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HOUSE BILL NO. 1283

Offered January 24, 2000

A BILL to amend and reenact §§ 38.2-4214 and 38.2-4319, as it is effective and as it shall become effective, and to amend the Code of Virginia by adding in Chapter 34 of Title 38.2 an article numbered 6, consisting of sections numbered 38.2-3438 through 38.2-3442, relating to accident and sickness insurance; discrimination against victims of abuse.

Patrons—Watts and Woodrum; Senators: Howell and Puller

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-4214 and 38.2-4319, as it is effective and as it shall become effective, of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 34 of Title 38.2 an article numbered 6, consisting of sections numbered 38.2-3438 through 38.2-3442 as follows:

Article 6.

Discrimination Against Victims of Abuse.

§ 38.2-3438. Definitions.

As used in this section:

"Abuse" means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner or caretaker:

1. Attempting to cause or intentionally, knowingly or recklessly causing another person bodily injury, physical harm, severe emotional distress, psychological trauma, rape, sexual assault or involuntary sexual intercourse;

2. Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person or minor child without proper authority, under circumstances that place the person or minor child in reasonable fear of bodily injury or physical harm;

3. Subjecting another person to false imprisonment; or

4. Attempting to cause or intentionally, knowingly, or recklessly causing damage to property so as to intimidate or attempt to control the behavior of another person.

"Abuse-related medical condition" means a medical condition sustained by a subject of abuse that arises in whole or part out of an act or pattern of abuse.

"Abuse status" means the fact or perception that a person is, has been, or may be a subject of abuse, irrespective of whether the person has sustained abuse-related medical conditions.

"Carrier" means:

1. Any insurer licensed under this title proposing to offer or issue accident and sickness insurance policies that are subject to this chapter or Chapter 39 (§ 38.2-3900 et seq.) of this title;

2. Any nonstock corporation licensed under this title proposing to issue or deliver subscription contracts for one or more health services plans, medical or surgical services plans or hospital services plans that are subject to Chapter 42 (§ 38.2-4200 et seq.) of this title;

3. Any health maintenance organization licensed under this title that provides or arranges for the provision of one or more health care plans that are subject to Chapter 43 (§ 38.2-4300 et seq.) of this title;

4. Any nonstock corporation licensed under this title proposing to issue or deliver subscription contracts for one or more dental or optometric services plans which are subject to Chapter 45 (§ 38.2-4500 et seq.) of this title; and

5. Any other person licensed under this title who provides or arranges for the provision of health care coverage or benefits or health care plans or provider panels that are subject to regulation as the business of insurance under this title.

"Confidential abuse information" means information about acts of abuse or abuse status of a subject of abuse, a person's medical condition that the carrier knows or has reason to know is abuse-related, the address and telephone number (home and work) of a subject of abuse or the status of an applicant or insured as a family member, employer or associate of, or a person in a relationship with, a subject of abuse.

"Health benefit plan" or "plan" means a policy, contract, certificate or agreement offered by a carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services.

"Insured" means a party named on a health benefit plan as the person with legal rights to the benefits provided by the health benefit plan. For group plans, "insured" includes a person who is a

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60 beneficiary covered by a group health benefit plan.

61 "Subject of abuse" means a person against whom an act of abuse has been directed; who has
62 current or prior injuries, illnesses or disorders that resulted from abuse; or who seeks, may have
63 sought, or had reason to seek (i) medical or psychological treatment for abuse or (ii) court-ordered
64 protection or shelter from abuse.

65 § 38.2-3439. Unfair discriminatory practices.

66 A. It is unfairly discriminatory to:

67 1. Deny, refuse to issue, renew or reissue, cancel or otherwise terminate a health benefit plan, or
68 restrict or exclude health benefit plan coverage or add a premium differential to any health benefit plan
69 on the basis of the applicant's or insured's abuse status; or

70 2. Exclude or limit coverage for losses or deny a claim incurred by an insured on the basis of the
71 insured's abuse status.

72 B. When the health carrier has information in its possession that clearly indicates that the insured or
73 applicant is a subject of abuse, the disclosure or transfer of the confidential abuse information by a
74 person employed by or contracting with a health carrier for any purpose or to any person is unfairly
75 discriminatory, except:

76 1. To the subject of abuse or an individual specifically designated in writing by the subject of abuse;

77 2. To a health care provider for the direct provision of health care services;

78 3. To a licensed physician identified and designated by the subject of abuse;

79 4. When ordered by the Commission or a court of competent jurisdiction or otherwise required by
80 law; or

81 5. When necessary for a valid business purpose to transfer information that includes confidential
82 abuse information that cannot reasonably be segregated without undue hardship. Confidential abuse
83 information may be disclosed only if the recipient has executed a written agreement to be bound by the
84 prohibitions of this Chapter in all respects and to be subject to the enforcement of this Chapter by the
85 courts of this state for the benefit of the applicant or the insured, and only to the following persons:

86 a. A reinsurer that seeks to indemnify or indemnifies all or any part of a policy covering a subject of
87 abuse and that cannot underwrite or satisfy its obligations under the reinsurance agreement without that
88 disclosure;

89 b. A party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the
90 business of the health carrier;

91 c. Medical or claims personnel contracting with the health carrier, only where necessary to process
92 an application or perform the health carrier's duties under the policy or to protect the safety or privacy
93 of a subject of abuse (also includes parent or affiliate companies of the health carrier that have service
94 agreements with the health carrier); or

95 d. With respect to address and telephone number, to entities with whom the health carrier transacts
96 business when the business cannot be transacted without the address and telephone number;

97 6. To an attorney who needs the information to represent the health carrier effectively, provided the
98 health carrier notifies the attorney of its obligations under this Chapter and requests that the attorney
99 exercise due diligence to protect the confidential abuse information consistent with the attorney's
100 obligation to represent the health carrier;

101 7. To the policy owner or assignee, in the course of delivery of the policy, if the policy contains
102 information about abuse status; or

103 8. To any other entities deemed appropriate by the Commission.

104 This subsection does not preclude a subject of abuse from obtaining his or her insurance records.

105 D. It is unfairly discriminatory to request information relating to acts of abuse or an applicant's or
106 insured's abuse status, or make use of that information, however obtained, except for the limited
107 purposes of complying with legal obligations or verifying a person's claim to be a subject of abuse. This
108 subsection does not prohibit a health carrier from asking about a medical condition or from using
109 medical information to underwrite or to carry out its duties under the policy, even if the medical
110 information is related to a medical condition that the insurer knows or has reason to know is
111 abuse-related, to the extent otherwise permitted under this article and other applicable law.

112 E. It is unfairly discriminatory to terminate group coverage for a subject of abuse because coverage
113 was originally issued in the name of the abuser and the abuser has divorced, separated from, or lost
114 custody of the subject of abuse, or the abuser's coverage has terminated voluntarily or involuntarily.
115 Nothing in this subsection prohibits the health carrier from requiring the subject of abuse to pay the full
116 premium for coverage under the health plan or from requiring as a condition of coverage that the
117 subject of abuse reside or work within its service area, if the requirements are applied to all insureds of
118 the health carrier. The health carrier may terminate group coverage after the continuation coverage
119 required by this subsection has been in force for eighteen months, if it offers conversion to an
120 equivalent individual plan. The continuation coverage required by this section shall be satisfied by
121 coverage required under P.L. 9-272, the Consolidated Omnibus Budget Reconciliation Act (COBRA) of

122 1985, provided to a subject of abuse and is not intended to be in addition to coverage provided under
123 COBRA.

124 § 38.2-3440. Adverse decisions.

125 A health carrier that takes an action that adversely affects an applicant or insured on the basis of a
126 medical condition that the health carrier knows or has reason to know is abuse-related shall explain the
127 reason for its action to the applicant or insured in writing and shall be able to demonstrate that its
128 action, and any applicable plan provision: (i) does not have the purpose or effect of treating abuse
129 status as a medical condition or underwriting criterion; (ii) is not based upon any actual or perceived
130 correlation between a medical condition and abuse; (iii) is otherwise permissible by law and applies in
131 the same manner and to the same extent to all applicants and insureds with a similar medical condition
132 without regard to whether the condition or claim is abuse-related; and (iv) except for claim actions, is
133 based on a determination, made in conformance with sound actuarial principles and supported by
134 reasonable statistical evidence, that there is a correlation between the medical condition and a material
135 increase in insurance risk.

136 § 38.2-3441. Protocols for subjects of abuse.

137 Health carriers shall develop and adhere to written policies specifying procedures to be followed by
138 employees for the purpose of protecting the safety and privacy of a subject of abuse and shall otherwise
139 implement the provisions of this article when taking an application, investigating a claim, pursuing
140 subrogation or taking any other action relating to a policy or claim involving a subject of abuse.
141 Carriers shall distribute their written policies to employees.

142 § 38.2-3442. Enforcement.

143 The Commission shall promulgate any regulations it deems necessary for the enforcement of this
144 article.

145 § 38.2-4214. Application of certain provisions of law.

146 No provision of this title except this chapter and, insofar as they are not inconsistent with this
147 chapter, §§ 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-230,
148 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through
149 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,
150 38.2-1018, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.) and 2
151 (§ 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,
152 38.2-1340, 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3400, 38.2-3401,
153 38.2-3404, 38.2-3405, 38.2-3405.1, 38.2-3407.1 through 38.2-3407.6:1, 38.2-3407.9 through
154 38.2-3407.16, 38.2-3409, 38.2-3411 through 38.2-3419.1, 38.2-3430.1 through 38.2-343738.2-3442,
155 38.2-3501, 38.2-3502, 38.2-3514.1, 38.2-3514.2, 38.2-3516 through 38.2-3520 as they apply to Medicare
156 supplement policies, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3541, 38.2-3542,
157 38.2-3543.2, 38.2-3600 through 38.2-3607, Chapter 53 (§ 38.2-5300 et seq.), Chapter 58 (§ 38.2-5800 et
158 seq.) and Chapter 59 (§ 38.2-5900 et seq.) of this title shall apply to the operation of a plan.

159 § 38.2-4319. (Effective until July 1, 2004) Statutory construction and relationship to other laws.

160 A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this
161 chapter, §§ 38.2-100, 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225,
162 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500
163 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1057, 38.2-1306.2
164 through 38.2-1309, Articles 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, Articles 1
165 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836,
166 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through
167 38.2-3407.16, 38.2-3411.2, 38.2-3412.1:01, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.11, 38.2-3419.1,
168 38.2-3430.1 through 38.2-343738.2-3442, 38.2-3500, 38.2-3514.1, 38.2-3514.2, §§ 38.2-3522.1 through
169 38.2-3523.4, 38.2-3525, 38.2-3542, 38.2-3543.2, Chapter 53 (§ 38.2-5300 et seq.), Chapter 58
170 (§ 38.2-5800 et seq.) and Chapter 59 (§ 38.2-5900 et seq.) of this title shall be applicable to any health
171 maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer
172 or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42
173 (§ 38.2-4200 et seq.) of this title except with respect to the activities of its health maintenance
174 organization.

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

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

181 D. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health
182 maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to

183 offer coverage to or accept applications from an employee who does not reside within the health
184 maintenance organization's service area.

185 § 38.2-4319. (Effective July 1, 2004) Statutory construction and relationship to other laws.

186 A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this
187 chapter, §§ 38.2-100, 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225,
188 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500
189 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1057, 38.2-1306.2
190 through 38.2-1309, Articles 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, Articles 1
191 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836,
192 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through
193 38.2-3407.16, 38.2-3411.2, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.11, 38.2-3419.1, 38.2-3430.1
194 through 38.2-3437, 38.2-3442, 38.2-3500, 38.2-3514.1, 38.2-3514.2, §§ 38.2-3522.1 through 38.2-3523.4,
195 38.2-3525, 38.2-3542, 38.2-3543.2, Chapter 53 (§ 38.2-5300 et seq.), Chapter 58 (§ 38.2-5800 et seq.)
196 and Chapter 59 (§ 38.2-5900 et seq.) of this title shall be applicable to any health maintenance
197 organization granted a license under this chapter. This chapter shall not apply to an insurer or health
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