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HOUSE BILL NO. 218

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Labor and Commerce

on _____)

(Patron Prior to Substitute--Delegate Orrock)

A BILL 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.

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

26 the basis of the provider's contracting with the carrier to provide services at a discounted fee-for-service
27 rate.

28 B. Any such carrier that offers a provider panel shall establish and use it in accordance with the
29 following requirements:

30 1. Notice of the development of a provider panel in the Commonwealth or local service area shall
31 be filed with the Department of Health Professions.

32 2. Carriers shall provide a provider application and the relevant terms and conditions to a provider
33 upon request.

34 C. A carrier that uses a provider panel shall establish procedures for:

35 1. Notifying an enrollee of:

36 a. The termination from the carrier's provider panel of a provider who was furnishing health care
37 services to the enrollee or furnished health care services to the enrollee in the ~~six~~ 12 months prior to the
38 notice; and

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

42 The carrier shall provide notice required by this subdivision 1 prior to the date of the termination
43 of the provider, except when a provider is terminated for cause.

44 2. Notifying a provider at least 90 days prior to the date of the termination of the provider, except
45 when a provider is terminated for cause.

46 3. Notifying the purchaser of the health benefit plan, whether such purchaser is an individual or an
47 employer providing a health benefit plan, in whole or in part, to its employees and enrollees of the health
48 benefit plan of:

49 a. A description of all types of payment arrangements that the carrier uses to compensate providers
50 for health care services rendered to enrollees, including withholds, bonus payments, capitation, and fee-
51 for-service discounts; and

52 b. The terms of the plan in clear and understandable language that reasonably informs the purchaser
53 of the practical application of such terms in the operation of the plan.

54 For the purposes of subdivisions 1 and 2, "provider" includes a provider group.

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

58 E. 1. A provider shall be permitted by the carrier to render health care services to any of the carrier's
59 enrollees for a period of at least 90 days from the date of such provider's termination from the carrier's
60 provider panel, except when a provider is terminated for cause. A provider shall continue to render health
61 care services to any of the carrier's enrollees who have an existing provider-patient relationship with the
62 provider for a period of at least 90 days from the date of such provider's termination from the carrier's
63 provider panel, except when a provider is terminated for cause.

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

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

77 4. Notwithstanding the provisions of subdivision 1, any provider shall be permitted by the carrier
78 to continue rendering and shall continue rendering health services to any enrollee who has an existing

79 provider-patient relationship with the provider and who has been determined by a medical professional to
80 have a life-threatening condition at the time of a provider's termination of participation. Such treatment
81 shall, at the enrollee's option, continue for up to 180 days for care directly related to the life-threatening
82 condition.

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

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

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

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

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

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

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

105 2. The information provided under subdivision 1 shall be updated at least once a year if in paper
106 form, and monthly if in electronic form.

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

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

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

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

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

117 L. Carriers shall provide to their group policyholders written notice of any benefit reductions
118 during the contract period at least 60 days before such benefit reductions become effective. Group
119 policyholders shall, in turn, provide to their enrollees written notice of any benefit reductions during the
120 contract period at least 30 days before such benefit reductions become effective. Such notice shall be
121 provided to the group policyholder as a separate and distinct notification, and ~~may~~ shall not be combined
122 with any other notification or marketing materials.

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

127 N. If a provider panel contract between a provider and a carrier, or other entity that provides
128 hospital, physician, or other health care services to a carrier, includes provisions that require a provider,
129 as a condition of participating in one of the carrier's or other entity's provider panels, to participate in any
130 other provider panel owned or operated by that carrier or other entity, the contract shall contain a provision
131 permitting the provider to refuse participation in one or more such other provider panels at the time the

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

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

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

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

158 **§ 38.2-4319. Statutory construction and relationship to other laws.**

159 A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this
160 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
161 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,
162 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
163 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, and 38.2-1306.1, Article 2 (§ 38.2-
164 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 (§ 38.2-
165 1322 et seq.), 5.1 (§ 38.2-1334.3 et seq.), and 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13, Articles 1 (§
166 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14, Chapter 15 (§ 38.2-
167 1500 et seq.), Chapter 17 (§ 38.2-1700 et seq.), §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405,
168 38.2-3405.1, 38.2-3406.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.20, 38.2-
169 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 through 38.2-
170 3418.19, 38.2-3418.21, 38.2-3419.1, and 38.2-3430.1 through 38.2-3454, Articles 8 (§ 38.2-3461 et seq.)
171 and 9 (§ 38.2-3465 et seq.) of Chapter 34, § 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of §
172 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-
173 3540.2, 38.2-3541.2, 38.2-3542, and 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter
174 35.1 (§ 38.2-3556 et seq.), § 38.2-3610, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.),
175 Chapter 58 (§ 38.2-5800 et seq.), Chapter 65 (§ 38.2-6500 et seq.), and Chapter 66 (§ 38.2-6600 et seq.)
176 shall be applicable to any health maintenance organization granted a license under this chapter. This
177 chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with
178 the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health
179 maintenance organization.

180 B. For plans administered by the Department of Medical Assistance Services that provide benefits
181 pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title
182 except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136, 38.2-
183 200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229, 38.2-232,
184 38.2-322, 38.2-325, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, and 38.2-600
185 through 38.2-629, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, and 38.2-

186 1306.1, Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-
187 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 seq.) of
188 Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter
189 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, 38.2-3407.9,
190 38.2-3407.9:01, and 38.2-3407.9:02, ~~subdivisions~~ subsection E-1, 2, and 3 of § 38.2-3407.10, §§ 38.2-
191 3407.10:1, 38.2-3407.11, 38.2-3407.11:3, 38.2-3407.13, 38.2-3407.13:1, 38.2-3407.14, 38.2-3411.2,
192 38.2-3418.1, 38.2-3418.2, 38.2-3418.16, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, and 38.2-3500,
193 subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1
194 through 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,
195 Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.),
196 Chapter 65 (§ 38.2-6500 et seq.), and Chapter 66 (§ 38.2-6600 et seq.) shall be applicable to any health
197 maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer
198 or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§
199 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

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

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

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

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

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