

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 38.2-3405 of the Code of Virginia, relating to accident and sickness*
3 *insurance; coordination of benefits.*

4
5 Approved

[S 806]

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

7 **1. That § 38.2-3405 of the Code of Virginia is amended and reenacted as follows:**

8 § 38.2-3405. Certain subrogation provisions and limitations upon recovery in hospital, medical, etc.,
9 policies forbidden.

10 A. No insurance contract providing hospital, medical, surgical and similar or related benefits, and no
11 subscription contract or health services plan delivered or issued for delivery or providing for payment of
12 benefits to or on behalf of persons residing in or employed in this Commonwealth shall contain any
13 provision providing for subrogation of any person's right to recovery for personal injuries from a third
14 person.

15 B. No such contract, subscription contract or health services plan shall contain any provision
16 requiring the beneficiary of any such contract or plan to sign any agreement to pay back to any
17 company issuing such a contract or creating a health services plan any benefits paid pursuant to the
18 terms of such contract or plan from the proceeds of a recovery by such a beneficiary from any other
19 source; provided, that this provision shall not prohibit an exclusion of benefits paid or payable under
20 workers' compensation laws or federal or state programs, nor shall this provision prohibit coordination of
21 benefits provisions when there are two or more such *accident and sickness insurance* contracts or plans
22 providing for the payment of the same benefits. *Coordination of benefits provisions may not operate to*
23 *reduce benefits because of any benefits paid, payable, or provided by any liability insurance contract or*
24 *any benefits paid, payable, or provided by any medical expense or medical payments insurance provided*
25 *in conjunction with liability coverage.*

26 C. Whenever benefits paid or payable under workers' compensation are excluded from coverage
27 under the terms of any such contract, subscription contract or health services plan, the issuer thereof
28 shall not exclude coverage for any medical condition pursuant to such exclusion if (i) an award of the
29 Workers' Compensation Commission pursuant to § 65.2-704 denies compensation benefits relating to
30 such medical condition and no request for review of such award is made pursuant to and within the time
31 prescribed by § 65.2-705 or (ii) an award of the Workers' Compensation Commission, after review by
32 the full Commission pursuant to § 65.2-705, denies compensation benefits relating to such medical
33 condition. Following the entry of a workers' compensation award pursuant to clause (i) or (ii) having the
34 effect of prohibiting the application of any such exclusion, the issuer shall immediately provide coverage
35 for such medical condition to the extent otherwise covered under the contract, subscription contract or
36 health services plan. If, upon appeal to the Court of Appeals or the Supreme Court, such medical
37 condition is held to be compensable under the Virginia Workers' Compensation Act (Title 65.2), the
38 issuer may recover from the applicable employer or workers' compensation insurance carrier the costs of
39 coverage for medical conditions found to be compensable under the Act.

ENROLLED

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