(b) No claim for loss incurred or disability (as defined in the policy) that starts after two years one year from the date of issue of this policy will be reduced or denied because a sickness or physical condition, not excluded by name or specific description before the date of loss, had existed before the effective date of coverage.

3. Provision 3:

GRACE PERIOD: This policy has a . . . day grace period. This means that if a renewal premium is not paid on or before the date it is due, it may be paid during the following . . . days. During the grace period the policy shall continue in force.

In Provision 3 a number not less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies shall be inserted between the words "a" and "day," and between "following" and "days."

A policy that contains a cancellation provision may add, at the end of Provision 3: "subject to the right of the Company to cancel in accordance with the cancellation provision."

A policy in which the insurer reserves the right to refuse any renewal shall have, in Provision 3, the following sentence:

The grace period will not apply if, at least . . . days before the premium due date, the Company has

57 delivered or has mailed to the Insured's last address shown in the Company's records written notice of
58 the Company's intent not to renew this policy.

59 In the above sentence a number not less than "7" for weekly premium policies, "10" for monthly
60 premium policies and "31" for all other policies shall be inserted between the words "least" and "days."

61 4. Provision 4:

62 REINSTATEMENT: If the renewal premium is not paid before the grace period ends, the policy will
63 lapse. Later acceptance of the premium by the Company or by an agent authorized to accept payment,
64 without requiring an application for reinstatement, will reinstate the policy. If the Company or its agent
65 requires an application for reinstatement, the Insured will be given a conditional receipt for the premium.
66 If the application is approved the policy will be reinstated as of the approval date. Lacking such
67 approval, the policy will be reinstated on the forty-fifth day after the date of the conditional receipt
68 unless the Company has previously written the Insured of its disapproval. The reinstated policy will
69 cover only loss that results from an injury sustained after the date of reinstatement and sickness that
70 starts more than ten days after such date. In all other respects the rights of the Insured and the Company
71 will remain the same, subject to any provisions noted or attached to the reinstated policy. Any premiums
72 the Company accepts for a reinstatement will be applied to a period for which premiums have not been
73 paid. No premiums will be applied to any period more than sixty days prior to the date of reinstatement.

74 The last sentence of Provision 4 may be omitted from any policy that the Insured has the right to
75 continue in force subject to its terms by the timely payment of premiums (i) until at least age fifty, or
76 (ii) for a policy issued after age forty-four, for at least five years from its effective date.

77 5. Provision 5:

78 NOTICE OF CLAIM: Written notice of claim must be given within twenty days after a covered loss
79 starts or as soon as reasonably possible. The notice can be given to the Company at
80 (insert the location of such office as the insurer may designate for the purpose), or to the Company's
81 agent. Notice should include the name of the Insured, and Claimant if other than the Insured, and the
82 policy number.

83 Optional paragraph: If the Insured has a disability for which benefits may be payable for at least two
84 years, at least once in every six months after the Insured has given notice of claim, the Insured must
85 give the Company notice that the disability has continued. The Insured need not do this if legally
86 incapacitated. The first six months after any filing of proof by the Insured or any payment or denial of a
87 claim by the Company will not be counted in applying this provision. If the Insured delays in giving
88 this notice, the Insured's right to any benefits for the six months before the date the Insured gives notice
89 will not be impaired.

90 6. Provision 6:

91 CLAIM FORMS: When the Company receives the notice of claim, it will send the Claimant forms
92 for filing proof of loss. If these forms are not given to the Claimant within fifteen days after the giving
93 of such notice, the Claimant shall meet the proof of loss requirements by giving the Company a written
94 statement of the nature and extent of the loss within the time limit stated in the Proofs of Loss Section.

95 7. Provision 7:

96 PROOFS OF LOSS: If the policy provides for periodic payment for a continuing loss, written proof
97 of loss must be given the Company within ninety days after the end of each period for which the
98 Company is liable. For any other loss, written proof must be given within ninety days after such loss. If
99 it was not reasonably possible to give written proof in the time required, the Company shall not reduce
100 or deny the claim for this reason if the proof is filed as soon as reasonably possible. In any event,
101 except in the absence of legal capacity, the proof required must be given no later than one year from the
102 time specified.

103 8. Provision 8:

104 TIME OF PAYMENT OF CLAIMS: After receiving written proof of loss, the Company will pay . .
105 . . (Insert period for payment which must not be less frequently than monthly) all benefits then due for .
106 . . . (Insert type of loss). Benefits for any other loss covered by this policy will be paid as soon as the
107 Company receives proper written proof.

108 9. Provision 9:

109 PAYMENT OF CLAIMS: Benefits will be paid to the Insured. Loss of life benefits are payable in
110 accordance with the beneficiary designation in effect at the time of payment. If none is then in effect,
111 the benefits will be paid to the Insured's estate. Any other benefits unpaid at death may be paid, at the
112 Company's option, either to the Insured's beneficiary or the Insured's estate.

113 Optional paragraph: If benefits are payable to the Insured's estate or a beneficiary who cannot
114 execute a valid release, the Company can pay benefits up to \$. . . . (insert an amount which shall not
115 exceed \$2,000), to someone related to the Insured or beneficiary by blood or by marriage whom the
116 Company considers to be entitled to the benefits. The Company will be discharged to the extent of any
117 payment made in good faith.

118 Optional paragraph: The Company may pay all or a portion of any indemnities provided for health
 119 care services to the health care services provider, unless the Insured directs otherwise in writing by the
 120 time proofs of loss are filed. The Company cannot require that the services be rendered by a particular
 121 health care services provider.

122 10. Provision 10:

123 PHYSICAL EXAMINATIONS AND AUTOPSY: The Company at its own expense has the right to
 124 have the Insured examined as often as reasonably necessary while a claim is pending. It may also have
 125 an autopsy made unless prohibited by law.

126 11. Provision 11:

127 LEGAL ACTIONS: No legal action may be brought to recover on this policy within sixty days after
 128 written proof of loss has been given as required by this policy. No legal action may be brought after
 129 three years from the time written proof of loss is required to be given.

130 12. Provision 12:

131 CHANGE OF BENEFICIARY: The Insured can change the beneficiary at any time by giving the
 132 Company written notice. The beneficiary's consent is not required for this or any other change in the
 133 policy, unless the designation of the beneficiary is irrevocable.

134 § 38.2-3514.1. *Preexisting conditions provisions.*

135 A. *In determining whether a preexisting conditions provision applies to an insured, all coverage shall*
 136 *credit the time the person was covered under previous individual or group policies providing hospital,*
 137 *medical and surgical or major medical coverage on an expense incurred basis if the previous coverage*
 138 *was continuous to a date not more than thirty days prior to the effective date of the new coverage,*
 139 *exclusive of any applicable waiting period under such coverage.*

140 B. *As used herein, a "preexisting conditions provision" means a policy provision that limits, denies,*
 141 *or excludes coverage for charges or expenses incurred during a twelve-month period following the*
 142 *insured's effective date of coverage, for a condition that, during a twelve-month period immediately*
 143 *preceding the effective date of coverage, had manifested itself in such a manner as would cause an*
 144 *ordinarily prudent person to seek diagnosis, care, or treatment, or for which medical advice, diagnosis,*
 145 *care, or treatment was recommended or received within twelve months immediately preceding the*
 146 *effective date of coverage or as to pregnancy existing on the effective date of coverage.*

147 C. *This section shall not apply to the following insurance policies or contracts:*

148 1. *Short-term travel;*

149 2. *Accident-only;*

150 3. *Limited or specified disease contracts;*

151 4. *Long-term care insurance;*

152 5. *Short-term nonrenewable policies or contracts of not more than six months' duration which are*
 153 *subject to no medical underwriting or minimal underwriting;*

154 6. *Individual open enrollment policies or contracts issued pursuant to § 38.2-4216.1 to persons who*
 155 *were previously covered under a group health insurance policy or contract issued by another*
 156 *unaffiliated insurer, health services plan or health maintenance organization, and who, due to health*
 157 *status, are eligible for individual coverage only under §§ 38.2-3416 and 38.2-4216.1; and*

158 7. *Policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of*
 159 *the Social Security Act, known as Medicare, or any other similar coverage under state or federal*
 160 *government plans.*

161 § 38.2-3605. Coverage of preexisting conditions; Medicare supplement policies.

162 Notwithstanding subdivision 2 (b) of § 38.2-3503 or the provisions of § 38.2-3514.1, an insurer that
 163 issues a Medicare supplement policy shall not deny a claim for losses incurred more than six months
 164 from the effective date of coverage on the grounds that a condition existed prior to the effective date of
 165 coverage regardless of the application form used. Except as so provided, the policy or contract shall not
 166 include wording that would permit a defense based upon preexisting conditions.

167 § 38.2-4214. Application of certain provisions of law.

168 No provision of this title except this chapter and, insofar as they are not inconsistent with this
 169 chapter, §§ 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-230,
 170 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
 171 through 38.2-620, 38.2-700 through 38.2-705, 38.2-900 through 38.2-904, 38.2-1017, 38.2-1018,
 172 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.)
 173 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
 174 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3400, 38.2-3401, 38.2-3404, 38.2-3405,
 175 38.2-3405.1, 38.2-3407.1 through 38.2-3407.6, 38.2-3409, 38.2-3411 through 38.2-3419.1, 38.2-3425
 176 through 38.2-3429, 38.2-3431, 38.2-3432, 38.2-3500, 38.2-3501, 38.2-3502, 38.2-3514.1, 38.2-3516
 177 through 38.2-3520 as they apply to Medicare supplement policies, §§ 38.2-3525, 38.2-3540.1, 38.2-3541,
 178 38.2-3542, 38.2-3600 through 38.2-3607 and Chapter 53 (§ 38.2-5300 et seq.) of this title shall apply to

179 the operation of a plan.

180 § 38.2-4319. Statutory construction and relationship to other laws.

181 A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this
182 chapter, §§ 38.2-100, 38.2-200, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229,
183 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
184 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,
185 Article 4 (§ 38.2-1317 et seq.) of Chapter 13, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405,
186 38.2-3405.1, 38.2-3407.2 through 38.2-3407.6, 38.2-3411.2, 38.2-3418.1, 38.2-3418.1:1, 38.2-3419.1,
187 38.2-3431, 38.2-3432, 38.2-3500, 38.2-3514.1, 38.2-3525, 38.2-3542, and Chapter 53 (§ 38.2-5300 et
188 seq.) of this title shall be applicable to any health maintenance organization granted a license under this
189 chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in
190 conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) of this title except with respect
191 to the activities of its health maintenance organization.

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

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

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