VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 75

An Act to amend and reenact § 38.2-2201 of the Code of Virginia, relating to motor vehicle insurance policies; assignment of certain benefits.

[H 1655]

Approved March 5, 2013

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-2201 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-2201. Provisions for payment of medical expense and loss of income benefits; assignment of certain benefits.

A. Upon request of an insured, each insurer licensed in this Commonwealth issuing or delivering any policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance or use of any motor vehicle shall provide on payment of the premium, as a minimum coverage (i) to persons occupying the insured motor vehicle; and (ii) to the named insured and, while resident of the named insured's household, the spouse and relatives of the named insured while in or upon, entering or alighting from or through being struck by a motor vehicle while not occupying a motor vehicle, the following health care and disability benefits for each accident:

1. All reasonable and necessary expenses for medical, chiropractic, hospital, dental, surgical, ambulance, prosthetic and rehabilitation services, and funeral expenses, resulting from the accident and incurred within three years after the date of the accident, up to $2,000 per person; however, if the insured does not elect to purchase such limit the insurer and insured may agree to any other limit;

2. If the person is usually engaged in a remunerative occupation, an amount equal to the loss of income incurred after the date of the accident resulting from injuries received in the accident up to $100 per week during the period from the first workday lost as a result of the accident up to the date the person is able to return to his usual occupation. However, the period shall not extend beyond one year from the date of the accident; and

3. An expense described in subdivision 1 shall be deemed to have been incurred:

a. If the insured is directly responsible for payment of the expense;

b. If the expense is paid by (i) a health care insurer pursuant to a negotiated contract with the health care provider or (ii) Medicaid or Medicare, where the actual payment with reference to the medical bill rendered by the provider is less than or equal to the provider's usual and customary fee, in the amount of the actual payment *as evidenced by an explanation of benefits, remittance advice, or similar documentation from the health care provider*; however, if the insured is required to make a payment in addition to the actual payment by the health care insurer or Medicaid or Medicare, the amount shall be increased by the payment made by the insured; *or*

c. If no medical bill is rendered or specific charge made by a health care provider to the insured, an insurer, or any other person, in the amount of the usual and customary fee charged in that community for the service rendered.

B. The insured has the option of purchasing either or both of the coverages set forth in subdivisions *A* 1 and *A* 2 ~~of~~ ~~subsection~~ ~~A~~ ~~of~~ ~~this~~ ~~section~~. Either or both of the coverages, as well as any other medical expense or loss of income coverage under any policy of automobile liability insurance, shall be payable to the covered injured person *or pursuant to an assignment of benefits in accordance with subsection D,* notwithstanding the failure or refusal of the named insured or other person entitled to the coverage to give notice to the insurer of an accident as soon as practicable under the terms of the policy, except where the failure or refusal prejudices the insurer in establishing the validity of the claim.

C. In any policy of personal automobile insurance in which the insured has purchased coverage under subsection A ~~of~~ ~~this~~ ~~section~~, every insurer providing such coverage arising from the ownership, maintenance or use of no more than four motor vehicles shall be liable to pay up to the maximum policy limit available on every motor vehicle insured under that coverage if the health care or disability expenses and costs mentioned in subsection A ~~of~~ ~~this~~ ~~section~~ exceed the limits of coverage for any one motor vehicle so insured.

D. Any attempt to assign medical expense benefits shall be subject to the following:

1. An assignment of medical expense benefits shall be valid only if:

a. A copy of the AOB form, executed by the assignor and in compliance with the other requirements of subdivision D 1 and a copy of the notice complying with subdivision g if such notice is provided in a separate document pursuant to subdivision e, is provided to the motor vehicle insurer;

b. The AOB form is (i) in writing, which includes any printed or electronic format, (ii) dated, and (iii) executed by the assignor;

c. The AOB form includes a conspicuous statement that the assignor is not required to execute the

AOB form;

d. If the AOB form includes a notice that complies with the provisions of subdivision g, the AOB form is signed, initialed, or otherwise marked by the assignor, at or near the notice provision, to acknowledge that the assignor has read, or had the opportunity to read, the notice;

e. If the AOB form does not include a notice that complies with the provisions of subdivision g, (i) the assignor is given a separate document, in any printed or electronic format, that is delivered to the assignor at the same time as the AOB form and that contains a notice that complies with the provisions of subdivision g; (ii) the AOB form includes a conspicuous statement that a notice regarding the assignment of medical expense benefits is provided in a separate document; and (iii) the AOB form is signed, initialed, or otherwise marked by the assignor at or near the statement described in clause (ii) to acknowledge that the assignor has read, or had the opportunity to read, the separate document containing the notice;

f. The statements required by subdivision D 1 to be included in the AOB form or a separate document, including the notice prescribed by subdivision g, are in not less than eight-point type; and

g. The assignor is provided, either in the AOB form or in a separate document, a notice that summarizes the effect of the assignment of medical expense benefits, which notice states the following:

"Notice: automobile accident patients

If you have been in an automobile accident, you may be entitled to payment from your automobile insurance if you have medical expense benefits coverage. By signing this assignment of benefits form you are giving to your health care provider the right to receive some or all of that payment directly from your automobile insurance company.

If you have health insurance and your healthcare provider is in-network: as long as you provide information necessary to verify your health insurance coverage the healthcare provider may only bill the amount you owe for any copayment, coinsurance, or deductibles to your automobile insurance and you may be entitled to any remainder of your automobile insurance benefit.

If you do not provide information necessary to verify your health insurance coverage, do not have health insurance, or your healthcare provider is not in your health insurer's provider network: your health care provider may bill their full charges to your automobile insurance.

You may want to consult your insurance agent or attorney before signing or initialing this form. You are not required to sign/initial this form to receive care.";

2. Upon receipt of a copy of an AOB form that satisfies the requirements of subdivision D 1 and (i) an explanation of benefits or remittance advice or (ii) a bill, claim form, or documentation from the assignee advising that it has been represented to the assignee that the covered injured person does not have health insurance or is covered by a self-insured or self-funded employee welfare benefit plan subject to the Employee Retirement Income Security Act of 1974 which requires medical expense coverage to be primary, a motor vehicle insurer shall pay directly to the health care provider, from any medical expense benefits available to such person under a motor vehicle insurance policy:

a. If the covered injured person is covered under a health care policy, the health care provider is an in-network provider, and the health care provider has submitted its claim to the health insurer for the health care services, the amount of any copayments, coinsurance, or deductibles owed by the injured covered person to the health care provider, as evidenced by an explanation of benefits, remittance advice, or similar documentation provided to the motor vehicle insurer; or

b. If (i) the covered injured person is not covered under a health care policy, (ii) the covered injured person is covered by a self-insured or self-funded employee welfare benefit plan subject to the Employee Retirement Income Security Act of 1974 which requires medical expense coverage to be primary, or (iii) the health care provider is not an in-network provider, amounts to cover the cost of the health care services provided, in the amount of the usual and customary fee charged in that community for the health care services rendered;

3. A motor vehicle insurer shall in all respects be held harmless for making payments pursuant to subdivision D 2 to a health care provider in accordance with an assignment of benefits that satisfies the requirements of subdivision D 1;

4. A covered injured person shall not be required to assign to any person any medical expense benefits he may have under this section, including any assignment of the proceeds of such coverages;

5. An assignment of medical expense benefits shall be void and unenforceable as against public policy if the assignment does not comply with the requirements of subdivision D 1;

6. Medical expense benefits may not be reduced because of any benefits paid, payable, or provided by any insurance contract providing hospital, medical, surgical, and similar or related benefits, or any subscription contract or health services plan delivered or issued for delivery or providing for the payment of benefits to or on behalf of persons residing in or employed in the Commonwealth, except as authorized by this section; and

7. Nothing in this section shall prohibit the payment of medical expense benefits due to the covered injured person directly to any state or federal assistance program that has provided medical benefits to such injured person when the injury arose out of the ownership, maintenance, or use of any motor vehicle.

E. As used in subsection D:

"AOB form" means the document or instrument that contains a provision by which the assignor assigns medical expense benefits, including any assignment of the proceeds of such coverages, to an assignee. The AOB form may be a separate instrument or included in another instrument, including a consent form or a form assigning other benefits.

"Assignee" means the health care provider to which the assignor is assigning medical expense benefits, including any assignment of the proceeds of such coverages.

"Assignor" means the covered injured person or a person authorized to consent on the covered injured person's behalf.

"Health care policy" means any health care plan, subscription contract, evidence of coverage, certificate, health services plan, medical or hospital services plan, accident and sickness insurance policy or certificate, or other similar certificate, policy, contract, or arrangement, and any endorsement or rider thereto, offered, arranged, issued, or administered by a health insurer to an individual or a group contract holder to cover all or a portion of the cost of individuals, or their eligible dependents, receiving covered health care services. Health care policy includes coverages issued pursuant to (i) Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2 (state employees); (ii) § 2.2-1204 (local choice); (iii) 5 U.S.C. § 8901 et seq. (federal employees); and (iv) an employee welfare benefit plan as defined in 29 U.S.C. § 1002(1) of the Employee Retirement Income Security Act of 1974 that is self-insured or self-funded. Health care policy does not include (a) coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare); Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., or Title XX of the Social Security Act, 42 U.S.C. § 1397 et seq. (Medicaid); or Chapter 55 of Title 10 of the United States Code, 10 U.S.C. § 1071 et seq. (TRICARE); (b) subscription contracts for one or more dental or optometric services plans that are subject to Chapter 45 (§ 38.2-4500 et seq.); (c) insurance policies that provide coverage, singly or in combination, for death, dismemberment, disability, or hospital and medical care caused by or necessitated as a result of accident or specified kinds of accidents, including student accident, sports accident, blanket accident, specific accident, and accidental death and dismemberment policies; (d) credit life insurance and credit accident and sickness insurance issued pursuant to Chapter 37.1 (§ 38.2-3717 et seq.) of Title 38.2; (e) insurance policies that provide payments when an insured is disabled or unable to work because of illness, disease, or injury, including incidental benefits; (f) long-term care insurance as defined in § 38.2-5200; (g) plans providing only limited health care services under § 38.2-4300 unless offered by endorsement or rider to a group health benefit plan; (h) TRICARE supplement, Medicare supplement, and workers' compensation coverages; or (i) medical expense coverage issued pursuant to this section.

"Health care provider" has the same meaning that is ascribed to that term in § 8.01-581.1.

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

"Health insurer" means any entity that is the issuer or sponsor of a health care policy.

"In-network provider" means a health care provider that is employed by or has entered into a provider agreement with the health insurer that has issued the health care policy, under which applicable agreement the health care provider has agreed to provide health care services to covered patients.

"Medical expense benefits" means the benefits of coverages described in subdivision A 1, including any assignment of the proceeds of such coverages.

"Motor vehicle insurer" means the insurer issuing or delivering a policy or contract covering liability arising from the ownership, maintenance, or use of any motor vehicle that provides coverage for medical expense benefits.

"Person authorized to consent on the covered injured person's behalf" means any person authorized by law to consent on behalf of the covered injured person incapable of making an informed decision or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian or as otherwise provided by law.

"Provider agreement" means a contract, agreement, or arrangement between a health care provider and a health insurer, or a health insurer's network, provider panel, intermediary, or representative, under which the health care provider has agreed to provide health care services to patients with coverage under a health care policy issued by the health insurer and to accept payment from the health insurer for the health care services provided.