COMMONWEALTH OF VIRGINIA

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June 16, 2008

Administrative Letter 2008 - 09

To: All Health Maintenance Organizations Licensed in Virginia and Interested Parties

Re: Emergency Services
§ 38.2-4312.3 of the Code of Virginia

The purpose of this administrative letter is to provide all HMOs with guidance for compliance with the requirements of subsection B of Code of Virginia § 38.2-4312.3, patient access to emergency services, addressing federal Emergency Medical Treatment and Active Labor Act ("EMTALA") claims and reimbursements. It should be noted that this letter addresses requirements specifically addressed in subsection B of the statute only.

§ 38.2-4312.3 B states:

> *A health maintenance organization shall reimburse a hospital emergency facility and provider, less any applicable copayments, deductibles, or coinsurance, for medical screening and stabilization services rendered to meet the requirements of the Federal Emergency Medical Treatment and Active Labor Act (42 U.S.C. § 1395dd) and related to the condition for which the member presented in the hospital emergency facility if (i) the health maintenance organization or its designee or the member's primary care physician or its designee authorized, directed, or referred a member to use the hospital emergency facility; or (ii) the health maintenance organization fails to have a system for provision of twenty-four-hour access in accordance with subsection A above. For purposes of (i) above, a primary care physician may include a physician with whom the primary care physician has made arrangements for on-call backup coverage.*

Subsection B of § 38.2-4312.3 requires an HMO to reimburse hospital emergency facilities and providers for EMTALA services rendered to its members "less any applicable copayments, deductibles, and coinsurance." This is the only guidance the statute provides regarding the level of reimbursement for EMTALA services. The provision does not state that non-participating providers are entitled to be fully reimbursed for their billed charges, nor does it say what the rate of reimbursement should otherwise be. The statute also does not distinguish between ETMALA services rendered by participating providers and EMTALA services rendered by non-participating providers. The plain language of the statute requires that the HMO pay the non-participating provider an amount sufficient to prevent the member from being balance billed. This does not mean that that the HMO must always pay non-participating providers the exact amount it has been billed. The HMO is free to negotiate a lower amount with the provider.

If the HMO pays a provider an amount insufficient to prevent the member from being balance billed, then it is not reimbursing the provider "less any copayments, deductibles and coinsurance". This procedure does not meet the requirements of the statute.

Further, HMOs are required under § 38.2-4312.3 B to directly reimburse non-participating providers for EMTALA services. This is also supported by the plain meaning of the statute. An HMO may not reimburse the member, rather than the provider, for screening and stabilization services rendered to meet the requirements of EMTALA.

The Bureau requires all HMOs to review their procedures associated with emergency services to ensure that they are compliant with § 38.2-4312.3 B and to notify the Bureau within 60 days of the date of this letter of any prospective and retrospective corrective measures that will be implemented if noncompliant procedures have been identified.

Questions concerning this letter may be directed IN WRITING to:

Jacqueline K. Cunningham
Deputy Commissioner
Bureau of Insurance
Life and Health Division
P.O. Box 1157
Richmond, VA 23218

Cordially,

Alfred W. Gross
Commissioner of Insurance

AWG

NOTE: Please note that the Bureau of Insurance will be converting to Sircon for States, a new web-based computer system, effective Tuesday, September 16. As a result, the Bureau will be unable to process any transactions or provide information for producer licensing, consumer services, or company admissions from 5:00 p.m., Thursday, September 4 through Monday, September 15. Please keep these dates in mind as you plan for your business needs in September. See the Bureau website for further details.