VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 688

An Act to amend and reenact §§ 38.2-305, 38.2-4214, 38.2-4308, 38.2-4315 and 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4 of Title 32.1 an article numbered 7, consisting of a section numbered 32.1-122.10:01, relating to accident and sickness insurance; health maintenance organizations; contents of policies; State Health Commissioner review.

[H 2785]

Approved March 21, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-305, 38.2-4214, 38.2-4308, 38.2-4315 and 38.2-4319 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 32.1 an article numbered 7, consisting of a section numbered 32.1-122.10:01, as follows:

Article 7.

Review of Health Services Quality.

§ 32.1-122.10:01. Review of health maintenance organizations.

A. The State Health Commissioner (the "Commissioner") shall examine the quality of health care services of any health maintenance organization ("HMO") licensed in Virginia pursuant to §§ 38.2-4301 and 38.2-4302 and the providers with whom the organization has contracts, agreements, or other arrangements according to the HMO's health care plan as often as considered necessary for the protection of the interests of the people of this Commonwealth. The Commissioner shall consult with HMOs and providers in carrying out his duties under this section.

B. For the purposes of examinations, the Commissioner may review records, take affidavits, and interview the officers and agents of the HMO and the principals of the providers concerning their business.

C. The expenses of examinations by or for the Commissioner under this section shall be assessed against the organization being examined and remitted to the Commissioner.

D. In making his examination, the Commissioner may consider the report of an examination of a foreign HMO certified by the insurance supervisory official, a similar regulatory agency, an independent recognized accrediting organization, or the state health commissioner of another state.

E. The Commissioner also shall: (i) consult with HMOs in the establishment of their complaint systems as provided in § 38.2-4308; (ii) review and analyze HMOs' complaint reports which are required in subsection B of § 38.2-4308; and (iii) assist the State Corporation Commission in examining such complaint systems, as provided in subsection C of § 38.2-4308.

F. The Commissioner shall coordinate the activities undertaken pursuant to this section with the State Corporation Commission to ensure an appropriate level of regulatory oversight and to avoid any undue duplication of effort or regulation.

§ 38.2-305. Contents of policies.

A. Each insurance policy or contract shall specify:

1. The names of the parties to the contract;

2. The subject of the insurance;

3. The risks insured against;

4. The time the insurance takes effect and, except in the case of group insurance, title insurance, and insurance written under perpetual policies, the period during which the insurance is to continue;

5. A statement of the premium, except in the case of group insurance and title insurance; and

6. The conditions pertaining to the insurance.

B. Each *new or renewal* insurance policy ~~or~~, contract, *certificate or evidence of coverage issued to a policyholder, covered person or enrollee* shall be accompanied by a notice stating substantially:

"IMPORTANT INFORMATION ~~TO POLICYHOLDERS~~ *REGARDING YOUR INSURANCE"*

"In the event you need to contact someone about this ~~policy~~ *insurance* for any reason please contact your agent. If *no agent was involved in the sale of this insurance, or if* you have additional questions you may contact the insurance company issuing this ~~policy~~ *insurance* at the following address and telephone number [Insert the appropriate address and telephone number, toll free number if available, for the company's home or regional office].

Health maintenance organizations shall add the following: We recommend that you familiarize yourself with our grievance procedure, and make use of it before taking any other action.

If you have been unable to contact or obtain satisfaction from the company or the agent, you may contact the Virginia *State Corporation Commission's* Bureau of Insurance at: [Insert the appropriate address, toll free phone number, and phone number for out-of-state calls for the Bureau of Insurance.]

Written correspondence is preferable so that a record of your inquiry is maintained. When contacting

your agent, company or the Bureau of Insurance, have your policy number available."

C. If, under the contract, the exact amount of premiums is determinable only at the termination of the contract, a statement of the basis and rates upon which the final premium is to be determined and paid shall be furnished to any policy-examining bureau having jurisdiction or to the insured upon request.

D. This section shall not apply to surety insurance contracts.

§ 38.2-4214. Application of certain provisions of law.

No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-230, 38.2-232, *38.2-305*, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-700 through 38.2-705, 38.2-900 through 38.2-904, 38.2-1017, 38.2-1018, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.) and 2 (§ 38.2-1306.2 et seq.) of Chapter 13, 38.2-1312, 38.2-1314, 38.2-1317 through 38.2-1328, 38.2-1334, 38.2-1340, 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3400, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3405.1, 38.2-3407.1 through 38.2-3407.6, 38.2-3407.9, 38.2-3407.10, 38.2-3407.11, 38.2-3409, 38.2-3411 through 38.2-3419.1, 38.2-3431, 38.2-3432, 38.2-3500, 38.2-3501, 38.2-3502, 38.2-3514.1, 38.2-3514.2, 38.2-3516 through 38.2-3520 as they apply to Medicare supplement policies, §§ 38.2-3525, 38.2-3540.1, 38.2-3541, 38.2-3542, 38.2-3600 through 38.2-3607 and Chapter 53 (§ 38.2-5300 et seq.) of this title shall apply to the operation of a plan.

§ 38.2-4308. Complaint system.

A. Each health maintenance organization shall establish and maintain a complaint system to provide reasonable procedures for the resolution of written complaints. The complaint system shall be established after consultation with the State Health Commissioner and approval by the Commission.

B. Each health maintenance organization shall submit to the Commission and the State Health Commissioner an annual complaint report in a form prescribed by the Commission, after consultation with the State Health Commissioner. The complaint report shall include (i) a description of the procedures of the complaint system, (ii) the total number of complaints handled through the complaint system, (iii) a compilation of causes underlying the complaints filed, and (iv) the number, amount, and disposition of malpractice claims settled or adjudicated during the year by the health maintenance organization and any of its health care providers. A record of the complaints shall be maintained for the period set forth in § 38.2-511.

C. The Commission ~~or~~, *in cooperation with* the State Health Commissioner ~~may~~, *shall* examine the complaint system. *However, at its discretion, the Commission may accept the report of examination conducted by the State Health Commissioner instead of making its own examination.*

§ 38.2-4315. Examinations.

A. The Commission shall examine the affairs of each health maintenance organization as provided for in § 38.2-1317 at least once every five years. The Commission may examine the affairs of providers with whom any health maintenance organization has contracts, agreements, or other arrangements according to its health care plan as often as it considers necessary for the protection of the interests of the people of this Commonwealth.

~~B. The State Health Commissioner may examine the quality of health care services of any health maintenance organization or providers with whom the organization has contracts, agreements, or other arrangements according to its health care plan as often as considered necessary for the protection of the interests of the people of this Commonwealth.~~

~~C. For the purpose of examinations, the State Health Commissioner may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of the providers concerning their business.~~

~~D. The expenses of examinations by or for the State Health Commissioner under this section shall be assessed against the organization being examined and remitted to the State Health Commissioner.~~

~~E.~~ *B.* Instead of making its own examination, the Commission ~~or State Health Commissioner~~ may accept the report of an examination of a foreign health maintenance organization certified by the insurance supervisory official, similar regulatory agency, or the state health commissioner of another state.

C. The Commission shall coordinate such examinations with the State Health Commissioner to ensure an appropriate level of regulatory oversight and to avoid any undue duplication of effort or regulation.

§ 38.2-4319. Statutory construction and relationship to other laws.

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-200, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, *38.2-305*, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.) of this title, 38.2-1057, 38.2-1306.2 through 38.2-1309, Article 4 (§ 38.2-1317 et seq.) of Chapter 13, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3407.2 through 38.2-3407.6, 38.2-3407.9, 38.2-3407.10, 38.2-3407.11, 38.2-3411.2, 38.2-3414.1, 38.2-3418.1, 38.2-3418.1:1, 38.2-3418.1:2, 38.2-3418.2,

38.2-3419.1, 38.2-3431, 38.2-3432, 38.2-3433, 38.2-3500, 38.2-3514.1, 38.2-3514.2, 38.2-3525, 38.2-3542, Chapter 53 (§ 38.2-5300 et seq.) and Chapter 54 (§ 38.2-5400 et seq.) of this title shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) of this title except with respect to the activities of its health maintenance organization.

B. Solicitation of enrollees by a licensed health maintenance organization or by its representatives shall not be construed to violate any provisions of law relating to solicitation or advertising by health professionals.

C. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful practice of medicine. All health care providers associated with a health maintenance organization shall be subject to all provisions of law.

D. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to offer coverage to or accept applications from an employee who does not reside within the health maintenance organization's service area.

2. That the State Health Commissioner, in cooperation with the State Corporation Commission Bureau of Insurance, the Department of Health Professions, and other state agencies as appropriate, be requested to study the quality of health care services provided by health maintenance organizations.

A. The study should (i) examine quality of care mechanisms currently in place for health maintenance organizations (HMOs) and providers with whom they contract, including, but not limited to, state and federal statutes and regulations and review by private accrediting bodies, such as the National Committee for Quality Assurance; (ii) assess the sufficiency of these mechanisms for ensuring quality and providing health care consumers with a means of having their inquiries and complaints addressed; (iii) determine the extent to which such quality of care mechanisms currently exist for forms of managed care other than HMOs (described above) and whether any or all of such mechanisms should be expanded to entities other than HMOs; (iv) examine how the Department of Health and the Bureau of Insurance can coordinate their regulatory roles for ensuring quality of health care services in a manner which minimizes overlapping of authority and duplication of resources; and (v) identify the appropriate role of the Department of Health and any other appropriate state agencies in monitoring quality of care provided through HMOs, other managed care plans, and the providers with whom they contract.

B. The study also should consider whether changes in existing law or regulations are warranted with respect to: (i) the system for investigating and resolving complaints, including whether such system should include complaints by providers and other interested parties on matters which are not purely contractual in nature; (ii) addressing complaints regarding alleged violations of applicable laws or regulations and the manner in which such laws and regulations should be enforced in the Commonwealth; and (iii) whether there is a need in the Commonwealth for a mechanism to be created for the purpose of adjudicating controversies and resolving complaints in connection with alleged violations of applicable law or regulation.

C. The State Health Commissioner also is requested to submit a report by October 1, 1997, to the Governor, the Joint Commission on Health Care and the General Assembly which, in addition to the matters to be reported on as set forth above, (i) recommends the appropriate role of the Commonwealth in monitoring and improving the quality of care in managed care plans which either require or create incentives for covered persons to use health care providers managed, owned, under contract with or employed by the health carrier; (ii) recommends the Commonwealth's role in providing consumer information on managed care issues; (iii) assesses the licensing functions for individual and institutional health care providers currently performed by the Department of Health Professions and the Department of Health, and determines, in light of current health care market conditions, whether any modification or consolidation of these functions would enhance the Commonwealth's efforts in overseeing the quality of managed care health plans; and (iv) evaluates whether there is a need to establish an external appeals or ombudsman process for resolving consumer complaints regarding managed care plans, and, if so, whether the Department of Health or another entity should administer the process. In formulating his recommendations, the State Health Commissioner is requested to optimize the contributions of other public and private entities such as Virginia Health Information, Inc.'s, role in consumer education, as well as identify other public and private partners able to support these functions.

3. That, in concert with the State Health Commissioner's examination of the quality of health care services provided by health maintenance organizations, the Department of Health be requested to receive and respond to complaints from managed care plan enrollees regarding quality of care issues which are forwarded to the Department by the Bureau of Insurance's consumer complaint review program.