

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 38.2-3407.10 and 38.2-4319 of the Code of Virginia, relating to health insurance; health care provider panels; continuity of care.

[H 218]

Approved

Be it enacted by the General Assembly of Virginia: 1. That §§ 38.2-3407.10 and 38.2-4319 of the Code of Virginia are 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 a provider who was furnishing health care services to the enrollee or furnished health care services to the enrollee in the six 12 months prior to the notice; and

b. The right of an enrollee to continue to receive health care services as provided in subsection E following the provider's 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, except when a provider is terminated for cause.

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

E. 1. A provider shall be permitted by the carrier to render health care services to any of the carrier's

57 enrollees for a period of at least 90 days from the date of such provider's termination from the carrier's
 58 provider panel, except when a provider is terminated for cause. *A provider shall continue to render*
 59 *health care services to any of the carrier's enrollees who have an existing provider-patient relationship*
 60 *with the provider for a period of at least 90 days from the date of such provider's termination from the*
 61 *carrier's provider panel, except when a provider is terminated for cause.*

62 2. Notwithstanding the provisions of subdivision 1, any provider shall be permitted by the carrier to
 63 continue rendering *and shall continue rendering* health services to any enrollee *who has an existing*
 64 *provider-patient relationship with the provider and* who has been medically confirmed to be pregnant at
 65 the time of a provider's termination of participation, except when a provider is terminated for cause.
 66 Such treatment shall, at the enrollee's option, continue through the provision of postpartum care directly
 67 related to the delivery.

68 3. Notwithstanding the provisions of subdivision 1, any provider shall be permitted by the carrier to
 69 continue rendering *and shall continue rendering* health services to any enrollee *who has an existing*
 70 *provider-patient relationship with the provider and* who is determined to be terminally ill (as defined
 71 under § ~~1861 (dd)(3)(A)~~ 1861(dd)(3)(A) of the Social Security Act) at the time of a provider's
 72 termination of participation, except when a provider is terminated for cause. Such treatment shall, at the
 73 enrollee's option, continue for the remainder of the enrollee's life for care directly related to the
 74 treatment of the terminal illness.

75 4. Notwithstanding the provisions of subdivision 1, any provider shall be permitted by the carrier to
 76 continue rendering *and shall continue rendering* health services to any enrollee *who has an existing*
 77 *provider-patient relationship with the provider and* who has been determined by a medical professional
 78 to have a life-threatening condition at the time of a provider's termination of participation. Such
 79 treatment shall, at the enrollee's option, continue for up to 180 days for care directly related to the
 80 life-threatening condition.

81 5. Notwithstanding the provisions of subdivision 1, any provider shall be permitted by the carrier to
 82 continue rendering *and shall continue rendering* health services to any enrollee *who has an existing*
 83 *provider-patient relationship with the provider and* who is admitted to and receiving treatment in any
 84 inpatient facility at the time of a provider's termination of participation. Such admission and treatment
 85 shall continue until the enrollee is discharged from the inpatient facility.

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

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

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

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

95 For the purposes of this subsection, "provider" includes a provider group *and "existing*
 96 *provider-patient relationship" means the provider has rendered health care services to the enrollee or*
 97 *admitted or discharged the enrollee in the previous 12 months.*

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

103 2. The information provided under subdivision 1 shall be updated at least once a year if in paper
 104 form; and monthly if in electronic form.

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

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

109 I. No contract between a carrier and a provider shall prohibit, impede, or interfere in the discussion
 110 of medical treatment options between a patient and a provider.

111 J. A contract between a carrier and a provider shall permit and require the provider to discuss
 112 medical treatment options with the patient.

113 K. Any carrier requiring preauthorization for medical treatment shall have personnel available to
 114 provide such preauthorization at all times when such preauthorization is required.

115 L. Carriers shall provide to their group policyholders written notice of any benefit reductions during
 116 the contract period at least 60 days before such benefit reductions become effective. Group policyholders
 117 shall, in turn, provide to their enrollees written notice of any benefit reductions during the contract

118 period at least 30 days before such benefit reductions become effective. Such notice shall be provided to
119 the group policyholder as a separate and distinct notification, and ~~may~~ shall not be combined with any
120 other notification or marketing materials.

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

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

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

150 P. *Nothing in this section shall prohibit a provider from discontinuing services to an enrollee at any*
151 *time due to misconduct, a refusal to follow the provider's policies and procedures, or on any other*
152 *reasonable basis; however, the provider shall not discontinue services to the enrollee solely on the basis*
153 *that the provider was terminated from the carrier's provider panel.*

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

155 **§ 38.2-4319. Statutory construction and relationship to other laws.**

156 A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this
157 chapter, §§ 38.2-100, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218
158 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-316.1, 38.2-322, 38.2-325, 38.2-326,
159 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-629, Chapter 9
160 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, and 38.2-1306.1, Article 2
161 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, and Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.), 5
162 (§ 38.2-1322 et seq.), 5.1 (§ 38.2-1334.3 et seq.), and 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13,
163 Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14,
164 Chapter 15 (§ 38.2-1500 et seq.), Chapter 17 (§ 38.2-1700 et seq.), §§ 38.2-1800 through 38.2-1836,
165 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3406.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through
166 38.2-3407.20, 38.2-3411, 38.2-3411.2, 38.2-3411.3, 38.2-3411.4, 38.2-3412.1, 38.2-3414.1, 38.2-3418.1
167 through 38.2-3418.19, 38.2-3418.21, 38.2-3419.1, and 38.2-3430.1 through 38.2-3454, Articles 8
168 (§ 38.2-3461 et seq.) and 9 (§ 38.2-3465 et seq.) of Chapter 34, § 38.2-3500, subdivision 13 of
169 § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through
170 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.2, 38.2-3542, and 38.2-3543.2, Article 5
171 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 35.1 (§ 38.2-3556 et seq.), § 38.2-3610, Chapter 52
172 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.), Chapter 65
173 (§ 38.2-6500 et seq.), and Chapter 66 (§ 38.2-6600 et seq.) shall be applicable to any health maintenance
174 organization granted a license under this chapter. This chapter shall not apply to an insurer or health
175 services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200
176 et seq.) except with respect to the activities of its health maintenance organization.

177 B. For plans administered by the Department of Medical Assistance Services that provide benefits
178 pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title

179 except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136,
180 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229,
181 38.2-232, 38.2-322, 38.2-325, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, and
182 38.2-600 through 38.2-629, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057,
183 and 38.2-1306.1, Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4
184 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et seq.), 5.1 (§ 38.2-1334.3 et seq.), and 5.2 (§ 38.2-1334.11 et
185 seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.)
186 of Chapter 14, §§ 38.2-3401, 38.2-3405, 38.2-3407.2 through 38.2-3407.5, 38.2-3407.6, 38.2-3407.6:1,
187 38.2-3407.9, 38.2-3407.9:01, and 38.2-3407.9:02, ~~subdivisions~~ *subsection E 1, 2, and 3* of
188 § 38.2-3407.10, §§ 38.2-3407.10:1, 38.2-3407.11, 38.2-3407.11:3, 38.2-3407.13, 38.2-3407.13:1,
189 38.2-3407.14, 38.2-3411.2, 38.2-3418.1, 38.2-3418.2, 38.2-3418.16, 38.2-3419.1, 38.2-3430.1 through
190 38.2-3437, and 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1,
191 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.2,
192 38.2-3542, and 38.2-3543.2, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), Chapter
193 58 (§ 38.2-5800 et seq.), Chapter 65 (§ 38.2-6500 et seq.), and Chapter 66 (§ 38.2-6600 et seq.) shall be
194 applicable to any health maintenance organization granted a license under this chapter. This chapter shall
195 not apply to an insurer or health services plan licensed and regulated in conformance with the insurance
196 laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance
197 organization.

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

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

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

208 F. For purposes of applying this section, "insurer" when used in a section cited in subsections A and
209 B shall be construed to mean and include "health maintenance organizations" unless the section cited
210 clearly applies to health maintenance organizations without such construction.