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HOUSE BILL NO. 1829

Offered January 14, 2009

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A BILL to amend and reenact §§ 38.2-508, 38.2-508.5, and 38.2-3430.9 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3430.6:1, relating to classifications of individuals with respect to individual health insurance coverage.

Patron—Fralin

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-508, 38.2-508.5, and 38.2-3430.9 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding a section numbered 38.2-3430.6:1 as follows:

§ 38.2-508. Unfair discrimination.

No person shall:

1. Unfairly discriminate or permit any unfair discrimination between individuals of the same class and equal expectation of life (i) in the rates charged for any life insurance or annuity contract, or (ii) in the dividends or other benefits payable on the contract, or (iii) in any other of the terms and conditions of the contract;

2. Unfairly discriminate or permit any unfair discrimination between individuals of the same class and of essentially the same hazard (i) in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance, (ii) in the benefits payable under such policy or contract, (iii) in any of the terms or conditions of such policy or contract, or (iv) in any other manner, *provided that any classification, tier placement, or other rating of individuals under any policy or contract providing accident or health insurance in the individual market shall comply with the requirements of § 38.2-3430.6:1 and regulations adopted by the Commission pursuant thereto*;

3. Refuse to insure, refuse to continue to insure, or limit the amount, extent or kind of insurance coverage available to an individual, or charge an individual a different rate for the same coverage solely because of blindness, or partial blindness, or mental or physical impairments, unless the refusal, limitation or rate differential is based on sound actuarial principles. This paragraph shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance or renewal of any insurance policy or contract;

4. Unfairly discriminate or permit any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, cancelling or limiting the amount of insurance coverage solely because of the geographic location of the individual or risk, unless:

a. The refusal, cancellation or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

b. The refusal, cancellation or limitation is required by law or regulatory mandate;

5. Make or permit any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, cancelling or limiting the amount of insurance coverage on a residential property risk, or the personal property contained in a residential property risk, solely because of the age of the residential property, unless:

a. The refusal, cancellation or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

b. The refusal, cancellation or limitation is required by law or regulatory mandate;

6. Refuse to issue or renew any individual accident and sickness insurance policy or contract for coverage over and above any lifetime benefit of a group accident and sickness policy or contract solely because an individual is insured under a group accident and sickness insurance policy or contract; provided that medical expenses covered by both individual and group coverage shall be paid first by the group policy or contract to the extent of the group coverage. This subsection shall not apply to individual policies or contracts issued or renewed pursuant to § 38.2-4216.1; or

7. Consider the status of a victim of domestic violence as a criterion in any decision with regard to insurance underwriting, pricing, renewal, scope of coverage, or payment of claims on any and all insurance defined in § 38.2-100 and further classified in Article 2 (§ 38.2-101 et seq.) of Chapter 1 of this title, other than (i) legal services plans as provided for in Chapter 44 (§ 38.2-4400 et seq.) of this title and (ii) the insurance classified in §§ 38.2-110 through 38.2-133. The term "domestic violence"

means the occurrence of one or more of the following acts by a current or former family member, household member as defined in § 16.1-228, person against whom the victim obtained a protective order or caretaker:

a. Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape or sexual assault;

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

c. Subjecting another person to false imprisonment; or

d. Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

Nothing in this subsection shall prohibit an insurer or insurance professional from asking about a medical condition or from using medical information to underwrite or to carry out its duties under an insurance policy even if the medical information is related to a medical condition that the insurer or insurance professional knows or has reason to know resulted from domestic violence, to the extent otherwise permitted under this section and other applicable law.

§ 38.2-508.5. Re-underwriting individual under existing group or individual accident and sickness insurance policy prohibited; exceptions.

A. No premium increase, including a reduced premium increase in the form of a discount *or a reclassification, reassignment, or other change in the class or tier rating applicable to an individual as provided in § 38.2-3430.6:1,* may be implemented for an insured individual under existing individual health insurance coverage as defined in subsection B of § 38.2-3431 subsequent to the initial effective date of coverage under such policy or certificate to the extent that such premium increase is determined based upon: (i) a change in a health-status-related factor of the individual insured as defined in subsection B of § 38.2-3431 or (ii) the past or prospective claim experience of the individual insured.

B. No reduction in benefits may be implemented for an insured individual under existing individual health insurance coverage as defined in subsection B of § 38.2-3431 subsequent to the initial effective date of coverage under such policy or certificate to the extent that such reduction in benefits is determined based upon: (i) a change in a health-status-related factor of the individual insured as defined in subsection B of § 38.2-3431 or (ii) the past or prospective claim experience of the individual insured.

C. No modifications to contractual terms and conditions may be implemented for an insured individual under existing individual health insurance coverage as defined in subsection B of § 38.2-3431 subsequent to the initial effective date of coverage under such policy or certificate to the extent that such modifications to contractual terms and conditions are determined based upon: (i) a change in a health-status-related factor of the individual insured as defined in subsection B of § 38.2-3431 or (ii) the past or prospective claim experience of the individual insured.

D. This section shall not prohibit adjustments to premium, rescission of, or amendments to the insurance contract in the following circumstances:

1. When an insurer learns of information subsequent to issuing the policy or certificate that was not disclosed in the underwriting process and that, had it been known, would have resulted in a higher premium level or denial of coverage. Any adjustment to premium or rescission of coverage made for this reason may be made only to extent that it would have been made had the information been disclosed in the application process, and shall not be imposed beyond any period of incontestability, or beyond any time period proscribing an insurer from asserting defenses based upon misstatements in applications, as otherwise may be provided by applicable law. Any such rescission shall be consistent with § 38.2-3430.3 regarding guaranteed availability.

2. When an insurer provides a lifestyle-based good health discount based upon an individual's adherence to a healthy lifestyle and this discount is not based upon a specific health condition or diagnosis.

3. When an insurer removes waivers or riders attached to the policy at issue that limit coverage for specific named pre-existing medical conditions.

E. For purposes of this section, re-underwriting means the reevaluation of any health-status-related factor of an individual for purposes of adjusting premiums, benefits or contractual terms as provided in subsections A, B and C of this section.

F. The provisions of this section shall not apply to individual health insurance coverage issued to members of a bona fide association, as defined in subsection B of § 38.2-3431, where coverage is available to all members of the association and eligible dependents of such members without regard to any health-status-related factor.

§ 38.2-3430.6:1. Classifications of individuals; establishment of classes and tiers.

A. A health insurer that provides individual health insurance coverage shall underwrite such coverage, including establishing premiums and cost-sharing provisions with respect thereto, in compliance with this section.

B. An individual obtaining health insurance coverage in the individual market shall be rated by the health insurer in a manner that ensures that the individual is underwritten in the same manner as individuals of the same class and of essentially the same hazard. The rating of individuals shall determine the appropriate class, or tier within a class, established by the Commission pursuant to subsection C, into which an individual shall be placed. Ratings shall not be based upon an individual's current or previous diagnosis or treatment for a specific illness, disease, or condition, without taking into due account all available information regarding:

1. The individual's current health condition and diagnosis;

2. The current severity of the illness, disease, or condition, and the prognosis for increased severity during the term of the coverage;

3. Projections of medical treatments and services, and the costs thereof, that are reasonably expected to be required during the term of the coverage;

4. The extent to which the symptoms or pathologies associated with the illness, disease, or condition are adequately controlled through medication, diet, exercise, and like measures implemented by the individual; and

5. The anticipated cost of future medical treatment of the individual, during the term of the coverage, based upon the factors listed in subdivisions 1 through 4 of this subsection.

C. The Commission shall establish by regulation a reasonable number of classes, and tiers within each class, for the underwriting of health insurance coverage in the individual market by each health insurer that provides individual health insurance coverage. Classes and tiers shall be established in a manner that provides appropriate recognition of risk associated with an individual's health condition or diagnosis; however, classes and tiers shall differentiate among individuals diagnosed with or treated for a specific illness, disease, or condition based upon the factors listed in subdivisions B 1 through B 4, to the end that separate classes or tiers are established for individuals who have been diagnosed with the same medical condition that recognize that the risk associated with the diagnosis is contingent upon those factors.

D. Each health insurer that provides individual health insurance coverage shall provide reasonable means for any individual who is aggrieved by a decision made by a health insurer pursuant to subsection B that involves the individual's rating and placement within a class or tier to be heard in person or by an authorized representative on his written request. Any individual who makes the written request to be heard shall be entitled to a review by the health insurer of the decision. If the health insurer fails to grant or reject the request for a review within 30 days after it is made, the individual may proceed in the same manner as if his request had been rejected.

E. Any person aggrieved by the action of the health insurer on a review conducted pursuant to subsection D may, within 30 days after written notice of the health insurer's action, appeal to the Commission. The Commission may modify, affirm, or reverse the action after a hearing held upon not less than 10 days' written notice to the applicant and to the health insurer. Any final decision of the Commission shall be subject to judicial review in accordance with the provisions of §§ 12.1-39 through 12.1-41.

§ 38.2-3430.9. Regulations establishing standards and classes.

A. The Commission may adopt regulations to enable it to establish and administer such standards relating to the provisions of this article and Article 5 (§ 38.2-3431 et seq.) of this chapter as may be necessary to (i) implement the requirements of this article, *including but not limited to the requirements of § 38.2-3430.6:1 regarding classifications and tier ratings for individuals;* and (ii) assure that the Commonwealth's regulation of health insurance issuers is not preempted pursuant to P. L. 104-191 (The Health Insurance Portability & Accountability Act of 1996).

B. The Commission may revise or amend such regulations and may increase the scope of the regulations to the extent necessary to maintain federal approval of the Commonwealth's program for regulation of health insurance issuers pursuant to the requirements established by the United States Department of Health and Human Services.

C. The Commission shall annually advise the standing committees of the General Assembly having jurisdiction over insurance matters of revisions and amendments made pursuant to subsection B.