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HOUSE BILL NO. 1682

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 11, 2019)

(Patron Prior to Substitute—Delegate Ware)

A BILL to amend and reenact § 38.2-4509 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3407.17:1, relating to contracts between carriers and providers of dental services; network access; payment and reimbursement practices.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-4509 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-3407.17:1 as follows:

§ 38.2-3407.17:1. *Payment and reimbursement practices for dental services; network access.*

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

"Brand licensing program" means the process of creating and managing contracts or agreements between a person who owns a brand and a third party who uses the brand in connection with the provision of insurance for dental services in a specific geographic territory.

"Carrier" means (i) any health carrier that proposes to issue individual or group health benefit plans that provide coverage for dental services, (ii) any nonstock corporation that offers or administers dental services plans as defined in § 38.2-4501, or (iii) a dental plan organization as defined in § 38.2-6101.

"Contracting entity" means a carrier or other person that enters into a provider contract with a provider.

"Enrollee" means any person entitled to coverage for dental services (i) under an individual or group health benefit plan that provides coverage for dental services, (ii) under a dental services plan, or (iii) under a dental plan organization.

"Health benefit plan" and "health carrier" have the meaning ascribed to those terms in § 38.2-3438.

"Network plan" means coverage by a carrier for dental services under which the financing and delivery of dental services are provided, in whole or in part, through a defined set of providers under contract with the carrier.

"Participating provider" means a provider that has entered into a provider contract with a contracting entity.

"Preferred provider organization" or "PPO" means a health benefit plan that contracts with providers to create a network of participating providers that have agreed to provide dental services at contracted rates to the PPO's enrollees.

"PPO network" means the multiple provider contracts available to a person pursuant to a PPO network arrangement.

"PPO network arrangement" means an arrangement under which the contracting entity or third-party administrator sells, conveys, or otherwise transfers to a person the ability to discount payments or reimbursements to a provider pursuant to the terms of multiple provider contracts to which the contracting entity or third-party administrator is a direct party.

"Provider" means a dentist or oral surgeon licensed to provide covered dental services to an enrollee.

"Provider contract" means an agreement between a contracting entity and a provider pursuant to which the provider agrees to provide dental services to an enrollee in exchange for payment or reimbursement of an agreed-upon amount.

"Third-party administrator" means a person that administers, processes, handles, or pays claims to providers on behalf of a carrier.

"Third-party carrier" means a carrier that is not a party to a provider contract. "Third-party carrier" includes a network plan under which the carrier is not a party to such provider contract.

B. A contracting entity or third-party administrator shall not sell, lease, assign, or otherwise grant to a third-party carrier access as provided in a provider contract unless:

1. The contracting entity or third-party administrator is expressly authorized to do so by the provider contract. A provider contract shall expressly authorize access as provided in a provider contract only if the provider contract explicitly states that the selling, leasing, assigning, or granting of access as provided in a provider contract is permitted; and

2. The contracting entity or third-party administrator has notified, pursuant to § 38.2-3407.15, all of the affected participating providers that a third-party carrier is being granted access as provided in a provider contract of the participating provider. Such notification shall be sent to the affected participating provider either (i) by first-class mail in an envelope not containing any other enclosure or (ii) if the participating provider has agreed in advance with the contracting entity or third-party

60 administrator to authorize communication by electronic means, by such means.

61 C. If the requirements of subsection B are satisfied, the contracting entity or third-party
62 administrator may sell, lease, assign, or otherwise grant to a third-party carrier access as provided in a
63 provider contract.

64 D. Each third-party carrier that is granted access as provided in a provider contract in accordance
65 with subdivision B 1 to have dental services provided by a participating provider to enrollees of the
66 third-party carrier under the terms of a provider contract shall:

67 1. Abide by the fee schedule set forth in the provider contract applicable to the enrollee that is in
68 effect on the date treatment was rendered to the third-party carrier's enrollee by the provider. However,
69 if the provider has a contract directly with the entity to whom the contract is sold, leased, or assigned,
70 then the fee schedule in such contract shall apply; and

71 2. Disclose the name of the participating provider in all directories, websites, or other forms of
72 communications by which the third-party carrier advises or directs its enrollees to providers with which
73 the third-party carrier contracted directly. Such disclosure shall be made in a manner that displays the
74 same information and font size that the third-party carrier makes available to its enrollees about the
75 providers with which the third-party carrier contracted directly as it does about the providers for which
76 it has been granted access as provided in a provider contract.

77 E. The contracting entity or carrier shall inform participating providers, upon request, which
78 network plans have been granted access to the contract by the contracting entity.

79 F. A contracting entity or third-party administrator that sells, leases, assigns, or otherwise grants
80 access as provided in a provider contract shall:

81 1. Maintain a website and a toll-free telephone number through which a participating provider may
82 obtain information that identifies each third-party carrier or other person to which access has been
83 granted as provided in a provider contract to which the participating provider is a party; and

84 2. Ensure that remittance advice furnished to the participating provider that delivers the dental
85 services under the contract identifies the contract source relied upon to discount a payment or
86 reimbursement to the provider. Such remittance advice shall also include (i) the name of the provider,
87 contracting entity, and third-party administrator with whom the contract was originally negotiated and
88 (ii) a calculation of how the payment or reimbursement was determined.

89 G. All third-party carriers that have contracted with the contracting entity to purchase, lease, be
90 assigned, or otherwise be granted access as provided in a provider contract to the participating
91 provider's services, payment, or reimbursement rate shall comply with the participating provider's
92 contract, including all requirements to encourage enrollees to access the participating provider, or to
93 pay or reimburse the participating provider pursuant to the rates and payment methodology at the time
94 treatment is rendered as set forth in the contract, unless otherwise agreed to by the participating
95 provider.

96 H. A third-party carrier may comply with this section by providing enrollees with an identification
97 card that (i) identifies the carrier to be used to pay or reimburse the participating provider for the
98 covered dental services and (ii) identifies the contracting entity through which the third-party carrier
99 has obtained access. A contracting entity or third-party carrier or administrator may provide the
100 information described in clauses (i) and (ii) through an electronic equivalent or provider portal if the
101 participating provider has agreed to electronic communications as provided for in subdivision B 2. The
102 remittance advice shall include the information described in clauses (i) and (ii).

103 I. This section shall not apply to access as provided in a provider contract that is granted or
104 permitted to an entity operating under the same brand licensing program, including authorized affiliates,
105 provided that the third-party carrier or third-party administrator adheres to all terms, provisions, and
106 conditions of the provider contract and administers such terms, provisions, and conditions in accordance
107 with the member's contract. A listing of all affiliates shall be available to the provider under the
108 provisions of subsection E or subdivision F 1.

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

110 **§ 38.2-4509. Application of certain laws.**

111 A. No provision of this title except this chapter and, insofar as they are not inconsistent with this
112 chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229,
113 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
114 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
115 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
116 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et seq.), and 6 (§ 38.2-1335 et seq.) of Chapter 13, §§ 38.2-1400
117 through 38.2-1442, 38.2-1446, 38.2-1447, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3404,
118 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,
119 38.2-3407.17, 38.2-3407.17:1, 38.2-3407.19, 38.2-3415, 38.2-3541, Article 5 (§ 38.2-3551 et seq.) of
120 Chapter 35, §§ 38.2-3600 through 38.2-3603, Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58
121 (§ 38.2-5800 et seq.) shall apply to the operation of a plan.

122 B. The provisions of subsection A of § 38.2-322 shall apply to an optometric services plan. The
123 provisions of subsection C of § 38.2-322 shall apply to a dental services plan.
124 C. The provisions of Article 1.2 (§ 32.1-137.7 et seq.) of Chapter 5 of Title 32.1 shall not apply to
125 either an optometric or dental services plan.
126 D. The provisions of § 38.2-3407.1 shall apply to claim payments made on or after January 1, 2014.
127 No optometric or dental services plan shall be required to pay interest computed under § 38.2-3407.1 if
128 the total interest is less than \$5.