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STATE CORPORATION COMMISSION
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DATE: June 15, 1978 1978-5

TO : ALL COMPANIES LICENSED TO TRANSACT ACCIDENT AND SICKNESS INSURANCE IN VIRGINIA; and

ALL PREPAID HOSPITAL, MEDICAL AND SURGICAL PLANS LICENSED IN VIRGINIA PURSUANT TO TITLE 32 OF THE CODE OF VIRGINIA

SUBJECT: (1) AMENDMENT OF SECTIONS 38.1-348.7 and 38.1-348.8 OF THE CODE OF VIRGINIA RELATING TO COVERAGES FOR MENTAL, EMOTIONAL OR NERVOUS DISORDERS, ALCOHOL AND DRUG DEPENDENCE;

(2) ENACTMENT OF SECTION 38.1-348.9 OF THE CODE OF VIRGINIA RELATING TO OPTIONAL OBSTETRICAL SERVICES COVERAGES IN GROUP INSURANCE PLANS AND POLICIES;

(3) ENACTMENT OF SECTION 38.1-348.10 OF THE CODE OF VIRGINIA TO PROHIBIT EXCLUSION OR REDUCTION OF BENEFITS UNDER A GROUP ACCIDENT AND SICKNESS INSURANCE POLICY OR A GROUP PREPAID SERVICE PLAN ISSUED PURSUANT TO TITLE 32 OF THE CODE OF VIRGINIA ON THE BASIS OF SUCH BENEFITS BEING ALSO PAYABLE UNDER AN INDIVIDUAL POLICY OR CONTRACT.

Attached are copies of laws on the above subjects enacted by the General Assembly of Virginia during its 1978 Session. A brief discussion follows. (EFFECTIVE July 1, 1978)

(1)

Chapter 349 (Senate Bill 502). Section 38.1-348.7 now provides that the mandatory inpatient coverage for mental emotional or nervous disorders required in certain policies and prepaid plans issued on and after July 1, 1976 shall be

added to other such policies and prepaid plans issued prior to July 1, 1976 when reissued, extended or at any time when any term of the policy or prepaid plan is changed or any premium adjustment is made on or after July 1, 1978.

Further, Section 38.1-348.7 is also amended to provide that when optional coverage for alcohol and drug dependence made available pursuant to Section 38.1-348.8 is accepted by the group policyholder, then "mental, emotional or nervous disorders" as set forth in Section 38.1-348.7 shall not include coverage for incapacitation by, or physiological or psychological dependence upon, alcohol or drugs.

Section 38.1-348.8 now provides for optional coverages for certain inpatient and outpatient treatment of incapacitation by, or physiological or psychological dependence upon, alcohol or drugs in group accident and sickness insurance policies providing coverage on an expense-incurred basis and group service or indemnity-type contracts issued by nonprofit corporations. Minimum levels of coverage as to duration and restrictions are set forth as well as the types of policies or contract to which the statute does not apply.

(2)

Chapter 375 (House Bill 757). Section 38.1-348.9 provides that optional coverage for obstetrical services on an inpatient basis must be made available in connection with the issuance of a group hospital, group medical or group major medical service plan contract. Reimbursement for obstetrical services by a physician shall be based on the usual, customary and reasonable charges for such services determined according to the same formula by which charges are developed for other medical and surgical procedures. Durational and monetary limitations as to coverage shall not be less favorable than for physical illness generally. Types of policies or contracts to which the statute does not apply are set forth.

(3)

Chapter 496 (House Bill 78). Section 38.1-348.10 which applies to all group accident and sickness policies or group prepaid service plans as provided for in Title 32 of the Code of Virginia issued for delivery in Virginia, or renewed, reissued or extended if already issued, on and after July 1, 1978, prohibits the exclusion or reduction of benefits on the basis that benefits payable or services to be rendered

have been paid or are also payable under any individually underwritten and individually issued policy or contract which provides exclusively for accident and sickness benefits.

This applies to individual policies or contracts on which the entire premiums have been paid by the insureds or by a family member or by a guardian, irrespective of the method of premium payment, such as payroll deduction.

IMPLEMENTATION

The effective date of these statutes is July 1, 1978. Hence, they must receive early attention and the following action must be taken by each insurer or prepaid plan concerned:

(1) Incorporate the "prohibition against exclusion or reduction of benefits" in your operating procedures including claim evaluation;

(2) Prepare appropriate "notices of availability" for use in connection with applications for coverage to establish a record of the additional coverage having been offered;

(3) Prepare and submit for approval in accordance with form filing instructions riders or endorsements pursuant to the specifications in Section 38.1-348.8 A. and B. (including the resulting change in Section 38.1-348.7 as set forth in paragraph C. thereof) and in Section 38.1-348.9.

(4) Also, prepare and submit for approval in accordance with form filing instructions revised policy forms, certificates and riders or endorsements where your present such material is not in compliance with the prohibition against exclusion or reduction of benefits as set forth in Section 38.1-348.10.

John G. Day
Commissioner of Insurance

Encls.

1. That §§ 38.1-348.7 and 38.1-348.8 of the Code of Virginia are amended and reenacted as follows:

§ 38.1-348.7. Coverages for mental, emotional or nervous disorders.—A. All individual and group accident and sickness insurance policies providing coverage on an expense incurred basis and individual and group service or indemnity type contracts issued by a nonprofit corporation which provide coverage for a family member of the insured or the subscriber shall, in the case of benefits based upon treatment as an inpatient in a mental hospital or a general hospital, provide coverage for mental, emotional or nervous disorders, with limits that are not more restrictive than for any other illness except that such benefits may be limited to thirty days of active treatment in any policy year. *The requirements of this section shall apply to all insurance policies and subscriber contracts delivered, issued for delivery, reissued, or extended, or at any time when any term of the policy or contract is changed or any premium adjustment is made.*

B. Every insurer which proposes to issue a group hospital policy or a group major medical policy in this State and every nonprofit hospital and medical service plan corporation which proposes to issue hospital, medical or major medical service plan contracts which provide coverage for the insured or the subscriber shall, in the case of outpatient benefits, make available additional benefits as specified herein for the care and treatment of mental, emotional or nervous disorders subject to the right of the applicant for such policy or contract to select any alternative level of benefits as may be offered by the insurer or service plan corporation. Outpatient benefits shall consist of durational limits, dollar limits, deductibles and co-insurance factors that are not less favorable than for physical illness generally, except that the co-insurance factor need not exceed fifty per centum or the co-insurance factor applicable for physical illness generally, whichever is greater, and the maximum benefit for mental, emotional or nervous disorders in the aggregate during any applicable benefit period may be limited to not less than one thousand dollars.

This subsection B. shall apply to policies or contracts delivered or issued for delivery in this State on or after November one, nineteen hundred seventy-seven; but shall not apply to blanket, short-term travel, accident only, limited or specified disease, individual conversion policies, or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under State or federal governmental plans.

As used in this section, the following terms shall have the meanings indicated below.

(1) "Outpatient benefits" means only those payable for (i) charges made by a hospital for the necessary care and treatment of mental, emotional or nervous disorders furnished to a covered person while not confined as a hospital inpatient, (ii) charges for services rendered or prescribed by a physician or a psychologist duly licensed to practice in Virginia for the necessary care and treatment for mental, emotional or nervous disorders furnished to a covered person while not confined as a hospital inpatient, or (iii) charges made by a mental health treatment center, as defined herein, for the necessary care and treatment of a covered person provided in such treatment center.

(2) "Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written plan approved and monitored by a physician or a psychologist duly licensed to practice in Virginia and which facility is also: (i) licensed by the State, or (ii) funded or eligible for funding under federal or State law, or (iii) affiliated with a hospital under a contractual agreement with an established system for patient referral.

C. "Mental, emotional or nervous disorders" as used in this section shall include physiological and psychological dependence upon alcohol and drugs *; provided, however, that in instances where the optional coverage made available pursuant to § 38.1-348.8 B. is accepted by or on behalf of the insured or subscriber and included in a policy or contract "mental, emotional or nervous disorders" shall not include coverage for incapacitation by, or physiological or psychological dependence upon, alcohol or drugs .*

~~In the event any such policy or contract includes coverage for incapacitation by, or physiological or psychological dependence upon, alcohol or drugs as provided in §38.1-348.8, then "mental, emotional or nervous disorders" as used in this section shall not include coverage for incapacitation by, or physiological or psychological dependence upon, alcohol or drugs.~~

§ 38.1-348.8. Coverages for alcohol and drug dependence.—A. As used in this section:

1. "Treatment" includes diagnostic evaluation, medical, psychiatric and psychological care, counseling and rehabilitation for incapacitation by, or physiological or psychological dependence upon, alcohol or drugs which is determined to be necessary by and is provided by a certified alcoholism counselor, certified drug counselor, professional counselor, psychologist, or social worker licensed or certified pursuant to Chapter 28 (§ 54-923 et seq.) of Title 54, or by a licensed physician.

2. "Alcoholism or drug addiction facility" means a facility in which is provided a State-approved program for the treatment of alcoholism or drug addiction and which is (i) a facility licensed by the State Board of Health pursuant to Chapter 16 of Title 32 (§ 32-297 et seq.) or by the State Mental Health and Mental Retardation Board pursuant to Chapter 8 (§ 37.1-179 et seq.) or Chapter 11 (§ 37.1-203 et seq.) of Title 37.1; (ii) an office or clinic of a licensed physician or clinical psychologist; (iii) a State agency

or institution or (iv) a facility accredited by the Joint Commission on Accreditation of Hospitals.

3. "Intermediate care facility" means a duly licensed, residential public or private alcoholism or drug addiction facility which is not a hospital and which is operated primarily for the purpose of providing a continuous, structured twenty-four-hour-a-day State-approved program of inpatient treatment and care for inpatient alcoholics or drug addicts.

B. No ~~individual or~~ group accident and sickness insurance policy providing coverage on an expense incurred basis and no ~~individual or~~ group service or indemnity type contract issued by a nonprofit corporation which provides coverage of a family member of the insured or the subscriber, shall be delivered or issued for delivery in this State on or after July one, nineteen hundred seventy-eight, unless coverage for incapacitation by, or physiological or psychological dependence upon, alcohol or drugs as hereinafter provided was made available as an option. Such coverage made available as an option shall have no limits that are more restrictive than for any other illness and shall include as a minimum (i) treatment as an inpatient in any alcoholism or drug addiction facility ~~other than an~~ *and* intermediate care facility for a minimum of ~~fourteen~~ *forty-five* days during any given policy year or calendar year ~~, (ii) treatment as an inpatient in any intermediate care facility for a minimum of thirty days during any given policy year or calendar year~~ , and ~~(iii)~~ *(ii)* outpatient treatment in any alcoholism or drug addiction facility consisting of a minimum of forty-five ~~hours~~ *sessions* of individual, group, or family counseling during any given policy year or calendar year. ~~Coverage for individual and family counseling visits in excess of five hours may be limited to the rates established for group counseling. Each person covered shall be entitled to inpatient treatment in an intermediate care facility for two days or to two hours of outpatient individual, group or family counseling for each unused day of treatment as an inpatient in an alcoholism and drug addiction facility other than an intermediate care facility, and entitled to one hour of outpatient individual, group or family counseling for each unused day of treatment as an inpatient in an intermediate care facility. Benefits payable to each person covered may be limited to twice the minimums set forth in this subsection during the life of such person.~~

C. The provisions of this section shall not be applicable to short-term travel, accident only, limited or specified disease, individual conversion policies, or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under State or federal governmental plans.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 38.1-348.9 as follows:

§ 38.1-348.9. Optional coverage for obstetrical services.—Every insurer which proposes to issue a group hospital policy or a group major medical policy in this Commonwealth and every nonprofit hospital and medical service plan corporation which proposes to issue group hospital, group medical or group major medical service plan contracts which provide coverage for the insured or the subscriber shall, in the case of benefits based upon treatment as an inpatient in a general hospital, provide, as an option available to the group policyholder or the contract holder, coverage for obstetrical services, with reimbursement for obstetrical services by a physician to be based on the usual, customary and reasonable charges for such services determined according to the same formula by which such charges are developed for other medical and surgical procedures. Such coverage shall have durational limits, dollar limits, deductibles and coinsurance factors that are not less favorable than for physical illness generally.

This section shall apply to policies or contracts delivered or issued for delivery in this Commonwealth on or after July one, nineteen hundred seventy-eight; but shall not apply to short-term travel, accident only, limited or specified disease or individual conversion policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under State or federal governmental plans.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32-195.8 and 38.1-360 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.1-348.9 as follows:

§ 32-195.8. Application of certain provisions of law relating to insurance; payments under plan.—Sections 38.1-29, 38.1-44 to 38.1-57, 38.1-99 to 38.1-104, 38.1-159 to 38.1-165, 38.1-174 to 38.1-178, 38.1-342.1, 38.1-342.2, 38.1-348.6, 38.1-348.7 ~~and~~ , 38.1-348.8 *and 38.1-348.9* of the laws relating to insurance shall, insofar as they are not inconsistent with this chapter, apply to the operation of a plan. No payments shall be made by a plan to a person included in a subscription contract unless it be for breach of contract or unless it be for contractually included costs incurred by such person or for services received by such person and rendered by a nonparticipating hospital or physician.

§ 38.1-348.9. Exclusion or reduction of benefits prohibited.—No group policy of accident and sickness insurance, nor any group contract under a plan as provided in §§ 32-195.1 through 32-195.50 of the Code of Virginia, hereafter issued for delivery in this Commonwealth or renewed, reissued or extended if already issued, shall contain any provision excluding or reducing the benefits payable or services to be rendered to or on behalf of any insured because benefits have been paid or are also payable under any individually underwritten and individually issued policy or contract which provides exclusively for accident and sickness benefits and for which the entire premium has been paid by the insured or a member of the insured's family or his guardian, irrespective of the method of premium payment, such as payroll deduction, to the insurer and regardless of any discount received on the premium by virtue of the insured's membership in any organization or his status as an employee.

§ 38.1-360. Nonapplication to certain policies.—Nothing in this article shall apply to or affect (1) any policy of workmen's compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein or when issued with or supplemental to a policy of motor vehicle liability insurance, as provided for in §38.1-21 (2) to a coverage providing weekly indemnity or other specific benefits to persons who are injured and specific death benefits to dependents, beneficiaries or personal representatives of persons who are killed, provided such benefits are irrespective of legal liability of the insured or any other person, if such injury or death is caused by accident and sustained while in or upon, entering or alighting from, or through being struck by a motor vehicle; or (2) any policy or contract of reinsurance; or (3) any blanket or group policy of insurance, except that the provisions of §§38.1-348.1, 38.1-348.6, 38.1-348.7 ~~and~~ , 38.1-348.8 *and 38.1-348.9* shall be applicable to such policies of insurance; or (4) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract, or (5) any policy of industrial sick benefit insurance.