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HOUSE BILL NO. 318

Offered January 9, 2008

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A BILL to amend and reenact § 38.2-3407.10 of the Code of Virginia, relating to hospitalization insurance; provider panels; balance billing by nonparticipating physicians.

Patron—Cox (By Request)

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 38.2-3407.10 of the Code of Virginia is amended and reenacted as follows:**

§ 38.2-3407.10. Health care provider panels.

A. As used in this section:

"Carrier" means:

1. Any 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;
2. Any corporation providing individual or group accident and sickness subscription contracts;
3. Any health maintenance organization providing health care plans for health care services;
4. Any corporation offering prepaid dental or optometric services plans; or
5. Any other person or organization that provides health benefit plans subject to state regulation, and includes an entity that arranges a provider panel for compensation.

"Enrollee" means any person entitled to health care services from a carrier.

"Provider" means a hospital, physician or any type of provider licensed, certified or authorized by statute to provide a covered service under the health benefit plan.

"Provider panel" means those providers with which a carrier contracts to provide health care services to the carrier's enrollees under the carrier's health benefit plan. However, such term does not include an arrangement between a carrier and providers in which any provider may participate solely on the basis of the provider's contracting with the carrier to provide services at a discounted fee-for-service rate.

B. Any such carrier that offers a provider panel shall establish and use it in accordance with the following requirements:

1. Notice of the development of a provider panel in the Commonwealth or local service area shall be filed with the Department of Health Professions.

2. Carriers shall provide a provider application and the relevant terms and conditions to a provider upon request.

C. A carrier that uses a provider panel shall establish procedures for:

1. Notifying an enrollee of:

a. The termination from the carrier's provider panel of the enrollee's primary care provider who was furnishing health care services to the enrollee; and

b. The right of an enrollee upon request to continue to receive health care services for a period of up to 90 days from the date of the primary care provider's notice of termination from a carrier's provider panel, except when a provider is terminated for cause.

2. Notifying a provider at least 90 days prior to the date of the termination of the provider, except when a provider is terminated for cause.

3. Providing reasonable notice to primary care providers in the carrier's provider panel of the termination of a specialty referral services provider.

4. Notifying the purchaser of the health benefit plan, whether such purchaser is an individual or an employer providing a health benefit plan, in whole or in part, to its employees and enrollees of the health benefit plan of:

a. A description of all types of payment arrangements that the carrier uses to compensate providers for health care services rendered to enrollees, including, but not limited to, withholds, bonus payments, capitation and fee-for-service discounts; and

b. The terms of the plan in clear and understandable language that reasonably informs the purchaser of the practical application of such terms in the operation of the plan.

D. Whenever a provider voluntarily terminates his contract with a carrier to provide health care services to the carrier's enrollees under a health benefit plan, he shall furnish reasonable notice of such termination to his patients who are enrollees under such plan.

E. A carrier may not deny an application for participation or terminate participation on its provider panel on the basis of gender, race, age, religion or national origin.

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59 F. 1. For a period of at least 90 days from the date of the notice of a provider's termination from the
60 carrier's provider panel, except when a provider is terminated for cause, the provider shall be permitted
61 by the carrier to render health care services to any of the carrier's enrollees who:

- 62 a. Were in an active course of treatment from the provider prior to the notice of termination; and
63 b. Request to continue receiving health care services from the provider.

64 2. Notwithstanding the provisions of subdivision 1, any provider shall be permitted by the carrier to
65 continue rendering health services to any enrollee who has entered the second trimester of pregnancy at
66 the time of a provider's termination of participation, except when a provider is terminated for cause.
67 Such treatment shall, at the enrollee's option, continue through the provision of postpartum care directly
68 related to the delivery.

69 3. Notwithstanding the provisions of subdivision 1, any provider shall be permitted by the carrier to
70 continue rendering health services to any enrollee who is determined to be terminally ill (as defined
71 under § 1861 (dd)(3)(A) of the Social Security Act) at the time of a provider's termination of
72 participation, except when a provider is terminated for cause. Such treatment shall, at the enrollee's
73 option, continue for the remainder of the enrollee's life for care directly related to the treatment of the
74 terminal illness.

75 4. A carrier shall reimburse a provider under this subsection in accordance with the carrier's
76 agreement with such provider existing immediately before the provider's termination of participation.

77 G. 1. A carrier shall provide to a purchaser upon enrollment and make available to existing enrollees
78 at least once a year a list of members in its provider panel, which list shall also indicate those providers
79 who are not currently accepting new patients. Such list may be made available in a form other than a
80 printed document, provided the purchaser or existing enrollee is given the means to request and receive
81 a printed copy of such list.

82 2. The information provided under subdivision 1 shall be updated at least once a year if in paper
83 form, and monthly if in electronic form.

84 H. No contract between a carrier and a provider may require that the provider indemnify the carrier
85 for the carrier's negligence, willful misconduct, or breach of contract, if any.

86 I. No contract between a carrier and a provider shall require a provider, as a condition of
87 participation on the panel, to waive any right to seek legal redress against the carrier.

88 J. No contract between a carrier and a provider shall prohibit, impede or interfere in the discussion
89 of medical treatment options between a patient and a provider.

90 K. A contract between a carrier and a provider shall permit and require the provider to discuss
91 medical treatment options with the patient.

92 L. Any carrier requiring preauthorization for medical treatment shall have personnel available to
93 provide such preauthorization at all times when such preauthorization is required.

94 M. Carriers shall provide to their group policyholders written notice of any benefit reductions during
95 the contract period at least 60 days before such benefit reductions become effective. Group policyholders
96 shall, in turn, provide to their enrollees written notice of any benefit reductions during the contract
97 period at least 30 days before such benefit reductions become effective. Such notice shall be provided to
98 the group policyholder as a separate and distinct notification, and may not be combined with any other
99 notification or marketing materials.

100 N. No contract between a provider and a carrier shall include provisions that require a health care
101 provider or health care provider group to deny covered services that such provider or group knows to be
102 medically necessary and appropriate that are provided with respect to a specific enrollee or group of
103 enrollees with similar medical conditions.

104 O. If a provider panel contract between a provider and a carrier, or other entity that provides
105 hospital, physician or other health care services to a carrier, includes provisions that require a provider,
106 as a condition of participating in one of the carrier's or other entity's provider panels, to participate in
107 any other provider panel owned or operated by that carrier or other entity, the contract shall contain a
108 provision permitting the provider to refuse participation in one or more such other provider panels at the
109 time the contract is executed. If a provider contracts with a carrier or other entity that subsequently
110 contracts with one or more unaffiliated carriers to include such provider in the provider panels of such
111 unaffiliated carriers, and which permits an unaffiliated carrier to impose participation terms with respect
112 to such provider that differ materially in reimbursement rates or in managed care procedures, such as
113 conducting economic profiling or requiring a patient to obtain primary care physician referral to a
114 specialist, from the terms agreed to by the provider in the original contract, the provider panel contract
115 shall contain a provision permitting the provider to refuse participation with any such unaffiliated
116 carrier. Utilization review pursuant to Article 1.2 (§ 32.1-137.7 et seq.) of Chapter 5 of Title 32.1 shall
117 not constitute a materially different managed care procedure. This subsection shall apply to provider
118 panels utilized by health maintenance organizations and preferred provider organizations. For purposes
119 of this subsection, "preferred provider organization" means a carrier that offers preferred provider
120 contracts or policies as defined in § 38.2-3407 or preferred provider subscription contracts as defined in

§ 38.2-4209. The status of a physician as a member of or as being eligible for other existing or new provider panels shall not be adversely affected by the exercise of such right to refuse participation. This subsection shall not apply to the Medallion II and children's health insurance plan administered by or pursuant to contract with the Department of Medical Assistance Services.

P. A carrier that rents or leases its provider panel to unaffiliated carriers shall make available, upon request, to its providers a list of unaffiliated carriers that rent or lease its provider panel. Such list if available in electronic format shall be updated monthly. The provider shall be given the means to request and receive a printed copy of such list.

Q. *A carrier that offers a provider panel with respect to a policy, contract, or plan that provides hospitalization coverage shall provide in the policy, contract, or plan that an enrollee who is admitted for a covered service or procedure to a hospital that participates in the provider panel shall receive medical and surgical services from a physician or physicians who participates in the provider panel, unless the hospitalized enrollee has consented in writing, prior to receiving such services, to the use of a nonparticipating physician. The enrollee's written consent shall include a prominent statement that by consenting to the use of a nonparticipating physician, the enrollee acknowledges that he may be liable for charges of the nonparticipating physician that exceed the amount paid by the carrier for his services. If the enrollee fails or refuses to consent to the use of a nonparticipating physician, then the nonparticipating physician shall not bill the enrollee for any amount by which the physician's charges exceed the amount paid by the carrier for his services.*

R. The Commission shall have no jurisdiction to adjudicate controversies arising out of this section.

R.S. The requirements of this section shall apply to all insurance policies, contracts, and plans delivered, issued for delivery, reissued, or extended on or after July 1, 1996. However, the 90-day period referred to in subdivisions C 1 b and C 2 of this section, the requirements set forth in subdivisions F 2 and F 3, and the requirements set forth in subsections L, M, and N shall apply to contracts between carriers and providers that are entered into or renewed on or after July 1, 1999, the requirements set forth in subsection O shall apply to contracts between carriers and providers that are entered into, reissued, extended or renewed on or after July 1, 2001, ~~and~~ the requirements set forth in subsection P shall be effective on and after January 1, 2007, *and the requirements set forth in subsection Q shall apply all insurance policies, contracts, and plans delivered, issued for delivery, reissued, or extended on or after January 1, 2009.*