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HOUSE BILL NO. 2789

Offered January 20, 1997

A BILL to amend and reenact §§ 38.2-305, 38.2-4306, 38.2-4307, 38.2-4307.1, 38.2-4308, 38.2-4315, 38.2-4316 and 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding in Article 6 of Chapter 4 of Title 32.1 a section numbered 32.1-122.10:01 and by adding in Chapter 43 of Title 38.1 sections numbered 38.2-4322 and 38.2-4323, relating to health maintenance organizations; accountability for quality care.

Patrons—Shuler, Abbitt, Barlow, Crouch, Drake, Hargrove, Heilig, Hull, Ingram, Johnson, Katzen, Keating, Moore, Plum, Putney and Robinson; Senators: Colgan, Couric, Edwards, Hawkins, Lambert, Marye, Miller, Y.B., Newman, Reynolds, Schrock and Stolle

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-305, 38.2-4306, 38.2-4307, 38.2-4307.1, 38.2-4308, 38.2-4315, 38.2-4316 and 38.2-4319 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 6 of Chapter 4 of Title 32.1 a section numbered 32.1-122.10:01 and by adding in Chapter 43 of Title 38.1 sections numbered 38.2-4322 and 38.2-4323, 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 cooperate with the State Corporation Commission, the Commissioner of Insurance and the Department of Health Professions to investigate and resolve complaints and to 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.

B. For the purposes of investigations and 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. Except to the extent otherwise prohibited by applicable law, the expenses of investigations and examinations by or for the Commissioner under this section shall be assessed against the organization being investigated or examined and remitted to the Commissioner. The State Corporation Commission, as licensing authority, shall enforce such assessments against its licensees, if necessary, and may impose delinquent payment fees.

D. In making his examination, the Commissioner may consider the report of an examination of a foreign health maintenance organization certified by the insurance supervisory official, a similar regulatory agency, an independent recognized accrediting organization, or the state health commissioner of another state or of such other persons or agencies as are contemplated in §§ 38.2-4308 and 38.2-4315.

E. The Commissioner also shall to the extent not otherwise prohibited by applicable law: (i) consult with HMOs in the establishment of their complaint systems as provided in § 38.2-4308; (ii) review and analyze HMOs' complaints and their reports and systems as contemplated in § 38.2-4308; (iii) assist the State Corporation Commission and Department of Health Professions in examining such complaint systems, investigating and adjudicating complaints and examining HMOs as provided in § 38.2-4308 and 4315; and (iv) consult with those providers contracting with the HMO regarding its complaint system.

F. The Commissioner shall coordinate the activities undertaken pursuant to this section and Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 with the State Corporation Commission and Department of Health Professions to ensure an appropriate level of regulatory oversight and to avoid any undue duplication of effort or regulation. The State Corporation Commission shall remain responsible for enforcement or disciplinary actions against its licensees.

G. In concert with the Commissioner's examination of the quality of health care services provided by HMOs, the Department of Health shall establish and operate in coordination with the State Corporation Commission, or shall cooperate with the State Corporation Commission in connection with its establishment and operation of, a hotline for enrollees in health maintenance organizations, providers, subscribers, other health care plans and other interested persons to receive answers to questions and to make and resolve complaints regarding quality of care and access and compliance by the HMO with

applicable law and 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 should add the following : We recommend that you familiarize yourself with our grievance procedures and make use of them 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.

§ 38.2-4306. Evidence of coverage and charges for health care services.

A. 1. Each subscriber shall be entitled to evidence of coverage under a health care plan.

2. No evidence of coverage, or amendment to it, shall be delivered or issued for delivery in this Commonwealth until a copy of the form of the evidence of coverage, or amendment to it, has been filed with and approved by the Commission, subject to the provisions of subsection C of this section.

3. No evidence of coverage shall contain provisions or statements which are unjust, unfair, untrue, inequitable, misleading, deceptive or misrepresentative.

4. An evidence of coverage shall contain a clear and complete statement if a contract, or a reasonably complete summary if a certificate, of:

a. The health care services and any insurance or other benefits to which the enrollee is entitled under the health care plan;

b. Any limitations on the services, kind of services, benefits, or kind of benefits to be provided, including any deductible or copayment feature;

c. Where and in what manner information is available as to how services may be obtained;

d. The total amount of payment for health care services and any indemnity or service benefits that the enrollee is obligated to pay with respect to individual contracts, or an indication whether the plan is contributory or noncontributory for group certificates;

e. A description of the health maintenance organization's method for resolving ~~enrollee~~ complaints *by enrollees, providers, subscribers, other health plans or other interested persons, including any appeal rights required under this chapter*. Any subsequent change may be evidenced in a separate document issued to the enrollee;

f. A list of providers and a description of the service area which shall be provided with the evidence of coverage, if such information is not given to the subscriber at the time of enrollment; and

g. The right of subscribers covered under a group contract to convert their coverages to an individual contract issued by the health maintenance organization.

B. 1. No schedule of charges or amendment to the schedule of charges for enrollee coverage for health care services may be used in conjunction with any health care plan until a copy of the schedule, or its amendment, has been filed with the Commission.

2. The charges may be established for various categories of enrollees based upon sound actuarial principles, provided that charges applying to an enrollee shall not be individually determined based on the status of his health. A certification on the appropriateness of the charges, based upon reasonable

assumptions, may be required by the Commission to be filed along with adequate supporting information. This certification shall be prepared by a qualified actuary or other qualified professional approved by the Commission.

C. The Commission shall, within a reasonable period, approve any form if the requirements of subsection A of this section are met. It shall be unlawful to issue a form until approved. If the Commission disapproves a filing, it shall notify the filer. The Commission shall specify the reasons for its disapproval in the notice. A written request for a hearing on the disapproval may be made to the Commission within thirty days after notice of the disapproval. If the Commission does not disapprove any form within thirty days of the filing of such form, it shall be deemed approved unless the filer is notified in writing that the waiting period is extended by the Commission for an additional thirty days. Filing of the form means actual receipt by the Commission.

D. The Commission may require the submission of any relevant information it considers necessary in determining whether to approve or disapprove a filing made under this section.

§ 38.2-4307. Annual statement.

A. Each health maintenance organization shall file a statement with the Commission annually by March 1. The statement shall be verified by at least two principal officers and shall cover the preceding calendar year. Each health maintenance organization shall also send a copy of the statement to the State Health Commissioner.

B. The statement shall be on forms prescribed by the Commission and shall include:

1. A financial statement of the organization, including its balance sheet and income statement for the preceding year;

2. Any material changes in the information submitted pursuant to subsection B of § 38.2-4301;

3. The number of persons enrolled during the year, the number of enrollees as of the end of the year and the number of enrollments terminated during the year; ~~and~~

4. *A summary of each complaint received by the health maintenance organization and the specific manner in which the complaint was resolved; and*

5. Any other information relating to the performance and utilization of the health maintenance organization required by the Commission after consultation with the State Health Commissioner to carry out the Commission's duties under this chapter.

C. If the health maintenance organization is audited annually by an independent certified public accountant, a copy of the certified audit report shall be filed annually with the Commission by June 30.

D. The Commission may extend the time prescribed for filing annual statements or other reports or exhibits of any health maintenance organization for good cause shown. However, the Commission shall not extend the time for filing annual statements beyond sixty days after the time prescribed by subsection A of this section. Any health maintenance organization which fails to file its annual statement within the time prescribed by this section shall be subject to a fine as specified in § 38.2-218.

§ 38.2-4307.1. Additional reports.

In addition to the annual statement, the Commission may require a licensed health maintenance organization to file additional reports, exhibits or statements considered necessary to secure complete information concerning the condition, solvency, experience, *complaint volume and disposition,* transactions or affairs of the health maintenance organization. The Commission shall establish reasonable deadlines for filing these additional reports, exhibits, or statements and may require verification by any officers of the health maintenance organization designated by the Commission.

§ 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. *The complaint system shall meet such requirements as the Commission after consultation with the State Health Commissioner and Department of Health Professions may, by regulation, require as necessary to protect the interests of the people of the Commonwealth and to ensure compliance with the requirements of this chapter.*

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.~~ *The complaint system shall provide for the prompt resolution by the health maintenance organization of complaints filed by enrollees, providers, subscribers, other health care plans or other interested persons concerning (i) matters affecting quality of care, access, and*

availability of providers; (ii) the failure of the health maintenance organization to comply with any requirements of applicable law or regulation; or (iii) such other matters as the Commission after consultation with the State Health Commissioner or Department of Health Professions may, by regulation, require as necessary to implement this section. The complaint system shall require that complaints be resolved expeditiously and in good faith by the health maintenance organization, and the determinations shall be made in all events within 90 days after the complaint is received by the health maintenance organization, unless a longer period is required or permitted under applicable law.

C. The Commission ~~or~~ *, in cooperation with* the State Health Commissioner ~~may~~ *, shall monitor and* examine the complaint system *and may request the assistance of the Department of Health Professions where they determine appropriate. In its discretion, the Commission may accept the examination conducted by the State Health Commissioner instead of making its own examination. The Commission, after consultation with the State Health Commissioner and Department of Health Professions, shall establish by regulation, on or before December 1, 1997, a system to monitor and examine the complaint system required under subsection B and to investigate, review, adjudicate and resolve particular disputes arising under the complaint system of each health maintenance organization to the maximum extent permitted under applicable law. The regulations shall provide, at a minimum, for the establishment of a system within the Commission, the office of the State Health Commissioner, or the Department of Health Professions (i) to accept appropriate appeals from the health maintenance organization complaint system where the complaint is not resolved to the satisfaction of the complaining person, (ii) to permit the complaint to be filed directly with the Commission in the case of violation of applicable law or regulation or imminent and serious threat to the health of the patient, even if the complaint is also being pursued under the health maintenance organization's complaint process, and (iii) expeditiously and fairly to investigate, adjudicate and resolve such complaints or appeals. To the extent not otherwise prohibited by applicable law, the regulations shall also provide, at a minimum, for a system by which the complaining person may request and receive nonbinding mediation with the health maintenance organization at the time of submission of the complaint to the Commission which mediation will stay the investigation of the complaint by the Commission pending the resolution of the mediation, with the regulations to set forth the manner in which the expenses of mediation shall be borne. The submission or pendency of a complaint or appeal with the Commission shall not preclude the complaining person from pursuing any other rights or remedies which may exist under applicable law. The Commission, the State Health Commissioner and the Department of Health Professions shall be authorized to delegate to or otherwise to contract with one or more persons to conduct or administer all, or any portion, of the complaint investigation and resolution process; however, except to the extent otherwise required under applicable law, the final decision shall be approved by the Commission, the Commissioner of Insurance, the State Health Commissioner, or the Department of Health Professions. In conducting the complaint review process, the Commission, the Commissioner of Insurance, the State Health Commissioner, and the Department of Health Professions and any person under contract with any of them, shall be authorized to exercise all of the powers and rights contemplated under Article (§ 38.2-1317 et seq.) of Chapter 13 of this title.*

D. Each health maintenance organization shall submit to the Commission, the State Health Commissioner, and the Department of Health Professions an annual complaint report in a form prescribed by the Commission, after consultation with the State Health Commissioner and the Department of Health Professions. 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, (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, and (v) a summary of each complaint setting forth the date of the complaint, the nature of the complaint, the manner in which the complaint was disposed of and information sufficient to permit the Commission, State Health Commissioner or the Department of Health Professions (or a person under contract with any of them) independently to verify the accuracy of the information contained in the complaint report. A record of the complaints shall be maintained for the period set forth in § 38.2-511, and the record shall contain, in addition to the information required by § 38.2-511, a copy of all information obtained and reviewed by the health maintenance organization in connection with its investigation of the complaint.

E. The Commission, State Health Commissioner and the Department of Health Professions may make available to the Virginia Health Information, Incorporated, any independent accrediting entity or any agency of the Commonwealth having jurisdiction over a person with respect to whom the complaint relates, such information from the complaint, or records relating thereto, as is necessary to protect the interests of the people of this Commonwealth; however, the information so provided shall not identify any patient involved except as is otherwise permitted or required by law.

F. In the event the Commission determines that enforcement or disciplinary action is appropriate as a result of any complaint or that the complaint represents a violation of this chapter, it may initiate any

proceedings or actions as provided by law.

G. No cause of action shall arise nor shall any liability be imposed against the Commission, the Commissioner of Insurance, the State Health Commissioner, the Department of Health Professions or any person under contract with any of them as contemplated in this section, or any of their respective employees, directors, officers, contractors, agents, representatives or examiners for any statement made or conduct performed in good faith while carrying out the provisions of this section. No cause of action shall arise, nor shall any liability be imposed against any person, for the act of communicating or delivering information or data to the Commission, the State Health Commissioner, the Department of Health Professions or any person under contract with any of them as contemplated by this section, or any of their respective employees, directors, officers, contractors, agents, representatives or examiners, pursuant to any examination made under this section, if such act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subsection does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified or referred to in this subsection.

H. Every health maintenance organization shall maintain or cause to be maintained, in writing and at a location accessible to employees, representatives or contractors of the Commission, the State Health Commissioner and the Department of Health Professions, records of: (i) its complaint review procedures; (ii) the health care qualifications of its staff; (iii) the criteria used by the health maintenance organization to make the complaint review decisions; (iv) a summary of each complaint received, including the manner in which the complaints were resolved; (v) the number and type of adverse decisions and reconsiderations; (vi) the number and outcome of final adverse decisions and appeals thereof, including a separate record for expedited appeals; and (vii) procedures to ensure confidentiality of medical records and personal information. Records shall be maintained or caused to be maintained by the health maintenance organization for a period of three years, and all such records shall be subject to examination by the Commission, the State Health Commissioner, the Department of Health Professions or any person participating in the complaint investigation, review or appeal process or the examination of the affairs of the health maintenance organization under contract with the Commission, State Health Commissioner or Department of Health Professions.

I. The expenses of the investigation and resolution of complaints incurred by or for the Commission, the State Health Commissioner, the Department of Health Professions or any person under contract with them as permitted in this section may be assessed against the health maintenance organization to which the complaint relates and remitted to the Commission, State Health Commissioner, Department of Health Professions or other person, as appropriate.

J. Nothing in this section or § 38.2-4315 shall permit the disclosure or dissemination of any patient information or medical records in violation of any applicable law or regulation governing the confidentiality of patient information or medical records.

§ 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~~ *four* 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. *The Commission shall coordinate such examinations with the State Health Commission and the Department of Health Professions and any independent person under contract with it or them, to ensure an appropriate level of regulatory oversight and to avoid any undue duplication of effort or regulation. The Commission shall remain responsible for enforcement or disciplinary actions against its licensees.*

B. The State Health Commissioner ~~may~~, *in cooperation with the Commission and Department of Health Professions, shall* 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. *For purposes of this subsection, an examination of the quality of heath care services shall include, without limitation, inquiry into the following matters:*

1. Investigation and follow-up on complaints;

2. Access to and availability of appropriate providers;

3. Utilization review;

4. Barriers to access such as delays in permitting appointments, failure to permit appropriate and timely referrals including out-of-network referrals where medically necessary, unreasonable claims processing procedures, and unreasonable terms and conditions to limit provider participation;

5. The credentialling process for providers;

6. Conflicts of interest between the health maintenance organization and the providers permitted to participate;

7. Existence and effectiveness of procedures designed to identify and correct quality of care problems on an individual and system-wide basis; and

8. The adequacy of disclosure by the health maintenance organization to existing or prospective enrollees and subscribers of their respective rights and obligations under any applicable health care plan or applicable law or regulation.

C. For the purpose of examinations, the *Commission,* State Health Commissioner *and Department of Health Professions* 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 *incurred* by or for the *Commission, the* State Health Commissioner ~~under~~*, the Department of Health Professions, or any person under contract with any of them as permitted* this section, shall be assessed against the *health maintenance* organization being examined and remitted to the *Commission,* State Health Commissioner*, Department of Health Professions, or other person, as appropriate.*

E. Instead of making its own ~~examination~~ *examinations as called for under this section,* the Commission ~~or~~, State Health Commissioner *or Department of Health Professions* may *(i)* 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 *or (ii) contract with and retain attorneys, appraisers, independent actuaries, independent certified public accountants, independent persons with expertise on quality and utilization matters such as Virginia Health Quality Center, Inc., or other professionals and specialists to assist in or direct the examination process, subject to compliance with applicable law and regulations, including those governing the confidentiality of patient information and medical records.*

F. No cause of action shall arise nor shall any liability be imposed against the Commission, the Commissioner of Insurance, the State Health Commissioner, the Department of Health Professions, any person under contract with any of them as contemplated in this section, or any person identified or referred to in subsections D or E above, or their respective employees, directors, officers, contractors, agents, representatives or examiners, for any statements made or conduct performed in good faith while carrying out the provisions of this section. No cause of action shall arise, nor shall any liability be imposed, against any person for the act of communicating or delivering information or data to the Commission, the State Health Commissioner, the Department of Health Professions, or any person under contract with any of them as contemplated in this section, or any person identified or referred to in subsections D or E, above or any of their respective employees, directors, officers, contractors, agent, authorized representatives or examiners, pursuant to an examination made under this section, if such act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subsection does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in this subsection.

§ 38.2-4316. Suspension or revocation of license or imposition of penalties and restitution payments.

A. The Commission may suspend or revoke any license issued to a health maintenance organization under this chapter if it finds that any of the following conditions exist:

1. The health maintenance organization is operating significantly at variance with its basic organizational document, its health care plan, or in a manner contrary to that described in and reasonably inferred from any other information submitted under § 38.2-4301, unless amendments to those submissions have been filed with and approved by the Commission;

2. The health maintenance organization issues an evidence of coverage or uses a schedule of charges for health care services that do not comply with the requirements of § 38.2-4306;

3. The health care plan does not provide or arrange for basic health care services or limited health care services;

4. The State Health Commissioner certifies to the Commission, *or the Commission otherwise determines,* that the health maintenance organization *(i)* is unable to fulfill its obligations to furnish quality health care services as set forth in its health care plan consistent with prevailing medical care standards and practices in the Commonwealth, *(ii) has established a pattern of failing to furnish quality health care services, or (iii) has failed to furnish or arrange quality health care services with such frequency as to indicate a general business practice*;

5. The health maintenance organization is no longer financially responsible and a reasonable expectation exists that it may be unable to meet its obligations to enrollees or prospective enrollees;

6. The health maintenance organization has failed to implement a mechanism providing the enrollees with an opportunity to participate in matters of policy and operation as provided in § 38.2-4304;

7. The health maintenance organization has failed to implement the complaint system required by § 38.2-4308 to resolve valid complaints reasonably *or has failed, willfully established a pattern of failing, or failed with such frequency as to indicate a general business practice of failing, to timely resolve complaints in accordance with the approved complaint system and the requirements of this chapter*;

8. The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;

9. The continued operation of the health maintenance organization would be hazardous to its enrollees; or

10. The health maintenance organization has otherwise failed to substantially comply with the provisions of this chapter.

B. When the license of a health maintenance organization is suspended, the health maintenance organization shall not enroll any additional enrollees during the period of the suspension except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation.

C. The Commission shall not revoke or suspend the license of a health maintenance organization upon any of the grounds set out in subsection A of this section until it has given the organization ten days' notice of the proposed revocation or suspension and the grounds for it, and has given the organization an opportunity to introduce evidence and be heard. Any hearing authorized by this section may be informal. The required notice may be waived by the Commission and the health maintenance organization.

D. When the license of a health maintenance organization is revoked, the organization shall proceed to wind up its affairs immediately following the effective date of the order of revocation. The health maintenance organization shall conduct no further business except as may be essential to the orderly conclusion of its affairs. It shall engage in no further advertising or solicitation. The Commission may, by written order, permit further operation of the organization that it finds to be in the best interests of enrollees for the purpose of giving them the greatest practical opportunity to obtain continuing health care coverage.

E. In determining the level of administrative penalty to be imposed pursuant to § 38.2-218, the Commission may consider (i) the number of enrollees affected by the violation, (ii) the effect of the violation on the enrollees' health, quality of care and access to health care services, (iii) whether the violation is an isolated incident or part of a pattern of violations, (iv) the economic benefit derived by the health maintenance organization by virtue of the violation, and (v) such other factors relevant to the cost and quality of care and the nature of the violation as the Commission may determine appropriate. In making any determination or finding under this subsection, the Commission may rely on its own independent examination or a certification or finding of the Commissioner of Insurance, State Health Commissioner, the Department of Health Professions or any person under contract with any of them as contemplated in this chapter.

§ 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, §§ *32.1-122.10:01,* 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.

§ 38.2-4322. Severability clause.

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this Act which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are

severable.

§ 38.2-4323. Adjudication of controversies.

Notwithstanding any provision in this title to the contrary, the Commission shall have the authority to investigate and resolve disputes and to adjudicate controversies arising out of allegations that a health maintenance organization has violated applicable law or regulation, including without limitation allegations that it has violated §§ 38.2-3407.10, 38.2-3407.11, 38.2-4312.1, and Chapter 54 (§ 38.2-5400 et seq.) of Tile 38.2 to the extent contemplated in this chapter.