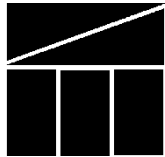


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes¹ Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

12 VAC 5-408 Regulation for the Certificate of Managed Care Health Insurance Plan Licensees

Virginia Department of Health

Town Hall Action/Stage: 5379 / 8750

December 2, 2019

Summary of the Proposed Amendments to Regulation

The Board of Health (Board) proposes to allow physicians and non-physician health care providers to provide their services while their application for credentialing to a managed care health insurance plan licensee (MCHIP) is pending. After a provider has been credentialed (otherwise known as being “in network”), the Board also proposes to permit retroactive provider reimbursement for services rendered, starting on the date the provider’s credentialing application was received by the MCHIP.

Background

In the past, health care providers were not allowed to be reimbursed for services provided to covered patients during the period in which their application for credentialing was being reviewed by the MCHIP (the “pendency” period). Chapter 703 of the 2018 Acts of Assembly² amended the Code of Virginia by adding § 38.2-3407.10:1 to allow physicians to receive reimbursement, at the contracted in-network rates, for covered persons seen during the pendency.

¹ Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

² <http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0703>

This reimbursement would be made after the application had been approved by the MCHIP. At the present time, such physician practice is allowed under the authority of the 2018 legislation.

Additionally, the Board is exercising its authority under § 32.1-137.2(C) of the Code of Virginia to also allow non-physician health care providers to be reimbursed for services they provided during the pendency of the credentialing process and upon approval of their credentialing application, to receive reimbursement at the contracted in-network rates for covered persons seen during the pendency. This regulation would allow such non-physician health care provider practice in a similar fashion to that of physician providers. According to the Virginia Department of Health (VDH), the non-physician health care providers may include any of the professions regulated by the Department of Health Professions except the professions regulated by the Board of Pharmacy.

Credentialing is already required and is a part of an incentive arrangement intended to influence the cost or level of health care services between the MCHIP and one or more health care providers with respect to the delivery of health care services, and must also include minimum standards of professional licensure or certification. During the credentialing process, the MCHIP verifies the validity and history of the applicant's professional license or certification, status of hospital privileges, education and training, and practice or work history among other things, to ensure that physicians meet the MCHIP's standards. The credentialing process is required to be completed within 120 days or within 150 days if the application is incomplete or requires additional information.

According to VDH, once a health care provider is credentialed, they would enter into a contract with the MCHIP that not only addresses reimbursement for services, but also requires the provider to take part in the MCHIP's quality assurance program that monitors quality of care and performance metrics of providers.

Credentialing benefits the MCHIPs in that it enables them to ensure that providers have the minimum professional competence to render high quality care. It also allows them to take into account any disciplinary issues related to professional licensure and any previous quality of care issues.

Credentialing also benefits the providers because being credentialed (that is, being deemed to be "in-network") allows them to access a patient population that may otherwise have

chosen a different provider with more preferential cost-sharing arrangements. As a part of being in network, a health care provider agrees to charge specific rates for services, which is often lower than the market/out-of-pocket rate; however, they are guaranteed to receive this rate along with a greater access to MCHIP covered patients. A non-credentialed provider (i.e. one who is out-of-network) can submit a claim for reimbursement by the MCHIP, but will be reimbursed at a less preferential rate. The remaining balance is billed to the patient; however, the health care provider is not guaranteed to collect the outstanding balance. Hence, unless a patient's preference for that specific provider outweighs financial considerations, an out-of-network provider will typically not have access to the patient population covered by a particular MCHIP.

Estimated Benefits and Costs

The 2018 legislation provided an option to physicians to start providing their services and receive reimbursement from their MCHIP the in-network rate during the pendency of their application subject to certain conditions. To receive the in-network reimbursement, the legislation requires the applicant physician to provide a written or electronic notification to the patient in advance of treatment, stating that the carrier is in the process of obtaining and verifying credentialing information. The legislation also allows MCHIPs to reimburse physicians at the in-network rates only if the physician is eventually credentialed. In the event that credentialing is denied, the MCHIP would not be required to remit the in-network rate and the patient would not be responsible for any of the charges for the service other than the in-network coinsurance, copayment, or the deductible. The Board proposes the same rules for the non-physician health care providers.

Under the new rules, a health care provider would have the option to start providing services in an MCHIP's network as soon as their completed application has been received. In doing so, the provider can start building a volume of receivables from the MCHIP, but is also taking a risk of forgoing in-network reimbursement rates if the credentialing is denied. However, we can reliably infer that in providing services, the provider reveals that the expected benefits to him are greater than the potential loss of in-network reimbursement rates.³ On the other hand, the

³ Prior to the 2018 legislation, in 2016, the Medical Society of Virginia submitted a petition for rulemaking requesting substantially the same changes on behalf of their nearly 11,000 members including physicians, medical students and physician assistants to address the issues with significant delays in delivering care to patients as a result of the credentialing process. See <https://townhall.virginia.gov/l/viewpetition.cfm?petitionid=236>.

MCHIP has to evaluate the application once it is submitted, but this requirement is not new and has existed before. In addition, the MCHIP would not be required to remit the in-network rate to the provider if the credentialing is eventually denied. Thus, the MCHIPS do not appear to be worse off either.

The proposed rules also do not appear to make the patients any worse off. First, any provider applicant would have to have a license to practice their profession and it appears that an MCHIP may require higher standards than the license requires, but not lower. Second, the provider applicant would be required to provide disclosures to the patients in advance of any treatment that their credentials are currently being evaluated. Third, in the event credentialing is denied, the patient would only be responsible for paying the in-network coinsurance, copayments, or deductibles, not the out-of-network charges, which are typically higher, for the services provided by that health care provider.

In summary, the health care provider and the patient would both need to consent for provision of services during the credentialing process, and the MCHIPS do not appear to be any worse off. Further, the proposed rules are beneficial in that they allow the health care providers to start providing their services sooner. Such a practice may expedite the provision of services by new MCHIP providers and improve access to care.

Businesses and Other Entities Affected

There are approximately 96 MCHIPS. According to VDH, these plans contract with approximately 90 percent of the regulated health care providers. However, there is no data on the number of credentialing applications received by MCHIPS in a given time period. Also, some patients may be affected to the extent they consent to receive services from a provider whose credentialing application is pending.

Localities⁴ Affected⁵

The proposed amendments are unlikely to affect any locality more than others. The proposed amendments do not appear to impose costs on localities.

⁴ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁵ § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Projected Impact on Employment

The proposed amendments would allow the health care providers to start providing services 120 days to 150 days earlier than otherwise would be, which would add to the supply of medical and dental services.

Effects on the Use and Value of Private Property

The proposed amendments would allow a health care provider to start building its receivables while the credentialing process is underway and may add to the asset value of the provider's business.

Real estate development costs do not appear to be affected.

Adverse Effect on Small Businesses⁶:

The proposed amendments do not appear to adversely affect small businesses.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁶ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”