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HOUSE BILL NO. 2354

Offered January 13, 2023

A BILL to amend and reenact § 38.2-3407.10 of the Code of Virginia, relating to health care provider panels; continuity of care.

Patrons—Orrock, Brewer and Hodges

Referred to Committee on Commerce and Energy

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~~ a provider who was furnishing health care services to the enrollee ~~or furnished health care services to the enrollee in the six months prior to the notice~~; 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 ~~as provided in subsection F~~ following the ~~primary care~~ provider's notice of termination from a carrier's provider panel, except when a provider is terminated for cause.

The carrier shall provide notice required by this subdivision 1 prior to the date of the termination of the provider.

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.

For the purposes of subdivisions 1 and 2, "provider" includes a provider group.

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

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59 termination to his patients who are enrollees under such plan.

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

62 F. 1. ~~For~~ *A provider shall be permitted by the carrier to render health care services to any of the*
63 *carrier's enrollees for a period of at least 90 days from the date of the notice of a such provider's*
64 *termination from the carrier's provider panel, except when a provider is terminated for cause, the*
65 *provider shall be permitted by the carrier to render health care services to any of the carrier's enrollees*
66 *who:*

67 a. ~~Were in an active course of treatment from the provider prior to the notice of termination; and~~

68 b. ~~Request to continue receiving health care services from the provider.~~

69 2. Notwithstanding the provisions of subdivision 1, any provider shall be permitted by the carrier to
70 continue rendering health services to any enrollee who has entered the second trimester of pregnancy
71 *been medically confirmed to be pregnant* at the time of a provider's termination of participation, except
72 when a provider is terminated for cause. Such treatment shall, at the enrollee's option, continue through
73 the provision of postpartum care directly related to the delivery.

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

80 4. *Notwithstanding the provisions of subdivision 1, any provider shall be permitted by the carrier to*
81 *continue rendering health services to any enrollee who has been determined by a medical professional*
82 *to have a life-threatening condition at the time of a provider's termination of participation,. Such*
83 *treatment shall, at the enrollee's option, continue for up to 180 days for care directly related to the*
84 *life-threatening condition.*

85 5. *Notwithstanding the provisions of subdivision 1, any provider shall be permitted by the carrier to*
86 *continue rendering health services to any enrollee who is admitted to and receiving treatment in any*
87 *inpatient facility at the time of a provider's termination of participation. Such admission and treatment*
88 *shall, at the enrollee's option, continue, without any time limitation, until the enrollee is discharged from*
89 *the inpatient facility.*

90 *For any health care services received by an enrollee from a provider after the date the provider has*
91 *been terminated from the carrier's provider panel:*

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

94 b. *The provider shall accept such reimbursement from the carrier and any cost-sharing payment from*
95 *the enrollee for items and services as payment in full; and*

96 c. *The provider shall continue to adhere to all policies and procedures and quality standards*
97 *imposed by the carrier for an enrollee that were required of the provider immediately before the*
98 *provider's termination of participation.*

99 *For the purposes of this subsection, "provider" includes a provider group.*

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

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

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

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

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

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

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

117 M. Carriers shall provide to their group policyholders written notice of any benefit reductions during
118 the contract period at least 60 days before such benefit reductions become effective. Group policyholders
119 shall, in turn, provide to their enrollees written notice of any benefit reductions during the contract
120 period at least 30 days before such benefit reductions become effective. Such notice shall be provided to

121 the group policyholder as a separate and distinct notification, and may not be combined with any other
122 notification or marketing materials.

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

127 O. If a provider panel contract between a provider and a carrier, or other entity that provides
128 hospital, physician or other health care services to a carrier, includes provisions that require a provider,
129 as a condition of participating in one of the carrier's or other entity's provider panels, to participate in
130 any other provider panel owned or operated by that carrier or other entity, the contract shall contain a
131 provision permitting the provider to refuse participation in one or more such other provider panels at the
132 time the contract is executed. If a provider contracts with a carrier or other entity that subsequently
133 contracts with one or more unaffiliated carriers to include such provider in the provider panels of such
134 unaffiliated carriers, and which permits an unaffiliated carrier to impose participation terms with respect
135 to such provider that differ materially in reimbursement rates or in managed care procedures, such as
136 conducting economic profiling or requiring a patient to obtain primary care physician referral to a
137 specialist, from the terms agreed to by the provider in the original contract, the provider panel contract
138 shall contain a provision permitting the provider to refuse participation with any such unaffiliated
139 carrier. Utilization review pursuant to Article 1.2 (§ 32.1-137.7 et seq.) of Chapter 5 of Title 32.1 shall
140 not constitute a materially different managed care procedure. This subsection shall apply to provider
141 panels utilized by health maintenance organizations and preferred provider organizations. For purposes
142 of this subsection, "preferred provider organization" means a carrier that offers preferred provider
143 contracts or policies as defined in § 38.2-3407 or preferred provider subscription contracts as defined in
144 § 38.2-4209. The status of a physician as a member of or as being eligible for other existing or new
145 provider panels shall not be adversely affected by the exercise of such right to refuse participation. This
146 subsection shall not apply to the Medallion II and children's health insurance plan administered by or
147 pursuant to contract with the Department of Medical Assistance Services.

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

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

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