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HOUSE BILL NO. 874

Offered January 26, 1998

A BILL to amend and reenact § 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 21.1 of Title 8.01 a section numbered 8.01-581.20:1, relating to health maintenance organizations; liability for health care treatment decisions.

Patron—Abbitt

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-4319 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Article 2 of Chapter 21.1 of Title 8.01 a section numbered 8.01-581.20:1 as follows:

§ 8.01-581.20:1. Health maintenance organizations; liability for health care treatment decisions.

A. For purposes of this section:

"Appropriate and medically necessary" means the standard for health care services as determined by physicians and health care providers in accordance with the prevailing practices and standards of the medical profession and community.

"Enrollee" or "member" means an individual who is enrolled in a health care plan.

"Health care plan" means any arrangement in which any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services. A significant part of the arrangement shall consist of arranging for or providing health care services, including emergency services and services rendered by nonparticipating referral providers, as distinguished from mere indemnification against the cost of the services, on a prepaid basis. For purposes of this section, a "significant part" means at least ninety percent of total costs of health care services.

"Health care treatment decision" means a determination made when medical services are actually provided by the health care plan and a decision which affects the quality of the diagnosis, care, or treatment provided to the plan's enrollees.

"Health maintenance organization" means an organization licensed pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 that undertakes to provide or arrange for one or more health care plans.

"Ordinary care" means that degree of care that a health maintenance organization of reasonable prudence would use under the same or similar circumstances. In the case of a person who is an employee, agent, or representative of a health maintenance organization, "ordinary care" means that degree of care that a person of ordinary prudence in the same profession, specialty, or area of practice as such person would use in the same or similar circumstances.

B. A health maintenance organization has the duty to exercise ordinary care when making health care treatment decisions and is liable for damages for harm to an enrollee proximately caused by its failure to exercise such ordinary care.

C. A health maintenance organization is also liable for damages for harm to an enrollee proximately caused by the health care treatment decisions made by its (i) employees, (ii) agents, or (iii) representatives who are acting on its behalf and over whom it has the right to exercise influence or control or has actually exercised influence or control which result in the failure to exercise ordinary care.

D. It shall be a defense to any action asserted against a health maintenance organization that:

1. Neither the health maintenance organization nor any employee, agent, or representative for whose conduct such health maintenance organization is liable under subsection B, controlled, influenced, or participated in the health care treatment decision; and

2. The health maintenance organization did not deny or delay payment for any treatment prescribed or recommended by a provider to the insured or enrollee.

E. The standards in subsections B and C create no obligation on the part of the health maintenance organization to provide to an enrollee treatment which is not covered by the health care plan of the entity.

F. This section does not create any liability on the part of an employer, an employer group-purchasing organization, or a pharmacy licensed by the State Board of Pharmacy that purchases coverage or assumes risk on behalf of its employees.

G. A health maintenance organization shall not remove a physician or health care provider from its plan or refuse to renew the physician or health care provider with its plan for advocating on behalf of

an enrollee for appropriate and medically necessary health care for the enrollee.

H. A health maintenance organization shall not enter into a contract with a physician, hospital, or other health care provider or pharmaceutical company which includes an indemnification or hold harmless clause for the acts or conduct of the health maintenance organization. Any such indemnification or hold harmless clause in an existing contract is hereby declared void.

I. Nothing in any law of this state prohibiting a health maintenance organization from practicing medicine or being licensed to practice medicine may be asserted as a defense by such health maintenance organization in an action brought against it pursuant to this section.

J. In an action against a health maintenance organization, a finding that a physician or other health care provider is an employee, agent, or representative of such health maintenance organization shall not be based solely on proof that such person's name appears in a listing of approved physicians or health care providers made available to enrollees under a health care plan.

K. The provisions of § 8.01-581.15 limiting recovery in certain medical malpractice actions shall not apply to actions brought pursuant to this section. In addition, excluding § 8.01-581.1, the provisions of Article 1 of this chapter governing medical malpractice review panels and the provisions of Chapters 53 (§ 38.2-5300 et seq.) and 54 (§ 38.2-5400 et seq.) of Title 38.2 governing private review agents and utilization review standards and appeals, respectively, shall not apply to actions brought pursuant to this section.

§ 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, §§ *8.01-581.20:1,* 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, 38.2-3430.1 through 38.2-3437, 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.