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SENATE BILL NO. 745
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on _____)
(Patron Prior to Substitute—Senator Srinivasan)

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 1 of Chapter 34 of Title 38.2 a section numbered 38.2-3407.23, relating to health insurance; prohibited restrictions on in-network referrals.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-4319 of the Code of Virginia is amended and reenacted and the Code of Virginia is amended by adding in Article 1 of Chapter 34 of Title 38.2 a section numbered 38.2-3407.23 as follows:

§ 38.2-3407.23. Prohibited restrictions on in-network referrals.

A. As used in this section:

"Carrier" has the same meaning as provided in § 38.2-3407.15. "Carrier" includes any entity administering a policy or plan providing health insurance coverage to state employees pursuant to § 2.2-2818.

"Health plan" has the same meaning as provided in § 38.2-3407.15. "Health plan" includes any policy or plan providing health insurance coverage to state employees pursuant to § 2.2-2818.

"In-network" means a provider that has contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees and be reimbursed by the carrier at a contracted rate as payment in full for the health care services, including applicable cost-sharing requirements.

B. No carrier, in the provision of individual or group accident and sickness insurance, including any health benefit plan, shall prohibit an in-network provider from referring any enrollee or specimen to any in-network clinical laboratory or in-network pathology service provider under the terms of the health plan unless such referral would constitute a violation of the Practitioner Self-Referral Act (§ 54.1-2410 et seq.) or 42 U.S.C. § 1320a-7b.

C. The Commission shall have no jurisdiction to adjudicate individual controversies arising out of 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, §§ 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 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-316.1, 38.2-316.2, 38.2-322, 38.2-325, 38.2-326, 38.2-400,

33 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-629, Chapter 9 (§ 38.2-900 et
34 seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, and 38.2-1306.1, Article 2 (§ 38.2-1306.2 et seq.),
35 § 38.2-1315.1, and Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et seq.), 5.1
36 (§ 38.2-1334.3 et seq.), and 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2
37 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14, Chapter 15 (§ 38.2-1500 et seq.), Chapter 17
38 (§ 38.2-1700 et seq.), §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3406.1,
39 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.20, 38.2-3411, 38.2-3411.2, 38.2-3411.3,
40 38.2-3411.4, 38.2-3412.1, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.19, 38.2-3418.21, 38.2-3418.22,
41 38.2-3419.1, and 38.2-3430.1 through 38.2-3454, Articles 8 (§ 38.2-3461 et seq.) and 9 (§ 38.2-3465 et seq.)
42 of Chapter 34, § 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1,
43 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, 38.2-3542,
44 and 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 35.1 (§ 38.2-3556 et seq.),
45 § 38.2-3610, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et
46 seq.), Chapter 65 (§ 38.2-6500 et seq.), and Chapter 66 (§ 38.2-6600 et seq.) shall be applicable to any health
47 maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or
48 health services plan licensed and regulated in conformance with the insurance laws or Chapter 42
49 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

50 B. For plans administered by the Department of Medical Assistance Services that provide benefits
51 pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title except
52 this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136, 38.2-200,
53 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, 38.2-322,
54 38.2-325, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, and 38.2-600 through 38.2-629,
55 Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, and 38.2-1306.1, Article 2
56 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.), 5
57 (§ 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, Articles 1
58 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14, §§ 38.2-3401,
59 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, 38.2-3407.9:01, and
60 38.2-3407.9:02, subsection E of § 38.2-3407.10, §§ 38.2-3407.10:1, 38.2-3407.11, 38.2-3407.11:3,
61 38.2-3407.13, 38.2-3407.13:1, 38.2-3407.14, 38.2-3407.23, 38.2-3411.2, 38.2-3418.1, 38.2-3418.2,
62 38.2-3418.16, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, and 38.2-3500, subdivision 13 of § 38.2-3503,
63 subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525,

64 38.2-3540.1, 38.2-3540.2, 38.2-3541.2, 38.2-3542, and 38.2-3543.2, Chapter 52 (§ 38.2-5200 et seq.),
65 Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.), Chapter 65 (§ 38.2-6500 et seq.), and
66 Chapter 66 (§ 38.2-6600 et seq.) shall be applicable to any health maintenance organization granted a license
67 under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in
68 conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities
69 of its health maintenance organization.

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

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

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

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