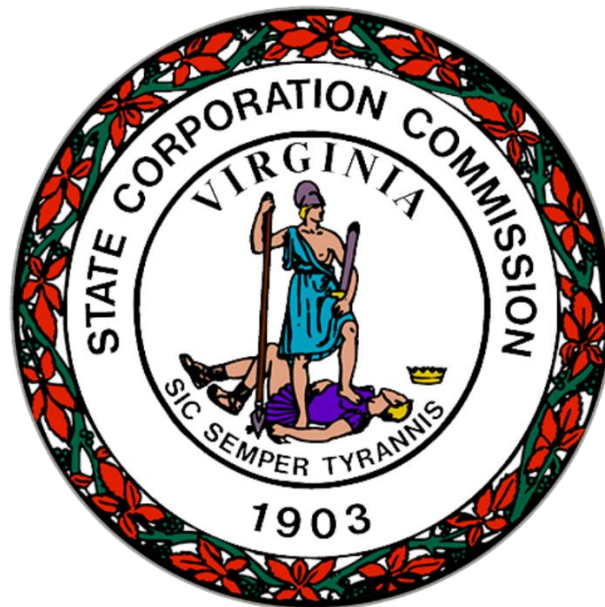


Report of the Continuity of Care Work Group

*Submitted to the Chairs of the Senate Committees
on Commerce and Labor, and Education and Health and the House of Delegates
Committees on Commerce and Energy, and Health, Welfare and Institutions
pursuant to Chapter 353, Acts of Assembly – 2022 Session*



December 1, 2022

COMMONWEALTH OF VIRGINIA

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December 1, 2022

Transmitted via Email

The Honorable Richard L. Saslaw
Chair, Commerce and Labor Committee
Senate of Virginia

The Honorable L. Louise Lucas
Chair, Education and Health Committee
Senate of Virginia

The Honorable Kathy J. Byron
Chair, Commerce and Energy Committee
Virginia House of Delegates

The Honorable Robert D. Orrock, Sr.
Chair, Health, Welfare and Institutions Committee
Virginia House of Delegates

Dear Chairs Saslaw, Lucas, Byron and Orrock:

Pursuant to [Chapter 353, Acts of Assembly – 2022 Session](#), the State Corporation Commission, Bureau of Insurance, submits this report on behalf of the Continuity of Care Work Group.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott White', written in a cursive style.

Scott White
Commissioner of Insurance

I. Executive Summary

[Chapter 353, Acts of Assembly – 2022 Session](#)¹ (House Bill 912) required the State Corporation Commission, Bureau of Insurance (Bureau) to convene a work group composed of representatives of the Virginia Association of Health Plans (VAHP), the Virginia Hospital & Healthcare Association (VHHA), and the Medical Society of Virginia (MSV),² for the following purposes:

- To determine options for ensuring continuity of care covered by insurance for a reasonable amount of time under reasonable conditions during the time that providers and insurance carriers are negotiating provider contracts; and,
- To provide recommendations regarding improvements to [§ 38.2-3407.10](#) of the Code of Virginia (Code) and any other relevant laws, to ensure proper notice to enrollees and providers, to ensure reasonable opportunities for continuity of care and coverage, and to determine whether special considerations should apply for health care systems that own and operate affiliated hospitals, medical groups, and insurance carriers.

Based on its findings, the Work Group recommends the following:

- Section 38.2-3407.10 of the Code should not be amended to include continuity of care provisions during carrier and provider contract negotiations, as such an amendment is not necessary. Continuity of care protections are only necessary once the contract terminates, not while the contract is still active.
- Specific changes are necessary to improve and clarify the provisions of § 38.2-3407.10 of the Code:
 - a) Clarify the notice of termination requirement and when the 90-day continuity of care period starts;
 - b) Drop the requirements that the enrollee be in an “active course of treatment” or request to receive continuity of care services;
 - c) Make Virginia’s continuity of care law more accommodating to enrollees who have potentially debilitating or life-threatening conditions, as well as to enrollees admitted to inpatient facilities;
 - d) Expand the initiation point for continuity of care for pregnancy;
 - e) Expand the scope of continuity of care provisions to group practices; and,
 - f) Simplify the Code by eliminating the separate requirements for primary care providers.

¹ A copy is attached as Appendix A.

² Referred to as “the Work Group.”

- Special considerations should not apply for health care systems that own and operate affiliated hospitals, medical groups, and insurance carriers.

In terms of scope, the Work Group notes that § 38.2-3407.10 of the Code applies only to fully insured plans, which corresponds to roughly 35% of Virginia’s commercial health insurance market.

II. Background

When a provider is removed (“terminated”) from a health plan’s network (or “provider panel”), enrollees can be abruptly left without in-network access to that provider. In general, continuity of care laws protect the enrollee from this situation by requiring the carrier and the provider to continue to adhere to in-network contract terms for a specified period following contract termination. These laws provide enrollees with a grace period to allow them to locate a new in-network provider and/or to finish an active course of treatment without disrupting the enrollee’s receipt of health care services.

Virginia’s continuity of care law is set out in § 38.2-3407.10 of the Code. Among other provisions, the law permits a provider to continue to render health care services to an enrollee “for a period of at least 90 days from the date of the notice of a provider’s termination from the carrier’s provider panel,” except when a provider is terminated for cause. The enrollee must be under an active course of treatment and must request to continue receiving services from the provider, except in the case of a primary care provider termination where an active course of treatment is not required. For enrollees who are in the second trimester of pregnancy, continuity of care protections extend through the postpartum period; for terminally ill enrollees, continuity of care protections extend through the end of life.

Effective January 1, 2022, the federal No Surprises Act³ also provides continuity of care protections that intersect with Virginia’s law.⁴ The Work Group considered certain provisions of this federal law in forming its recommendations.

III. Work Group Recommendations

1. *The work group shall determine options for ensuring continuity of care covered by insurance for a reasonable amount of time under reasonable conditions during the time that providers and insurance carriers are negotiating provider contracts.*

³ H.R.133 - 116th Congress (2019-2020): Consolidated Appropriations Act, 2021, H.R.133, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/133>.

⁴ The No Surprises Act applies to items and services for most individuals enrolled in private or commercial health coverage, such as: employment-based group health plans (both self-insured and fully insured); individual or group health coverage on or outside of the federal or state-based exchanges; Federal Employee Health Benefit health plans; non-federal governmental plans sponsored by state and local government employers; certain church plans within IRS jurisdiction; and student health insurance coverage as defined in 45 CFR 147.145.

The Work Group does not recommend introducing continuity of care provisions that apply during contract negotiations. Negotiations that occur while an existing contract is still active do not require continuity of care provisions as the contract and obligation to provide services and coverage remain in effect during this period. Creating requirements that apply during contract negotiations without any termination or disruption in the term of the contract would cause unnecessary confusion for carriers, providers, and patients alike. Continuity of care protections for patients need only be assured after a contract is terminated.

2. *The work group shall provide recommendations regarding improvements to § 38.2-3407.10 of the Code of Virginia, and any other relevant laws, to ensure proper notice to enrollees and providers, to ensure reasonable opportunities for continuity of care and coverage, and to determine whether special considerations should apply for health care systems that own and operate affiliated hospitals, medical groups, and insurance carriers.*

Members of the Work Group discussed the following points as related to improvements to § 38.2-3407.10 of the Code to ensure proper notice to enrollees and providers, and to ensure reasonable opportunities for continuity of care and coverage:

- a. Clarify the notice of termination requirement and when the 90-day continuity of care period starts. In the current statute, the 90-day continuity of care period starts on “the date of the notice of the provider’s termination,” but the law is not clear about from whom and to whom the notice is to be provided. This could result in a lack of uniformity of application of this statutory requirement in Virginia.

Members of the Work Group agreed that clarity on the continuity of care start date is needed and that carriers (not providers) should be responsible for enrollee notifications. The Work Group also recommends that, at a minimum, the carrier must notify current patients and patients who have received care from the provider in the previous six (6) months. However, Work Group members did not agree on specific requirements related to notification timing or when the 90-day continuity of care period should begin. In particular:

- The VAHP recommends that the carrier notify the enrollee of the forthcoming change in network status prior to the expiration of the contract, and that the 90-day clock for continuity of care start on the contract termination date.
- Citing the possibility of difficulty with carriers sending enrollee notifications prior to the contract expiration date, the VHHA recommends that the 90-day clock start on the later of: (1) the date that the provider’s contract ends or (2) the date that the carrier notifies the enrollee of the change in network status, as required under the No Surprises Act.

In addition, the Work Group recommends the inclusion of the following requirements during the 90-day continuation period, similar to provisions in the No Surprises Act: (1) the provider will accept payment from the plan or carrier (and cost sharing from the individual) for items and services as payment in full; and (2) the provider will continue to adhere to all policies and procedures and quality standards imposed by the plan or issuer for an individual as if the termination had not occurred.

- b. Drop requirements that the enrollee be in an “active course of treatment” and that the enrollee request to receive services. The Work Group recommends that the 90-day continuity of care period be accessible to all enrollees, not just those who are in an active course of treatment prior to the termination of the contract. In addition, the Work Group recommends dropping any requirements that an enrollee request continuity of health care services during this period for the continuity of care protections to apply.
- c. Make the Virginia law more accommodating to enrollees who have potentially debilitating or life-threatening conditions and to those who are admitted to inpatient facilities. There are several circumstances in which more than 90 days of continuity is necessary and appropriate for the health and well-being of patients. Cancer treatment is one example. Rehabilitation services following a severe injury is another. In addition to the protections currently provided to pregnant and terminally ill enrollees, the Work Group recommends the following:
 - Changing the statute so that continuity of care is ensured for up to 180 days in cases in which an enrollee has a life-threatening condition, as determined by a medical professional; and,
 - Ensuring continuity of care while an enrollee is admitted to and being treated in any inpatient facility, until discharge from the facility, with no time limit.
- d. Expand the initiation point for continuing care for pregnancy. Virginia’s law currently provides continuity of care protections from the second trimester of pregnancy through post-partum care directly related to the delivery. The Work Group recommends expanding the initiation point of the continuity of care requirement to the date of a medically confirmed pregnancy, rather than the second trimester.
- e. Expand the scope of continuing care to group practice. The Work Group recommends expanding all the continuity of care provisions in § 38.2-3407.10 of the Code to any provider in a group practice treating the enrollee (not just the individual provider), when the terminated contract is with the entire group.
- f. Simplify the Code by eliminating the separate requirements for primary care providers. The current statute contains separate notification requirements

when a primary care provider's network status changes. It also requires special notice to primary care providers when the contract of a specialty referral provider is terminated. If the Work Group's recommendations above regarding continuity of care services and notifications are adopted, the requirements specific to primary care providers will no longer be needed, and as a result, the Work Group recommends that these requirements be removed, thereby simplifying the Code.

Finally, the Work Group agreed that special considerations should not apply to health care systems that own and operate affiliated hospitals, medical groups, and insurance carriers.

IV. Conclusion

The Work Group agrees that § 38.2-3407.10 of the Code should not be revised to include specific provisions to accommodate continuity of care during contract negotiations as the contract and obligation to provide services and coverage already remain in effect during this period. The Work Group also agrees on specific improvements to the Code in certain areas, as described in this report, and agrees that special considerations should not apply to health care systems that own and operate affiliated hospitals, medical groups, and insurance carriers.

CHAPTER 353

An Act to direct the Bureau of Insurance to convene a work group regarding continuity of care.

[H 912]

Approved April 11, 2022

Be it enacted by the General Assembly of Virginia:

1. § 1. *The Bureau of Insurance of the State Corporation Commission (the Bureau) shall convene a work group to determine options for ensuring continuity of care covered by insurance for a reasonable amount of time under reasonable conditions during the time that providers and insurance carriers are negotiating provider contracts. The work group shall include representatives of the Virginia Hospital & Healthcare Association, the Virginia Association of Health Plans, the Medical Society of Virginia, and other relevant parties identified by the Bureau. The work group shall provide recommendations regarding improvements to § 38.2-3407.10 of the Code of Virginia, and any other relevant laws, to ensure proper notice to enrollees and providers, to ensure reasonable opportunities for continuity of care and coverage, and to determine whether special considerations should apply for health care systems that own and operate affiliated hospitals, medical groups, and insurance carriers. The work group shall provide its recommendations no later than December 1, 2022, to the Chairs of the House Committee on Commerce and Energy, the House Committee on Health, Welfare and Institutions, the Senate Committee on Commerce and Labor, and the Senate Committee on Education and Health.*