

SENATE BILL NO. 172

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on _____)

(Patron Prior to Substitute—Senator Pekarsky)

A BILL to amend and reenact § 38.2-3407.15 of the Code of Virginia, relating to health insurance claims; electronic attachments accepted.

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, *provided, however, that when such additional documentation is requested, the provider may submit and the carrier shall accept such documentation as an electronic attachment. No carrier shall require submission of such documentation by paper, facsimile, or other nonelectronic means if an electronic attachment can be used.*

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. 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 standards in the processing and

payment of claims for health care services:

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

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

b. The claim was submitted fraudulently.

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

2. A carrier shall, within 30 days after receipt of a claim, notify the person submitting the claim of any defect or impropriety that prevents the carrier from deeming the claim a clean claim and request the information that will be required to process and pay the claim. *When such information is requested, the provider may submit and the carrier shall accept such information as electronic information or an electronic attachment. In submitting such electronic information or electronic attachment, the provider may be required to comply with the standards, formats, and implementation specifications adopted by the U.S. Department of Health and Human Services, as amended and where applicable, and with the processes and procedures for electronic information outlined in the provider contract. A carrier shall not be required to accept electronic information or an electronic attachment submitted in nonstandard or noncompliant formats where applicable federal standards exist. A carrier shall not require submission of such information by paper, facsimile, or other nonelectronic means when the provider has submitted it as electronic information or an electronic attachment that is compliant with the standards referenced above and the processes and procedures for electronic information or an electronic attachment outlined in the provider contract.* Upon receipt of the additional information necessary to make the original claim a clean claim, a carrier shall make the payment of the claim in compliance with this section. *The date of transmission of electronic information or an electronic attachment that is compliant with the standards referenced above and the processes and procedures outlined*

in the provider contract shall be considered the date on which the claim was received for the purposes of timely payment as required under this section. No carrier ~~may~~ shall refuse to pay a claim for health care services rendered pursuant to a provider contract which are covered benefits if the carrier fails timely to notify or attempt to notify the person submitting the claim of the matters identified above unless such failure was caused in material part by the person submitting the claims; however, nothing herein shall preclude such a carrier from imposing a retroactive denial of payment of such a claim if permitted by the provider contract unless such retroactive denial of payment of the claim would violate subdivision 8. ~~Beginning no later than January 1, 2026, all~~ All notifications and information required under this subdivision shall be delivered electronically.

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

4. A carrier shall notify the provider in the provider contract if the carrier, or entity completing a transaction on behalf of the carrier, uses a payment method that imposes a transaction or processing fee or similar charge on the provider, and shall offer the provider an alternative payment method in which the carrier, or entity completing a transaction on behalf of the carrier, does not impose such a fee or similar charge. If the provider elects to accept the alternative payment method and has provided all required information to the carrier to enroll in such alternative method, the carrier shall pay the claim using such alternative payment method.

5. a. Every carrier shall establish and implement reasonable policies to permit any provider with which there is a provider contract (i) to confirm in advance during normal business hours by free telephone or electronic means if available whether the health care services to be provided are medically necessary and a covered benefit and (ii) to determine the carrier's requirements applicable to the provider (or to the type of health care services which the provider has contracted to deliver under the provider contract) for (a) pre-certification or authorization of coverage decisions, (b) retroactive reconsideration of a certification or authorization of coverage decision or retroactive denial of a previously paid claim, (c) provider-specific payment and reimbursement methodology, coding levels and methodology, downcoding, and bundling of claims, and (d) other provider-specific, applicable claims processing and payment matters necessary to meet the terms and conditions of the provider contract, including determining whether a claim is a clean claim. *If the carrier requires information from the provider to establish medical necessity, benefit coverage, or pre-certification or authorization of services, or to conduct reconsideration activities, the provider may submit*

and the carrier shall accept such information as electronic information or an electronic attachment. In submitting such information as electronic information or an electronic attachment, the provider may be required to comply with the standards, formats, and implementation specifications adopted by the U.S. Department of Health and Human Services, as amended and where applicable. A carrier shall not be required to accept electronic information submitted in nonstandard or noncompliant formats. A carrier shall not require submission of such documentation by paper, facsimile, or other nonelectronic means when the provider has submitted it as electronic information or an electronic attachment that is compliant with the standards referenced above and the processes and procedures for electronic information or an electronic attachment outlined in the provider contract. If a carrier routinely, as a matter of policy, bundles or downcodes claims submitted by a provider, the carrier shall clearly disclose that practice in each provider contract. Further, such carrier shall either (1) disclose in its provider contracts or on its website the specific bundling and downcoding policies that the carrier reasonably expects to be applied to the provider or provider's services on a routine basis as a matter of policy or (2) disclose in each provider contract a telephone or facsimile number or e-mail address that a provider can use to request the specific bundling and downcoding policies that the carrier reasonably expects to be applied to that provider or provider's services on a routine basis as a matter of policy. If such request is made by or on behalf of a provider, a carrier shall provide the requesting provider with such policies within 10 business days following the date the request is received.

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

6. Every carrier shall pay a claim if the carrier has previously authorized the health care service or has advised the provider or enrollee in advance of the provision of health care services that the health care services are medically necessary and a covered benefit, unless:

a. The documentation for the claim provided by the person submitting the claim clearly fails to support the claim as originally authorized;

b. The carrier's refusal is because (i) another payor is responsible for the payment, (ii) the provider has

151 already been paid for the health care services identified on the claim, (iii) the claim was submitted
152 fraudulently or the authorization was based in whole or material part on erroneous information provided to
153 the carrier by the provider, enrollee, or other person not related to the carrier, or (iv) the person receiving the
154 health care services was not eligible to receive them on the date of service and the carrier did not know, and
155 with the exercise of reasonable care could not have known, of the person's eligibility status; or

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

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

164 8. No carrier shall impose any retroactive denial of a previously paid claim or in any other way seek
165 recovery or refund of a previously paid claim unless the carrier specifies in writing the specific claim or
166 claims for which the retroactive denial is to be imposed or the recovery or refund is sought, the carrier has
167 provided a written explanation of why the claim is being retroactively adjusted, and (i) the original claim was
168 submitted fraudulently, (ii) the original claim payment was incorrect because the provider was already paid
169 for the health care services identified on the claim or the health care services identified on the claim were not
170 delivered by the provider, or (iii) the time which has elapsed since the date of the payment of the original
171 challenged claim does not exceed 12 months. Notwithstanding the provisions of clause (iii), a provider and a
172 carrier may agree in writing that recoupment of overpayments by withholding or offsetting against future
173 payments may occur after such 12-month limit for the imposition of the retroactive denial. A carrier shall
174 notify a provider at least 30 days in advance of any retroactive denial or recovery or refund of a previously
175 paid claim.

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

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

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

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

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

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

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

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

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

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

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

223 D. If the Commission has cause to believe that any provider has engaged in a pattern of potential
224 violations of subdivision B 13, with no corrective action, the Commission may submit information to the
225 Board of Medicine or the Commissioner of Health for action. Prior to such submission, the Commission may
226 provide the provider with an opportunity to cure the alleged violations or provide an explanation as to why
227 the actions in questions were not violations. If any provider has engaged in a pattern of potential violations of
228 subdivision B 13, with no corrective action, the Board of Medicine or the Commissioner of Health may levy
229 a fine or cost recovery upon the provider and take other action as permitted under its authority. Upon
230 completion of its review of any potential violation submitted by the Commission or initiated directly by an
231 enrollee, the Board of Medicine or the Commissioner of Health shall notify the Commission of the results of
232 the review, including where the violation was substantiated, and any enforcement action taken as a result of a
233 finding of a substantiated violation.

234 E. Without limiting the foregoing, in the processing of any payment of claims for health care services
235 rendered by providers under provider contracts and in performing under its provider contracts, every carrier
236 subject to regulation by this title shall adhere to and comply with the minimum fair business standards
237 required under subsection B, and the Commission shall have the jurisdiction to determine if a carrier has

violated the standards set forth in subsection B by failing to include the requisite provisions in its provider contracts and shall have jurisdiction to determine if the carrier has failed to implement the minimum fair business standards set out in subdivisions B 1 and 2 in the performance of its provider contracts.

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

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

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

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

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

K. Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and regulations as it may deem necessary to implement this section.

268 L. The Commission shall have no jurisdiction to adjudicate individual controversies arising out of this
269 section.