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SENATE BILL NO. 925

Offered January 8, 2025

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A BILL to amend and reenact § 38.2-3407.15 of the Code of Virginia, relating to health insurance; carrier business practices; method of payment for claims.

Patron—Head

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3407.15 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-3407.15. Ethics and fairness in carrier business practices.

A. As used in this section:

"Carrier," "enrollee," and "provider" shall have the meanings set forth in § 38.2-3407.10; however, a "carrier" shall also include any person required to be licensed under this title which offers or operates a managed care health insurance plan subject to Chapter 58 (§ 38.2-5800 et seq.) or which provides or arranges for the provision of health care services, health plans, networks or provider panels which are subject to regulation as the business of insurance under this title.

"Claim" means any bill, claim, or proof of loss made by or on behalf of an enrollee or a provider to a carrier (or its intermediary, administrator or representative) with which the provider has a provider contract for payment for health care services under any health plan; however, a "claim" shall not include a request for payment of a capitation or a withhold.

"Clean claim" means a claim that does all of the following:

1. Identifies the provider that provided the service with industry-standard identification criteria, including billing and rendering provider names, identification numbers, and address;

2. Identifies the patient with a carrier-assigned identification number so the carrier can verify the patient was an enrollee at the time of service;

3. Identifies the service rendered using an industry-standard system of procedure or service coding, or, if applicable, a methodology required under the provider contract. The claim shall include a complete listing of all relevant diagnoses, procedures, and service codes, as well as any applicable modifiers;

4. Specifies the date and place of service;

5. If prior authorization is required for the services listed in the claim, contains verification that prior authorization was obtained in accordance with the provider contract for those services; and

6. Includes additional documentation specific to the services rendered as required by the carrier in its provider contract.

Notwithstanding the above criteria, a claim shall be considered a clean claim if a carrier has failed timely to notify the person submitting the claim of any defect or impropriety in accordance with this section.

"Health care services" means items or services furnished to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability.

"Health plan" means any individual or group health care plan, subscription contract, evidence of coverage, certificate, health services plan, medical or hospital services plan, accident and sickness insurance policy or certificate, managed care health insurance plan, or other similar certificate, policy, contract or arrangement, and any endorsement or rider thereto, to cover all or a portion of the cost of persons receiving covered health care services, which is subject to state regulation and which is required to be offered, arranged or issued in the Commonwealth by a carrier licensed under this title. Health plan does not mean (i) coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare), Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid) or Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq. (CHIP), 5 U.S.C. § 8901 et seq. (federal employees), or 10 U.S.C. § 1071 et seq. (TRICARE); or (ii) accident only, credit or disability insurance, long-term care insurance, TRICARE supplement, Medicare supplement, or workers' compensation coverages.

"Provider contract" means any contract between a provider and a carrier (or a carrier's network, provider panel, intermediary or representative) relating to the provision of health care services.

"Retroactive denial of a previously paid claim" or "retroactive denial of payment" means any attempt by a carrier retroactively to collect payments already made to a provider with respect to a claim by reducing other payments currently owed to the provider, by withholding or setting off against future payments, or in any other manner reducing or affecting the future claim payments to the provider.

B. Subject to subsection K, every provider contract entered into by a carrier shall contain specific provisions which shall require the carrier to adhere to and comply with the following minimum fair business

59 standards in the processing and payment of claims for health care services:

60 1. A carrier shall pay any claim within 40 days of receipt of the claim except where the obligation of the  
61 carrier to pay a claim is not reasonably clear due to the existence of a reasonable basis supported by specific  
62 information available for review by the person submitting the claim that:

63 a. The claim is determined by the carrier not to be a clean claim due to a good faith determination or  
64 dispute regarding (i) the manner in which the claim form was completed or submitted, (ii) the eligibility of a  
65 person for coverage, (iii) the responsibility of another carrier for all or part of the claim, (iv) the amount of  
66 the claim or the amount currently due under the claim, (v) the benefits covered, or (vi) the manner in which  
67 services were accessed or provided; or

68 b. The claim was submitted fraudulently.

69 Each carrier shall maintain a written or electronic record of the date of receipt of a claim. The person  
70 submitting the claim shall be entitled to inspect such record on request and to rely on that record or on any  
71 other admissible evidence as proof of the fact of receipt of the claim, including without limitation electronic  
72 or facsimile confirmation of receipt of a claim.

73 2. A carrier shall, within 30 days after receipt of a claim, notify the person submitting the claim of any  
74 defect or impropriety that prevents the carrier from deeming the claim a clean claim and request the  
75 information that will be required to process and pay the claim. Upon receipt of the additional information  
76 necessary to make the original claim a clean claim, a carrier shall make the payment of the claim in  
77 compliance with this section. No carrier may refuse to pay a claim for health care services rendered pursuant  
78 to a provider contract which are covered benefits if the carrier fails timely to notify or attempt to notify the  
79 person submitting the claim of the matters identified above unless such failure was caused in material part by  
80 the person submitting the claims; however, nothing herein shall preclude such a carrier from imposing a  
81 retroactive denial of payment of such a claim if permitted by the provider contract unless such retroactive  
82 denial of payment of the claim would violate subdivision 7 8. Beginning no later than January 1, 2026, all  
83 notifications and information required under this subdivision shall be delivered electronically.

84 3. Any interest owing or accruing on a claim under § 38.2-3407.1 or 38.2-4306.1, under any provider  
85 contract or under any other applicable law, shall, if not sooner paid or required to be paid, be paid, without  
86 necessity of demand, at the time the claim is paid or within 60 days thereafter.

87 4. *A carrier, or entity completing a transaction of behalf of the carrier, prior to paying a claim using a*  
88 *credit card or electronic funds transfer payment method that imposes a transaction or processing fee or*  
89 *similar charge on the provider, shall notify the provider that such a fee or similar charge associated with the*  
90 *use of a credit card or electronic funds transfer payment method will apply and shall offer the provider an*  
91 *alternative payment method that does not impose such a fee or similar charge. If the provider elects to accept*  
92 *the alternative payment method, the carrier shall pay the claim using such alternative payment method.*

93 5. a. Every carrier shall establish and implement reasonable policies to permit any provider with which  
94 there is a provider contract (i) to confirm in advance during normal business hours by free telephone or  
95 electronic means if available whether the health care services to be provided are medically necessary and a  
96 covered benefit and (ii) to determine the carrier's requirements applicable to the provider (or to the type of  
97 health care services which the provider has contracted to deliver under the provider contract) for (a) pre-  
98 certification or authorization of coverage decisions, (b) retroactive reconsideration of a certification or  
99 authorization of coverage decision or retroactive denial of a previously paid claim, (c) provider-specific  
100 payment and reimbursement methodology, coding levels and methodology, downcoding, and bundling of  
101 claims, and (d) other provider-specific, applicable claims processing and payment matters necessary to meet  
102 the terms and conditions of the provider contract, including determining whether a claim is a clean claim. If a  
103 carrier routinely, as a matter of policy, bundles or downcodes claims submitted by a provider, the carrier shall  
104 clearly disclose that practice in each provider contract. Further, such carrier shall either (1) disclose in its  
105 provider contracts or on its website the specific bundling and downcoding policies that the carrier reasonably  
106 expects to be applied to the provider or provider's services on a routine basis as a matter of policy or (2)  
107 disclose in each provider contract a telephone or facsimile number or e-mail address that a provider can use to  
108 request the specific bundling and downcoding policies that the carrier reasonably expects to be applied to that  
109 provider or provider's services on a routine basis as a matter of policy. If such request is made by or on behalf  
110 of a provider, a carrier shall provide the requesting provider with such policies within 10 business days  
111 following the date the request is received.

112 b. Every carrier shall make available to such providers within 10 business days of receipt of a request,  
113 copies of or reasonable electronic access to all such policies which are applicable to the particular provider or  
114 to particular health care services identified by the provider. In the event the provision of the entire policy  
115 would violate any applicable copyright law, the carrier may instead comply with this subsection by timely  
116 delivering to the provider a clear explanation of the policy as it applies to the provider and to any health care  
117 services identified by the provider.

118 ~~5~~ 6. Every carrier shall pay a claim if the carrier has previously authorized the health care service or has  
119 advised the provider or enrollee in advance of the provision of health care services that the health care

120 services are medically necessary and a covered benefit, unless:  
121 a. The documentation for the claim provided by the person submitting the claim clearly fails to support the  
122 claim as originally authorized;

123 b. The carrier's refusal is because (i) another payor is responsible for the payment, (ii) the provider has  
124 already been paid for the health care services identified on the claim, (iii) the claim was submitted  
125 fraudulently or the authorization was based in whole or material part on erroneous information provided to  
126 the carrier by the provider, enrollee, or other person not related to the carrier, or (iv) the person receiving the  
127 health care services was not eligible to receive them on the date of service and the carrier did not know, and  
128 with the exercise of reasonable care could not have known, of the person's eligibility status; or

129 c. During the post-service claims process, it is determined that the claim was submitted fraudulently.

130 ~~6.~~ 7. In the case of an invasive or surgical procedure, if the carrier has previously authorized a health care  
131 service as medically necessary and during the procedure the health care provider discovers clinical evidence  
132 prompting the provider to perform a less or more extensive or complicated procedure than was previously  
133 authorized, then the carrier shall pay the claim, provided that the additional procedures were (i) not  
134 investigative in nature, but medically necessary as a covered service under the covered person's benefit plan;  
135 (ii) appropriately coded consistent with the procedure actually performed; and (iii) compliant with a carrier's  
136 post-service claims process, including required timing for submission to carrier.

137 ~~7.~~ 8. No carrier shall impose any retroactive denial of a previously paid claim or in any other way seek  
138 recovery or refund of a previously paid claim unless the carrier specifies in writing the specific claim or  
139 claims for which the retroactive denial is to be imposed or the recovery or refund is sought, the carrier has  
140 provided a written explanation of why the claim is being retroactively adjusted, and (i) the original claim was  
141 submitted fraudulently, (ii) the original claim payment was incorrect because the provider was already paid  
142 for the health care services identified on the claim or the health care services identified on the claim were not  
143 delivered by the provider, or (iii) the time which has elapsed since the date of the payment of the original  
144 challenged claim does not exceed 12 months. Notwithstanding the provisions of clause (iii), a provider and a  
145 carrier may agree in writing that recoupment of overpayments by withholding or offsetting against future  
146 payments may occur after such 12-month limit for the imposition of the retroactive denial. A carrier shall  
147 notify a provider at least 30 days in advance of any retroactive denial or recovery or refund of a previously  
148 paid claim.

149 Beginning no later than January 1, 2026, all written communications, explanations, notifications, and  
150 related provider responses applicable to this subdivision shall be delivered electronically. The electronic  
151 method and location for delivery shall be agreed upon by the carrier and provider and included in the  
152 provider contract.

153 ~~8.~~ 9. No provider contract shall fail to include or attach at the time it is presented to the provider for  
154 execution (i) the fee schedule, reimbursement policy, or statement as to the manner in which claims will be  
155 calculated and paid that is applicable to the provider or to the range of health care services reasonably  
156 expected to be delivered by that type of provider on a routine basis and (ii) all material addenda, schedules,  
157 and exhibits thereto and any policies (including those referred to in subdivision 4 5) applicable to the provider  
158 or to the range of health care services reasonably expected to be delivered by that type of provider under the  
159 provider contract.

160 ~~9.~~ 10. No amendment to any provider contract or to any addenda, schedule, exhibit or policy thereto (or  
161 new addenda, schedule, exhibit, or policy) applicable to the provider (or to the range of health care services  
162 reasonably expected to be delivered by that type of provider) shall be effective as to the provider, unless the  
163 provider has been provided with the applicable portion of the proposed amendment (or of the proposed new  
164 addenda, schedule, exhibit, or policy) at least 60 calendar days before the effective date and the provider has  
165 failed to notify the carrier within 30 calendar days of receipt of the documentation of the provider's intention  
166 to terminate the provider contract at the earliest date thereafter permitted under the provider contract.

167 ~~10.~~ 11. In the event that the carrier's provision of a policy required to be provided under subdivision 8 9 or  
168 ~~9~~ 10 would violate any applicable copyright law, the carrier may instead comply with this section by  
169 providing a clear, written explanation of the policy as it applies to the provider.

170 ~~11.~~ 12. All carriers shall establish, in writing, their claims payment dispute mechanism and shall make this  
171 information available to providers. If a carrier's claim denial is overturned following completion of a dispute  
172 review, the carrier shall, on the day the decision to overturn is made, consider the claims impacted by such  
173 decision as clean claims. All applicable laws related to the payment of a clean claim shall apply to the  
174 payments due.

175 ~~12.~~ 13. Every carrier shall include in its provider contracts a provision that prohibits a provider from  
176 discriminating against any enrollee solely due to the enrollee's status as a litigant in pending litigation or a  
177 potential litigant due to being involved in a motor vehicle accident. Nothing in this subdivision shall require a  
178 health care provider to treat an enrollee who has threatened to make or has made a professional liability claim  
179 against the provider or the provider's employer, agents, or employees or has threatened to file or has filed a  
180 complaint with a regulatory agency or board against the provider or the provider's employer, agents, or

181 employees.

182 ~~13.~~ 14. Beginning July 1, 2025, every carrier shall make available through electronic means a way for  
183 providers to determine whether an enrollee is covered by a health plan that is subject to the Commission's  
184 jurisdiction.

185 C. A provider shall not file a complaint with the Commission for failure to pay claims in accordance with  
186 subdivision B 1 unless:

187 1. Such provider has made a reasonable effort to confer with the carrier in order to resolve the issues  
188 related to all claims that are under dispute. Any request to confer shall be made to the contact listed for such  
189 purpose in the provider contract and shall include supporting documentation sufficient for the carrier to  
190 identify the claims in question; and

191 2. At least 30 calendar days have passed from the date of the request provided that the carrier has been  
192 responsive to the provider's request to confer. However, if in the judgment of the provider, the carrier has not  
193 been responsive to such request, the provider shall not be required to wait at least 30 calendar days to file the  
194 complaint.

195 The provider shall attest in any such complaint that it has satisfied the provisions of this subsection.

196 D. If the Commission has cause to believe that any provider has engaged in a pattern of potential  
197 violations of subdivision B ~~12~~ 13, with no corrective action, the Commission may submit information to the  
198 Board of Medicine or the Commissioner of Health for action. Prior to such submission, the Commission may  
199 provide the provider with an opportunity to cure the alleged violations or provide an explanation as to why  
200 the actions in questions were not violations. If any provider has engaged in a pattern of potential violations of  
201 subdivision B ~~12~~ 13, with no corrective action, the Board of Medicine or the Commissioner of Health may  
202 levy a fine or cost recovery upon the provider and take other action as permitted under its authority. Upon  
203 completion of its review of any potential violation submitted by the Commission or initiated directly by an  
204 enrollee, the Board of Medicine or the Commissioner of Health shall notify the Commission of the results of  
205 the review, including where the violation was substantiated, and any enforcement action taken as a result of a  
206 finding of a substantiated violation.

207 E. Without limiting the foregoing, in the processing of any payment of claims for health care services  
208 rendered by providers under provider contracts and in performing under its provider contracts, every carrier  
209 subject to regulation by this title shall adhere to and comply with the minimum fair business standards  
210 required under subsection B, and the Commission shall have the jurisdiction to determine if a carrier has  
211 violated the standards set forth in subsection B by failing to include the requisite provisions in its provider  
212 contracts and shall have jurisdiction to determine if the carrier has failed to implement the minimum fair  
213 business standards set out in subdivisions B 1 and 2 in the performance of its provider contracts.

214 F. No carrier shall be in violation of this section if its failure to comply with this section is caused in  
215 material part by the person submitting the claim or if the carrier's compliance is rendered impossible due to  
216 matters beyond the carrier's reasonable control (such as an act of God, insurrection, strike, fire, or power  
217 outages) which are not caused in material part by the carrier.

218 G. Any provider who suffers loss as the result of a carrier's violation of this section or a carrier's breach of  
219 any provider contract provision required by this section shall be entitled to initiate an action to recover actual  
220 damages. If the trier of fact finds that the violation or breach resulted from a carrier's gross negligence and  
221 willful conduct, it may increase damages to an amount not exceeding three times the actual damages  
222 sustained. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded,  
223 such provider also may be awarded reasonable attorney fees and court costs. Each claim for payment which is  
224 paid or processed in violation of this section or with respect to which a violation of this section exists shall  
225 constitute a separate violation. The Commission shall not be deemed to be a "trier of fact" for purposes of this  
226 subsection.

227 H. No carrier (or its network, provider panel or intermediary) shall terminate or fail to renew the  
228 employment or other contractual relationship with a provider, or any provider contract, or otherwise penalize  
229 any provider, for invoking any of the provider's rights under this section or under the provider contract.

230 I. Except where otherwise provided in this section, beginning no later than July 1, 2025, carriers shall  
231 deliver provider contracts, related amendments, and notices exclusively to providers in an electronic format  
232 other than electronic facsimile. Beginning no later than January 1, 2026, the provider shall submit provider  
233 contracts, amendments, and notices to carriers exclusively in an electronic format other than electronic  
234 facsimile. The electronic method and location for delivery shall be agreed upon by the carrier and provider  
235 and included in the provider contract.

236 J. This section shall apply only to carriers subject to regulation under this title and shall apply to the  
237 carrier and provider, regardless of any vendors, subcontractors, or other entities that have been contracted by  
238 the carrier or the provider to perform duties applicable to this section.

239 K. This section shall apply with respect to provider contracts entered into, amended, extended or renewed  
240 on or after July 1, 1999.

241 L. Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and

242 regulations as it may deem necessary to implement this section.  
243 M. The Commission shall have no jurisdiction to adjudicate individual controversies arising out of this  
244 section.

**INTRODUCED**

**SB925**