

COMMONWEALTH OF VIRGINIA

STEVEN T. FOSTER
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STATE CORPORATION COMMISSION BUREAU OF INSURANCE

September 11, 1995

Administrative Letter 1995-10

TO: All Insurers, Health Maintenance Organizations, and Interested Parties

RE: Capitated Administrative Services Only (ASO) Agreements are insurance and may subject both the provider and administrator to the provisions of Title 38.2 of the Code of Virginia.

The State Corporation Commission's Bureau of Insurance (the "Bureau") has received several inquiries regarding capitated Administrative Services Only (ASO) agreements. A capitated ASO contract is an arrangement that purports to provide only administrative services to a self-funded health plan, but which, in fact, involves a transfer of all or part of the risk of loss for health care claims through capitation, i.e. through a fixed charge per time unit (e.g. month) per member (or other unit) enjoying health care coverage.

It has come to the Bureau's attention that certain insurers, health maintenance organizations, health services plans, third party administrators, health care providers, or other entities may have entered into capitated ASO agreements with several employer groups and others in Virginia. **Capitated ASO agreements are insurance and, under such agreements, the health care providers as well as the health plan administrators may be subject to the provisions of Title 38.2 of the Code of Virginia.**

An employer may self-fund health benefits for its employees and contract with an administrator in an ASO agreement to process claims and provide access to a network of providers. In such cases, the employer bears the ultimate risk of loss for all health care claims incurred by its employees. Furthermore, the employer may self-fund to cover its entire risk of loss, or it may self-fund to a certain dollar cap and purchase stop-loss insurance to cover any health care claims that exceed an individual or aggregate cap.

However, with a capitated ASO agreement, the employer, for a fixed fee per employee, transfers all or a portion of its risk of loss for health care claims of its employees to an administrator, health care provider or other entity. This type of agreement constitutes a contract of insurance under Virginia law. Such contracts are subject to the appropriate provisions of Title 38.2 of the Code of Virginia, including provisions relating

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to licensing, contract and benefit requirements, taxes, and assessment for maintenance of the Bureau of Insurance.

No insurer, health maintenance organization, health services plan, third party administrator, health care provider, or other entity should enter into a capitated ASO agreement in Virginia unless the contract as well as the entity are in compliance with all the requirements of Title 38.2 of the Code of Virginia. Furthermore, any capitated ASO agreements currently in effect in Virginia should not be renewed. The Bureau will continue to monitor capitated health care arrangements in the Commonwealth, and will take appropriate regulatory action when it finds violations of Title 38.2 of the Code of Virginia.

Questions concerning this Administrative Letter shall be directed to:

Victoria I. Savoy, CPA
Chief Financial Auditor
Financial Regulation Division
Bureau of Insurance
P.O. Box 1157
Richmond, VA 23209
(804) 371-9869

Sincerely,

A handwritten signature in black ink, appearing to read 'Steven T. Foster', with a long horizontal line extending to the right.

Steven T. Foster
Commissioner of Insurance