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HOUSE BILL NO. 1444

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 5, 2015)

(Patron Prior to Substitute—Delegate Ware)

A BILL to amend and reenact §§ 38.2-4214, 38.2-4319, and 38.2-4509 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 34 of Title 38.2 a section numbered 38.2-3407.19, relating to payments for certain services provided by optometrists and ophthalmologists.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-4214, 38.2-4319, and 38.2-4509 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 34 of Title 38.2 a section numbered 38.2-3407.19 as follows:

§ 38.2-3407.19. *Payment for services by optometrists and ophthalmologists.*

A. As used in this section, unless the context requires a different meaning:

"Covered materials" means lenses, devices containing lenses, prisms, lens treatments and coatings, contact lenses, and devices to correct, relieve, or treat defects or abnormal conditions of the human eye and its adnexa for which benefits under a policy, contract, or evidence of coverage are payable by a vision care plan carrier, including materials paid by the insureds, subscribers, or enrollees because the annual or periodic payment maximum established by the vision care plan has been met.

"Covered services" means the health care services for which benefits under a policy, contract, or evidence of coverage are payable by a vision care plan carrier, including services paid by the insureds, subscribers, or enrollees because the annual or periodic payment maximum established by the vision care plan has been met.

"Enrollee" means any person entitled to health care services under a vision care plan.

"Optometric services plan" has the same meaning ascribed thereto in § 38.2-4501.

"Participating provider agreement" means a contract or agreement between an optometrist or ophthalmologist and a vision care plan carrier in which the optometrist or ophthalmologist has agreed to provide vision-related health care services to enrollees and to hold those enrollees harmless from payment with an expectation of receiving payment, other than copayments or deductibles, directly or indirectly from a vision care plan.

"Vision care plan" means (i) an individual or group accident and sickness insurance policy providing hospital, medical, and surgical or major medical coverage on an expense-incurred basis; (ii) an individual or group accident and sickness subscription contract; (iii) an optometric services plan; (iv) a health care plan provided by a health maintenance organization; or (v) an integrated or stand-alone vision benefit plan or a vision care insurance policy or contract that provides vision benefits to an enrollee pertaining to the provision of covered services or covered materials, under which policy, contract, or plan an enrollee is eligible to receive a benefit for covered services or covered materials.

"Vision care plan carrier" means (i) an insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical, and surgical or major medical coverage on an expense-incurred basis; (ii) a nonstock corporation providing individual or group accident and sickness subscription contracts; (iii) a nonstock corporation offering an optometric services plan; (iv) a health maintenance organization providing a health care plan; and (v) an entity that creates, promotes, sells, provides, advertises, or administers (a) an integrated or stand-alone vision benefit plan or (b) a vision care insurance policy or contract that provides vision benefits to an enrollee pertaining to the provision of covered services or covered materials.

B. No participating provider agreement shall establish the fee or rate that the optometrist or ophthalmologist is required to accept for the provision of health care materials or services, or require that an optometrist or ophthalmologist accept the reimbursement paid as payment in full, unless the health care materials and services are covered materials or covered services under the applicable vision care plan.

C. Reimbursement paid by the vision care plan carrier for covered services and covered materials shall be reasonable and shall not provide nominal reimbursement in order to claim that services and materials are covered services or covered materials under the applicable vision care plan. For the purposes of this subsection, "reasonable" means the negotiated fee or rate that is set forth in the participating provider agreement and is acceptable to the provider.

D. No vision care plan shall require an optometrist or ophthalmologist to use a particular optical laboratory, manufacturer of eyeglass frames or contact lenses, or third-party supplier as a condition of participation in a vision care plan.

60 *E. Any changes to a participating provider agreement proposed by the vision care plan carrier shall*
61 *be submitted in writing to the optometrist or ophthalmologist at least 30 days prior to the effective date*
62 *of such proposed changes.*

63 *F. This section shall apply with respect to any participating provider agreement that is entered into,*
64 *amended, extended, or renewed on or after July 1, 2015.*

65 *G. The Commission shall have no jurisdiction to adjudicate individual controversies arising out of*
66 *this section.*

67 *H. The provisions of subsections B through G, as related to covered materials only, shall be*
68 *applicable to licensed opticians practicing in the Commonwealth.*

69 **§ 38.2-4214. Application of certain provisions of law.**

70 No provision of this title except this chapter and, insofar as they are not inconsistent with this
71 chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-230,
72 38.2-232, 38.2-305, 38.2-316, 38.2-316.1, 38.2-322, 38.2-326, 38.2-400, 38.2-402 through 38.2-413,
73 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
74 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
75 seq.) and 2 (§ 38.2-1306.2 et seq.) of Chapter 13, §§ 38.2-1312, 38.2-1314, 38.2-1315.1, 38.2-1317
76 through 38.2-1328, 38.2-1334, 38.2-1340, 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836,
77 38.2-3400, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3405.1, 38.2-3406.1, 38.2-3406.2, 38.2-3407.1 through
78 38.2-3407.6:1, 38.2-3407.9 through ~~38.2-3407.18~~ 38.2-3407.19, 38.2-3409, 38.2-3411 through
79 38.2-3419.1, 38.2-3430.1 through 38.2-3454, 38.2-3501, 38.2-3502, subdivision 13 of § 38.2-3503,
80 subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, §§ 38.2-3516 through 38.2-3520 as they
81 apply to Medicare supplement policies, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1,
82 38.2-3541 through 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 35.1
83 (§ 38.2-3556 et seq.), §§ 38.2-3600 through 38.2-3607, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55
84 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) of this title shall apply to the operation of a
85 plan.

86 **§ 38.2-4319. Statutory construction and relationship to other laws.**

87 A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this
88 chapter, §§ 38.2-100, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218
89 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-316.1, 38.2-322, 38.2-326, 38.2-400,
90 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9
91 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1, Article 2 (§ 38.2-1306.2
92 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et
93 seq.), and 5.1 (§ 38.2-1334.3 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412
94 et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3406.1,
95 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through ~~38.2-3407.18~~ 38.2-3407.19, 38.2-3411,
96 38.2-3411.2, 38.2-3411.3, 38.2-3411.4, 38.2-3412.1:01, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.17,
97 38.2-3419.1, 38.2-3430.1 through 38.2-3454, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of
98 § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1,
99 38.2-3540.2, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter
100 35.1 (§ 38.2-3556 et seq.), Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and
101 Chapter 58 (§ 38.2-5800 et seq.) shall be applicable to any health maintenance organization granted a
102 license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and
103 regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with
104 respect to the activities of its health maintenance organization.

105 B. For plans administered by the Department of Medical Assistance Services that provide benefits
106 pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title
107 except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136,
108 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229,
109 38.2-232, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through
110 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1,
111 Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et
112 seq.), 5 (§ 38.2-1322 et seq.), and 5.1 (§ 38.2-1334.3 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et
113 seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-3401, 38.2-3405, 38.2-3407.2 through
114 38.2-3407.5, 38.2-3407.6, 38.2-3407.6:1, 38.2-3407.9, 38.2-3407.9:01, and 38.2-3407.9:02, subdivisions
115 F 1, F 2, and F 3 of § 38.2-3407.10, §§ 38.2-3407.11, 38.2-3407.11:3, 38.2-3407.13, 38.2-3407.13:1,
116 38.2-3407.14, 38.2-3411.2, 38.2-3418.1, 38.2-3418.2, 38.2-3419.1, 38.2-3430.1 through 38.2-3437,
117 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2,
118 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.2, 38.2-3542,
119 38.2-3543.2, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58
120 (§ 38.2-5800 et seq.) shall be applicable to any health maintenance organization granted a license under
121 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.) except with respect to the activities of its health maintenance organization.

C. 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.

D. 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.

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

F. For purposes of applying this section, "insurer" when used in a section cited in subsections A and B shall be construed to mean and include "health maintenance organizations" unless the section cited clearly applies to health maintenance organizations without such construction.

§ 38.2-4509. Application of certain laws.

A. No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-316, 38.2-326, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-900 through 38.2-904, 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, 38.2-1315.1, Articles 4 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et seq.), and 6 (§ 38.2-1335 et seq.) of Chapter 13, §§ 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3407.1, 38.2-3407.4, 38.2-3407.10, 38.2-3407.13, 38.2-3407.14, 38.2-3407.15, 38.2-3407.17, 38.2-3407.19, 38.2-3415, 38.2-3541, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, §§ 38.2-3600 through 38.2-3603, Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall apply to the operation of a plan.

B. The provisions of subsection A of § 38.2-322 shall apply to an optometric services plan. The provisions of subsection C of § 38.2-322 shall apply to a dental services plan.

C. The provisions of Article 1.2 (§ 32.1-137.7 et seq.) of Chapter 5 of Title 32.1 shall not apply to either an optometric or dental services plan.

D. The provisions of § 38.2-3407.1 shall apply to claim payments made on or after January 1, 2014. No optometric or dental services plan shall be required to pay interest computed under § 38.2-3407.1 if the total interest is less than \$5.