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HOUSE BILL NO. 1682

Offered January 9, 2019

Prefiled December 6, 2018

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.*

Patrons—Ware, Kory, Miyares and Peace; Senator: Chase

Referred to Committee on Commerce and Labor

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:

"Access as provided in a provider contract" means the right to have dental services provided by a participating provider to the enrollees of a third-party carrier in accordance with the terms of a provider contract.

"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 (i) a carrier or other person that enters into a provider contract with a provider or (ii) an intended beneficiary of the rights of the carrier or other person described in a provision of a provider contract.

"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 reduced 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 PPO network arranger 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 PPO network arranger is a direct party.

"PPO network arranger" means a person that operates a PPO network arrangement.

"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

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59 contract. A provider contract shall expressly authorize access as provided in a provider contract only if
60 the provider contract explicitly states that the selling, leasing, assigning, or granting of access as
61 provided in a provider contract is permitted;

62 2. The contracting entity or third-party administrator or carrier has notified all of the affected
63 participating providers that a third-party carrier seeks a grant of access as provided in a provider
64 contract of the participating provider. Such notification shall be sent to the affected participating
65 provider either (i) by first-class mail in a special envelope, not containing any other enclosure, which
66 envelope has a message on its outside front located below the addressee's address that states "Open
67 Immediately - Contract Changes Enclosed," or (ii) if the participating provider has agreed in advance
68 with the carrier or third-party administrator to authorize the communication as required by this
69 subdivision by secure electronic means, by such means.

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

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

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

80 2. Disclose the name of the participating provider in all directories, websites, or other forms of
81 communications by which the third-party carrier advises or directs its enrollees to providers with which
82 the third-party carrier contracted directly. Such disclosure shall be made in a manner that displays the
83 same information that the third-party carrier makes available to its enrollees about the providers with
84 which the third-party carrier contracted directly as it does for providers for which it has been granted
85 access as provided in a provider contract, in a size and format that does not prejudice any provider for
86 which it has been granted access as provided in a provider contract.

87 E. Prior to initial credentialing and prior to every re-credentialing, the contracting entity or carrier
88 shall provide a written or electronic listing to the participating provider of all persons and network
89 plans that have been granted access to the contract to which the participating provider is a party.

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

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

95 2. Ensure that an explanation of benefits or remittance advice furnished to the participating provider
96 that delivers the dental services under the contract identifies the contract source relied upon to discount
97 a payment or reimbursement to the provider. Such explanation of benefits or remittance advice shall
98 also include (i) the name of the provider, contracting entity, or PPO network arranger with whom the
99 contract was originally negotiated and (ii) an explanation of how the right to discount any payment or
100 reimbursement was obtained.

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

108 H. A contracting entity or third-party administrator shall be deemed in compliance with this section
109 if an enrollee identification card provides information that (i) identifies the carrier to be used to pay or
110 reimburse the participating provider for the covered dental services, (ii) identifies the contracting entity
111 that maintain the PPO network arrangement through which the third-party carrier has obtained access,
112 and (iii) identifies the carrier or third-party administrator of the dental coverage. A contracting entity or
113 third-party administrator that has provided notice to the provider pursuant to subdivision B 1 may
114 provide information required by this section through an electronic equivalent or provider portal. In
115 addition, the explanation of benefits or remittance advice shall also contain the information required by
116 this section.

117 I. This section shall not apply to access as provided in a provider contract that is granted or
118 permitted to an entity operating under the same brand licensing program, including affiliates authorized
119 to support the brand licensing program, provided that the third-party carrier or third-party
120 administrator adheres to all terms, provisions, and conditions of the provider contract and administers

such terms, provisions, and conditions in accordance with the member's contract.

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

§ 38.2-4509. Application of certain laws.

A. No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 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 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 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 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et seq.), and 6 (§ 38.2-1335 et seq.) of Chapter 13, §§ 38.2-1400 through 38.2-1442, 38.2-1446, 38.2-1447, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3404, 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, 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 Chapter 35, §§ 38.2-3600 through 38.2-3603, Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall apply to the operation of a plan.

B. The provisions of subsection A of § 38.2-322 shall apply to an optometric services plan. The provisions of subsection C of § 38.2-322 shall apply to a dental services plan.

C. The provisions of Article 1.2 (§ 32.1-137.7 et seq.) of Chapter 5 of Title 32.1 shall not apply to either an optometric or dental services plan.

D. The provisions of § 38.2-3407.1 shall apply to claim payments made on or after January 1, 2014. No optometric or dental services plan shall be required to pay interest computed under § 38.2-3407.1 if the total interest is less than \$5.

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