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SENATE BILL NO. 1274

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact §§ 38.2-3503 and 38.2-3527 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-508.6, relating to certain health insurance business practices.

 Patron—Vogel

 Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3503 and 38.2-3527 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-508.6 as follows:

§ 38.2-508.6. *Business practices applicable to health policies.*

A. As used in this section:

"Carrier" means:

1. Any insurer licensed under this title proposing to offer or issue accident and sickness insurance policies that are subject to Chapter 34 (§ 38.2-3400 et seq.) or 39 (§ 38.2-3900 et seq.);

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.); and

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.).

"Health policy" means:

1. Any accident and sickness insurance policy subject to Chapter 34 (§ 38.2-3400 et seq.) or 39 (§ 38.2-3900 et seq.);

2. Any subscription contract for any health services plan, medical or surgical services plan, or hospital services plan subject to Chapter 42 (§ 38.2-4200 et seq.); and

3. Any health care plan subject to Chapter 43 (§ 38.2-4300 et seq.).

B. No person shall issue, deliver, sell, solicit, or negotiate the sale of a health policy that provides for the payment of premiums in monthly or other periodic installments that:

1. Requires the holder of the health policy to pay, as a condition to reinstatement of a health policy, premiums in advance for periods beyond the month or other period in which reinstatement is sought; or

2. Fails to contain a provision that the policyowner is entitled to a grace period of not less than 90 days for the payment of any premium due except the first premium.

C. A carrier shall not refuse to permit a policyholder to reinstate a health policy on the basis of the policyholder's claims experience or history of premium payments with the carrier.

§ 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. Provisions 1 through 12 shall apply to all such policies. In addition, provision 13 shall apply to all such policies that are delivered, issued for delivery, renewed, or extended in this Commonwealth on or after January 1, 2001. 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

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59 of a claim during such initial two-year period, nor to limit the application of subdivisions 1, 2, 3, 4 and
60 5 of § 38.2-3504 in the event of misstatement with respect to age, occupation or other insurance.

61 Instead of Provision 2, a policy which the insured has the right to continue in force subject to its
62 terms by the timely payment of premium (i) until at least age 50 or, (ii) for a policy issued after age 44,
63 for at least five years from its date of issue, may contain the following provision, from which the clause
64 in parentheses may be omitted at the insurer's option:

65 INCONTESTABLE:

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

69 PREEXISTING CONDITIONS:

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

74 3. Provision 3:

75 GRACE PERIOD: This policy has a 90-day grace period. This means that if a renewal
76 premium is not paid on or before the date it is due, it may be paid during the following 90 days.
77 During the grace period the policy shall continue in force.

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

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

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

85 The grace period will not apply if, at least 90 days before the premium due date, the Company
86 has delivered or has mailed to the Insured's last address shown in the Company's records written notice
87 of the Company's intent not to renew this policy.

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

90 4. Provision 4:

91 REINSTATEMENT: If the renewal premium is not paid before the grace period ends, the policy will
92 lapse. Later acceptance of the premium by the Company or by an agent authorized to accept payment,
93 without requiring an application for reinstatement, will reinstate the policy. If the Company or its agent
94 requires an application for reinstatement, the Insured will be given a conditional receipt for the premium.
95 If the application is approved the policy will be reinstated as of the approval date. Lacking such
96 approval, the policy will be reinstated on the forty-fifth day after the date of the conditional receipt
97 unless the Company has previously written the Insured of its disapproval. The reinstated policy will
98 cover only loss that results from an injury sustained after the date of reinstatement and sickness that
99 starts more than 10 days after such date. In all other respects the rights of the Insured and the Company
100 will remain the same, subject to any provisions noted or attached to the reinstated policy. Any premiums
101 the Company accepts for a reinstatement will be applied to a period for which premiums have not been
102 paid. No premiums will be applied to any period more than 60 days prior to the date of reinstatement.

103 The last sentence of Provision 4 may be omitted from any policy that the Insured has the right to
104 continue in force subject to its terms by the timely payment of premiums (i) until at least age 50, or (ii)
105 for a policy issued after age 44, for at least five years from its effective date.

106 5. Provision 5:

107 NOTICE OF CLAIM: Written notice of claim must be given within 20 days after a covered loss
108 starts or as soon as reasonably possible. The notice can be given to the Company at (insert
109 the location of such office as the insurer may designate for the purpose), or to the Company's agent.
110 Notice should include the name of the Insured, and Claimant if other than the Insured, and the policy
111 number.

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

119 6. Provision 6:

120 CLAIM FORMS: When the Company receives the notice of claim, it will send the Claimant forms

for filing proof of loss. If these forms are not given to the Claimant within 15 days after the giving of such notice, the Claimant shall meet the proof of loss requirements by giving the Company a written statement of the nature and extent of the loss within the time limit stated in the Proofs of Loss Section.

7. Provision 7:

PROOFS OF LOSS: If the policy provides for periodic payment for a continuing loss, written proof of loss must be given the Company within 90 days after the end of each period for which the Company is liable. For any other loss, written proof must be given within 90 days after such loss. If it was not reasonably possible to give written proof in the time required, the Company shall not reduce or deny the claim for this reason if the proof is filed as soon as reasonably possible. In any event, except in the absence of legal capacity, the proof required must be given no later than one year from the time specified.

8. Provision 8:

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

9. Provision 9:

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

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

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

10. Provision 10:

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

11. Provision 11:

LEGAL ACTIONS: No legal action may be brought to recover on this policy within 60 days after written proof of loss has been given as required by this policy. No legal action may be brought after three years from the time written proof of loss is required to be given.

12. Provision 12:

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

13. Provision 13:

CANCELLATION BY INSURED: The Insured may cancel this policy at any time by written notice delivered or mailed to the Company effective upon receipt or on such later date as may be specified in the notice. In the event of cancellation, the Company shall return promptly the unearned portion of any premium paid. The earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

§ 38.2-3527. Grace period.

Each group accident and sickness insurance policy shall contain a provision that the policyowner is entitled to a grace period of not less than ~~thirty-one~~ 90 days for the payment of any premium due except the first premium. The provision shall also state that during the grace period the accident and sickness coverage shall continue in force unless the policyowner has given the insurer written notice of discontinuance in accordance with the terms of the policy and in advance of the date of discontinuance. The policy may provide that the policyowner shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during the grace period.