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HOUSE BILL NO. 1367

Offered January 22, 2010

A BILL to amend and reenact § 38.2-1802 of the Code of Virginia and to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6404, relating to the sale by foreign health insurers of health benefits plans with coverage for autism spectrum disorder.

Patron—LeMunyon

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-1802 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6404, as follows:

§ 38.2-1802. Acting as agent for unlicensed insurer prohibited; penalties.

A. No person other than a licensed surplus lines broker shall sell, solicit, or negotiate contracts of insurance in this Commonwealth on behalf of any insurer which is not licensed to transact the business of insurance in this Commonwealth. Nothing in this section shall prohibit any person from obtaining insurance upon his own life or property from an unlicensed insurer.

B. Any person violating the provisions of this section shall be guilty upon conviction of a Class 1 misdemeanor and punished for each offense. In addition, any person violating this section shall be (i) liable on any claim against any unlicensed insurer that arises out of a contract or policy sold, solicited, or negotiated by the person or which the person assisted in selling, soliciting, or negotiating, or (ii) punished as provided in §§ 38.2-218 and 38.2-1831, or (iii) subject to both (i) and (ii).

C. Nothing in this section shall apply to the selling, soliciting, or negotiating of ~~contracts of~~ insurance on:

1. ~~Vessels~~ *Contracts of insurance on vessels* or craft, their cargo, freight, marine builder's risk, maritime protection and indemnity, ship repairer's legal liability, tower's liability or other risks commonly insured under ocean marine insurance policies as distinguished from inland marine insurance policies, provided that a property and casualty or limited lines property and casualty agent licensed in this Commonwealth sells, solicits, or negotiates these classes of insurance on behalf of any insurer not licensed to transact the business of insurance in this Commonwealth; ~~or~~

2. ~~The~~ *Contracts of insurance on the* rolling stock and operating properties of railroads used in interstate commerce or of any liability or other risks incidental to their ownership, maintenance or operation; ~~or~~

3. *Health benefits plans providing coverage for treatment for autism spectrum disorder on behalf of an insurer that is licensed to sell, offer, or provide such health benefits plans in any other state, if such foreign insurer is authorized to sell, offer, or provide eligible health benefits plans in the Commonwealth pursuant to Chapter 64 (§ 38.2-6400 et seq.).*

D. A property and casualty or limited lines property and casualty agent licensed in this Commonwealth who, pursuant to the provisions of subdivision C 1, sells, solicits, or negotiates ocean marine insurance on behalf of any insurer not licensed to transact the business of insurance in this Commonwealth shall provide a notice to the insured stating that the insurance policy is to be placed with an insurer not licensed to transact the business of insurance in the Commonwealth and stating that (i) in the event of the insolvency of the insurer, there is no protection under the Virginia Property and Casualty Insurance Guaranty Association against financial loss to claimants or policyholders because of the insolvency of an unlicensed insurer, and (ii) the insured may not be protected under the insurance laws of this Commonwealth. The notice required by this subsection shall be in a form prescribed by the Commission and shall be signed and dated by the agent and the insured. The signatures required by this subsection may be in electronic form. The agent shall keep a copy of the notice for at least three years after the effective date of the policy to which the notice pertains. A copy of the notice shall be given to the insured prior to placement of the insurance.

CHAPTER 64.**OUT-OF-STATE HEALTH INSURANCE PLANS PROVIDING COVERAGE FOR AUTISM SPECTRUM DISORDER.**

§ 38.2-6400. Definitions.

As used in this chapter, unless the context requires otherwise:

"Autism spectrum disorder" means any pervasive developmental disorder, including (i) autistic

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59 disorder, (ii) Asperger's syndrome, (iii) Rett syndrome, (iv) childhood disintegrative disorder, or (v)
60 Pervasive Developmental Disorder - Not Otherwise Specified, as defined in the most recent edition of
61 the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

62 "Domestic health insurer" means an insurer licensed to sell, offer, or provide health benefits plans in
63 the Commonwealth.

64 "Eligible health benefits plan" means a health benefits plan that provides coverage for treatment of
65 autism spectrum disorder.

66 "Foreign health insurer" means an insurer licensed to sell, offer, or provide eligible health benefits
67 plans in any other state.

68 "Health benefits plan" means an arrangement for the delivery of health care, on a group basis, in
69 which a health carrier undertakes to provide, arrange for, pay for, or reimburse any of the costs of
70 health care services for a covered person that is offered in accordance with the laws of any state.

71 "Health benefits plan" does not include short-term travel, accident only, limited or specified disease, or
72 individual conversion policies or contracts, nor policies or contracts designed for issuance to persons
73 eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other
74 similar coverage under state or federal governmental plans.

75 "Health care services" means the furnishing of services to any individual for the purpose of
76 preventing, alleviating, curing, or healing human illness, injury, or physical disability.

77 "Insurer" means any entity that is authorized to sell, offer, or provide a health benefits plan,
78 including an entity providing a plan of health insurance, health benefits or health services, an accident
79 and sickness insurance company, a health maintenance organization, a corporation offering a health
80 benefits plan, a fraternal benefit society, or other entity that provides health benefits plans subject to
81 state insurance regulation. "Insurer" shall not include a multiple employer welfare arrangement.

82 "Treatment for autism spectrum disorder" includes the following care prescribed, provided, or
83 ordered as part of a treatment plan for an individual diagnosed with one of the autism spectrum
84 disorders by a licensed physician, a licensed psychologist, or a licensed clinical social worker who
85 determines the care to be medically necessary: (i) habilitative or rehabilitative care, (ii) pharmacy care,
86 (iii) psychiatric care, (iv) psychological care, and (v) therapeutic care.

87 "Treatment plan" means a plan for the treatment of autism spectrum disorder developed by a
88 licensed physician, licensed psychologist, or licensed clinical social worker pursuant to a comprehensive
89 evaluation or reevaluation performed in a manner consistent with the most recent clinical report or
90 recommendation of the American Academy of Pediatrics or the American Academy of Child and
91 Adolescent Psychiatry.

92 § 38.2-6401. When foreign health insurers may offer eligible health benefits plans in the
93 Commonwealth.

94 A. Notwithstanding any other law, rule, or regulation to the contrary, a foreign health insurer may
95 sell, offer, and provide an eligible health benefits plan in the Commonwealth if the foreign health
96 insurer offers an eligible health benefits plan with substantially identical coverage for treatment of
97 autism spectrum disorder in its domiciliary state and is in compliance with all applicable laws,
98 regulations, and other requirements of its domiciliary state.

99 B. Except as provided in this chapter, an eligible health benefits plan sold, offered, or provided by a
100 foreign health insurer in the Commonwealth in accordance with the provisions of this chapter shall not
101 be subject to laws of the Commonwealth applicable to the sale, offering, or provision of accident and
102 sickness insurance, including, but not limited to, requirements imposed by Articles 1.2 (§ 32.1-137.7 et
103 seq.) and 2.1 (§ 32.1-138.6 et seq.) of Chapter 5 of Title 32.1, §§ 38.2-232 and 38.2-316, and Chapters
104 34 (§ 38.2-3400 et seq.), 35 (§ 38.2-3500 et seq.), 37.1 (§ 38.2-3717 et seq.), 42 (§ 38.2-4200 et seq.),
105 43 (§ 38.2-4300 et seq.), 45 (§ 38.2-4500 et seq.), 58 (§ 38.2-5800 et seq.), and 59 (§ 38.2-5900 et seq.).

106 § 38.2-6402. Required disclosures.

107 Each eligible health benefits plan provided by a foreign health insurer in the Commonwealth, and
108 each application for the eligible health benefits plan, shall disclose the differences between the eligible
109 health benefits plan issued by the foreign health insurer and an accident and sickness insurance policy
110 issued by a domestic health insurer pursuant to Chapter 34 (§ 38.2-3400 et seq.), and such related
111 information as the Commission may prescribe by regulation.

112 § 38.2-6403. Marketing materials.

113 A. The Commission shall establish fair marketing standards for marketing materials used by foreign
114 health insurers to market eligible health benefits plans in the Commonwealth, which standards shall be
115 consistent with those applicable to health benefits plans offered by a domestic health insurer pursuant to
116 Chapter 34 (§ 38.2-3400 et seq.).

117 B. The procedures and standards established under subsection A shall be applied on a
118 nondiscriminatory basis so as not to place greater responsibilities on foreign health insurers than the
119 responsibilities placed on domestic health insurers doing business in the Commonwealth.

120 § 38.2-6404. Exemption from requirements.

121 *Except as provided in this chapter, a foreign health insurer offering eligible health benefits plans*
122 *pursuant to this chapter shall not be required to comply with other requirements of this title applicable*
123 *to the sale of health benefits plans.*