

## **CHAPTER 26.1-49 HEALTH PROVIDER COOPERATIVES**

### **26.1-49-01. Definitions.**

As used in this chapter:

1. "Commissioner" means the insurance commissioner.
2. "Health care provider" means any person or institution licensed to provide health care services in this state.
3. "Health provider cooperative" means a corporation organized under this chapter and operated on a cooperative plan to provide health care services to purchasers of those services.
4. "Member" means a licensed health care provider or an organization owned, controlled, or affiliated with a health care provider, including without limitation, a professional corporation, partnership, or other similar organization.

### **26.1-49-02. Organization - Licensure.**

A health provider cooperative shall organize under chapter 10-15 unless otherwise provided in this chapter. After incorporation the health provider cooperative is subject to chapter 10-15 unless otherwise provided in this chapter. If a provision of this chapter conflicts with chapter 10-15, the provision of this chapter applies. A health provider cooperative organized under this chapter is not an insurance company under chapter 26.1-12, a health maintenance organization under chapter 26.1-18.1, or a nonprofit health service corporation under chapter 26.1-17. A health provider cooperative does not violate limitations on the corporate practice of medicine.

### **26.1-49-03. Powers.**

In addition to the powers granted a cooperative under chapter 10-15, a health provider cooperative has the powers granted a nonprofit corporation under chapter 10-33. The power granted under chapter 10-15 controls over any inconsistent power granted by chapter 10-33.

### **26.1-49-04. Provider contracts.**

A health provider cooperative and its members may execute service contracts permitting the provider members to provide some or all of their health care services through the health provider cooperative to the enrollees, members, subscribers, or insureds of a nonprofit health service plan, health maintenance organization, accident and health insurance company, or the state medical assistance program. Each purchaser may execute contracts for the purchase of health services from a health provider cooperative in accordance with this section. A contract between a health provider cooperative and a purchaser must provide for payment by the purchaser on a substantially capitated or similar risk-sharing basis.

1. Every contract between a health provider cooperative and a purchaser must be in writing and must provide that if the purchaser fails to pay for health care services as set forth in the contract, the enrollee is not liable to the provider for any sums owed by the purchaser.
2. A member provider, agent, or trustee, or assignee thereof, may not maintain any action at law against an enrollee to collect sums owed by the purchaser.

### **26.1-49-05. Contract filing - Approval.**

The health provider cooperative shall file each contract between the cooperative and a purchaser with the commissioner. The commissioner shall disapprove any contract:

1. In which the consideration paid for health services is unreasonably high in relationship to the services provided.
2. That fails to include evidence of the specific procedures used to inform prospective enrollees of any limitations imposed on the enrollee's right to receive care from a health provider of the enrollee's choice.

3. Under which a health provider cooperative assumes a corridor of risk greater than fifteen percent in its first year of operation, or greater than thirty percent in any year thereafter.

Any actuarial costs incurred by the department in review of that filing must be borne by the cooperative. The commissioner may adopt rules implementing this section.

**26.1-49-06. Election of directors - Vote by mail.**

Directors of health provider cooperatives are elected under procedures set forth in chapter 10-15. A member may vote by mail for a director unless mail voting is prohibited for election of directors by the articles or bylaws of the cooperative. The board of directors shall prescribe the form of the ballot. The members shall mark the ballot for the candidate chosen and mail the ballot to the cooperative in a sealed plain envelope inside another envelope bearing the member's name. If the ballot of the member is received by the cooperative on or before the date of the regular members' meeting, the ballot must be accepted and counted as the vote of the absent member.

**26.1-49-07. State and federal governmental participation.**

The state or federal government, or any entity or political subdivision of the state or federal government, may be a member of a health provider cooperative. Any state or federal governmental hospital may be a member of a health provider cooperative. With respect to federal governmental participation:

1. A health provider cooperative may limit its enrollment to those persons entitled to care under the federal program responsible for the health provider cooperative.
2. A health provider cooperative may request that the commissioner waive the eligibility requirements for participation that are contrary to federal law or regulations.
3. The commissioner shall consult with federal officials to develop procedures to allow a health provider cooperative to use the federal government as a guaranteeing organization.
4. In developing and implementing initiatives to expand access to health care, the commissioner must recognize the unique problems of veterans and consider methods to reach underserved portions of the veteran population.

**26.1-49-08. Prohibited practices - Penalty.**

1. It is unlawful for any person, company, or corporation or any agent, officer, or employee thereof, to coerce or require any person to agree, either in writing or orally, not to join or become or remain a member of any health provider cooperative as a condition of securing or retaining a contract for health care services with the person, firm, or corporation.
2. It is unlawful for any person, company, or corporation, or any combination of persons, companies, or corporations, or any agents, officers, or employees thereof, to engage in acts of coercion, intimidation, or boycott of, or any refusal to deal with, any health care providing entity arising from that entity's actual or potential participation in a health provider cooperative.
3. It is unlawful for any health provider cooperative to engage in any acts of coercion, intimidation, or boycott of, or any concerted refusal to deal with any health plan company seeking to contract with the cooperative on a competitive, reasonable, and nonexclusive basis.
4. It is unlawful for any health provider cooperative to refuse membership to any licensed health care provider or organization that applies for membership and that otherwise agrees to the membership requirements of the health provider cooperative.
5. Any person violating subsections 1 through 4 is deemed to have committed a violation of chapter 51-08.1 and is subject to the provisions, procedures, and penalties of that chapter.