

# VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

## CHAPTER 224

*An Act to amend and reenact §§ 38.2-4400, 38.2-4401, 38.2-4404, 38.2-4405, 38.2-4408, 38.2-4408.1, 38.2-4409 and 38.2-4411 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 38.2-4402.1, and to repeal § 38.2-4402 of the Code of Virginia, relating to insurance; legal services plans.*

[S 225]

Approved April 4, 1994

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 38.2-4400, 38.2-4401, 38.2-4404, 38.2-4405, 38.2-4408, 38.2-4408.1, 38.2-4409 and 38.2-4411 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-4402.1 as follows:**

§ 38.2-4400. Definitions.

As used in this chapter:

"Contract holder" means a person entering into a subscription contract with an organization;

"Fee discount" means predetermined amounts or reduced rates which are not substantially below the usual charge by the same attorney for those services, but not less than 70 percent of the rate usually charged nonparticipants for the same service, except for simple wills, simple name changes, preparation of noncomplex legal documents, legal letters and calls, which may be less than 70 percent of the rate usually charged nonparticipants;

"Legal services organization" or "organization" means a person subject to regulation and licensing under this chapter who operates, conducts or administers a legal services plan;

"Legal services plan" or "plan" means a contractual obligation or an arrangement, whereby legal services are provided in consideration of a specified payment consisting in whole or in part of prepaid or periodic charges, regardless of whether the payment is made by the subscribers individually or by a third person for them;

"Licensed attorney" means an attorney licensed by the Virginia Board of Bar Examiners or other state licensing authority;

"Participating attorney provider" or "participating providers" means a licensed attorney ~~who is participating in a legal services plan~~, group of attorneys or any other person who has agreed through an organization to provide legal services to subscribers enrolled in a legal services plan;

"Simple matters" or "simple legal matters" means legal matters that can be reasonably handled over the telephone, or with one or two office visits, or by a limited review of routine legal documents, and without legal representation to third parties;

"Subscriber" means any person entitled to benefits under the terms and conditions of a subscription contract;

"Subscription contract" means a written contract which is issued to a subscriber by an organization and which provides legal services or benefits for legal services.

§ 38.2-4401. Certain contracts, etc., not deemed plans.

For the purposes of this chapter, the following are not deemed to be legal services plans:

1. Retainer contracts made by attorneys with individual clients where fees are based on estimates of the nature and amount of services that will be provided to the specific client, and similar contracts made with a group of clients involved in the same or closely related legal matters;

2. Plans providing no benefits other than a limited amount of consultation and advice on simple matters either alone or in combination with referral services or on the promise of fee discounts for other matters;

3. Plans providing limited benefits on simple legal matters on an informal basis, not involving a legally binding promise, in the context of an employment, educational or similar relationship;

4. Legal services ~~related to employment or occupation~~, provided by unions or employee associations to their members *in matters relating to employment or occupation*;

5. Legal services provided by an agency of federal or state government or a subdivision of federal or state government to its employees; or

6. Legal services insurance as provided for in §§ 38.2-127 and 38.2-300 when provided by an insurer licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of this title; or .

7. ~~Legal assistance provided to members or their dependents by an organization of employees that contracts directly with an attorney or law firm for the provision of legal services.~~

§ 38.2-4402.1. Corporate organization required.

*Each plan shall be conducted by or through (i) a nonstock or stock corporation organized pursuant to the laws of this Commonwealth or (ii) a foreign corporation that is subject to regulation and licensing under the laws of its domiciliary jurisdiction that are substantially similar to those provided by*

*this chapter.*

§ 38.2-4404. Liability of participating providers.

A. Except for a plan established pursuant to § 38.2-4403, all ~~persons and attorneys~~ participating ~~providers~~ in a plan shall be jointly and severally liable on all contracts made for the purposes of the plan by ~~them or by their~~ *the organization as agent for them*. Each contract may be executed and signed by their agent on their behalf. A contract so signed shall be binding on the ~~principals participating providers~~ and not on the agent.

B. Actions for breach of these contracts may be brought against the ~~principals participating providers~~ by naming the agent as the sole defendant. A judgment in favor of the plaintiff may be satisfied out of the assets of the legal services organization or out of the assets of each of the ~~principals participating providers~~.

C. Each ~~participant participating provider~~ shall be liable for his own torts and not for the torts of any other ~~participant participating provider~~ or of the agent.

§ 38.2-4405. Change of participating providers.

A. Any participating ~~person or attorney~~ *provider* may resign from a plan at any time but will continue to be liable on each subscription contract while effective. However, this liability shall not extend beyond the end of each such subscription contract's current contract year.

B. ~~Persons and attorneys~~ *Participating providers* may be admitted to a plan at any time and will then automatically become liable on all its outstanding contracts.

§ 38.2-4408. Application of certain provisions.

No provision of this title except this chapter and insofar as they are not inconsistent with this chapter §§ 38.2-100, 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-316, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-700 through 38.2-704, 38.2-800 through 38.2-806, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.), 2 (§ 38.2-1306.2 et seq.), and 4 (§ 38.2-1317 et seq.) of Chapter 13, and 38.2-1800 through 38.2-1836, insofar as they are not inconsistent with this chapter, and § 58.1-2500 et seq. shall apply to the operation of a plan.

§ 38.2-4408.1. Rehabilitation, liquidation, conservation.

Any rehabilitation, liquidation, or conservation of a legal services ~~plan~~ *organization* shall be deemed to be the rehabilitation, liquidation, or conservation of an insurer and shall be subject to the provisions of Chapter 15 (§ 38.2-1500 et seq.) of Title 38.2.

§ 38.2-4409. Payments under plan.

~~No payment shall be made by a~~ *The* legal services organization ~~to a person included in a subscription contract unless the payment is for breach of contract or for contractually included costs incurred by that person for services received by the person and rendered by a nonparticipating attorney shall not indemnify any subscriber for legal services rendered by any participating provider or nonparticipating attorney.~~

§ 38.2-4411. Subscriber to have free choice of participating providers available.

A ~~plan~~ *legal services organization* shall ~~be organized and operated to assure~~ *organize and operate a plan in a manner that assures* that any subscriber ~~to the plan~~ shall have free choice of the ~~attorneys participating providers~~ available and participating in the plan.

**2. That § 38.2-4402 of the Code of Virginia is repealed.**