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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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59 beneficiary covered by a group health benefit plan.

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

64 § 38.2-3439. Unfair discriminatory practices.

65 A. It is unfairly discriminatory to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 38.2-3440. Adverse decisions.

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

§ 38.2-3441. Protocols for subjects of abuse.

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

§ 38.2-3442. Enforcement.

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

§ 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, 38.2-305, 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, 38.2-3405.1, 38.2-3407.1 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.16, 38.2-3409, 38.2-3411 through 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3442, 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 supplement policies, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3541, 38.2-3542, 38.2-3543.2, 38.2-3600 through 38.2-3607, Chapter 53 (§ 38.2-5300 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and Chapter 59 (§ 38.2-5900 et seq.) of this title shall apply to the operation of a plan.

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

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 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 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 through 38.2-1309, Articles 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836, 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 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, 38.2-3430.1 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, 38.2-3525, 38.2-3542, 38.2-3543.2, Chapter 53 (§ 38.2-5300 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and Chapter 59 (§ 38.2-5900 et seq.) of this title shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) of this title except with respect to the activities of its health maintenance organization.

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

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

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

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

184 § 38.2-4319. (Effective July 1, 2004) Statutory construction and relationship to other laws.

185 A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this
186 chapter, §§ 38.2-100, 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225,
187 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
188 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
189 through 38.2-1309, Articles 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, Articles 1
190 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836,
191 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
192 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
193 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,
194 38.2-3525, 38.2-3542, 38.2-3543.2, Chapter 53 (§ 38.2-5300 et seq.), Chapter 58 (§ 38.2-5800 et seq.)
195 and Chapter 59 (§ 38.2-5900 et seq.) of this title shall be applicable to any health maintenance
196 organization granted a license under this chapter. This chapter shall not apply to an insurer or health
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206 maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to
207 offer coverage to or accept applications from an employee who does not reside within the health
208 maintenance organization's service area.