

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 38.2-3407.15:2, as it shall become effective, of the Code of Virginia, relating*
 3 *to health insurance; carrier contracts; required provisions regarding prior authorization for prescription*
 4 *drugs.*

5 [H 736]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**8 **1. That § 38.2-3407.15:2, as it shall become effective, of the Code of Virginia is amended and reenacted**
 9 **as follows:**10 **§ 38.2-3407.15:2. (Effective January 1, 2027) Carrier contracts; required provisions regarding prior**
 11 **authorization for drug benefits.**

12 A. As used in this section, unless the context requires a different meaning:

13 "Carrier" has the same meaning as provided in subsection A of § 38.2-3407.15.

14 "Prior authorization" means the approval process used by a carrier before certain drug benefits may be
 15 provided.

16 "Provider contract" has the same meaning as provided in subsection A of § 38.2-3407.15.

17 "Supplementation" means a request communicated by the carrier to the prescriber or his designee for
 18 additional information, limited to items specifically requested on the applicable prior authorization request,
 19 necessary to approve or deny such request.20 B. Any provider contract between a carrier and a participating health care provider with prescriptive
 21 authority, or its contracting agent, shall contain specific provisions that:22 1. Require the carrier to, in a method of its choosing, accept telephonic, facsimile, or electronic
 23 submission of prior authorization requests that are delivered from e-prescribing systems, electronic health
 24 record systems, and health information exchange platforms that utilize the National Council for Prescription
 25 Drug Programs' SCRIPT standards;26 2. Require that the carrier communicate to the prescriber or his designee within 24 hours, including
 27 weekend hours, of submission of an urgent prior authorization request to the carrier, if submitted
 28 telephonically or in an alternate method directed by the carrier, that the request is approved, denied, or
 29 requires supplementation;30 3. Require that the carrier communicate electronically, telephonically, or by facsimile to the prescriber or
 31 his designee, within two business days of submission of a fully completed prior authorization request, that the
 32 request is approved, denied, or requires supplementation;33 4. Require that the carrier communicate electronically, telephonically, or by facsimile to the prescriber or
 34 his designee, within two business days of submission of a properly completed supplementation from the
 35 prescriber or his designee, that the request is approved or denied;36 5. Require that if a prior authorization request is approved for prescription drugs and such prescription
 37 drugs have been scheduled, provided, or delivered to the patient consistent with the authorization, the carrier
 38 shall not, *for the duration of the authorization, which shall be no less than six months for initial*
 39 *authorizations and 12 months for continued authorizations*, revoke, limit, condition, modify, or restrict that
 40 authorization unless (i) there is evidence that the authorization was obtained based on fraud or
 41 misrepresentation; (ii) final actions by the U.S. Food and Drug Administration, other regulatory agencies, or
 42 the manufacturer remove the drug from the market, limit its use in a manner that affects the authorization, or
 43 communicate a patient safety *or efficacy* issue that would affect the authorization alone or in combination
 44 with other authorizations; (iii) *additional safety and efficacy monitoring is clinically appropriate or*
 45 *recommended by the U.S. Food and Drug Administration, other regulatory agencies, or the manufacturer;*
 46 *(iv) a combination of drugs prescribed would cause a drug interaction; or ~~(iv)~~ (v) a generic or biosimilar is*
 47 *added to the prescription drug formulary. Nothing in this section shall require a carrier to cover any benefit*
 48 *not otherwise covered or cover a prescription drug if the enrollee is no longer covered by a health plan on the*
 49 *date the prescription drug was scheduled, provided, or delivered;*50 6. Require that if the prior authorization request is denied, the carrier shall communicate electronically,
 51 telephonically, or by facsimile to the prescriber or his designee, within the timeframes established by
 52 subdivision 3 or 4, as applicable, the reasons for the denial;53 7. Require that prior authorization approved by another carrier be honored, upon the carrier's receipt from
 54 the prescriber or his designee of a record demonstrating the previous carrier's prior authorization approval or
 55 any written or electronic evidence of the previous carrier's coverage of such drug, at least for the initial 90
 56 days of a member's prescription drug benefit coverage under a new health plan, subject to the provisions of

57 the new carrier's evidence of coverage and any exception listed in subdivision 5;

58 8. Require that a tracking system be used by the carrier for all prior authorization requests and that the
59 identification information be provided electronically, telephonically, or by facsimile to the prescriber or his
60 designee, upon the carrier's response to the prior authorization request;

61 9. Require that the carrier's prescription drug formularies, all drug benefits subject to prior authorization
62 by the carrier, all of the carrier's prior authorization procedures, and all prior authorization request forms
63 accepted by the carrier be made available through one central location on the carrier's website and that such
64 information be updated by the carrier within seven days of approved changes;

65 10. Require a carrier to honor a prior authorization issued by the carrier for a drug, other than an opioid,
66 regardless of changes in dosages of such drug, provided such drug is prescribed consistent with U.S. Food
67 and Drug Administration-labeled dosages;

68 11. Require a carrier to honor a prior authorization issued by the carrier for a drug regardless of whether
69 the covered person changes plans with the same carrier and the drug is a covered benefit with the current
70 health plan;

71 12. Require a carrier, when requiring a prescriber to provide supplemental information that is in the
72 covered individual's health record or electronic health record, to identify the specific information required;

73 13. Require that no prior authorization be required for at least one drug prescribed for substance abuse
74 medication-assisted treatment, provided that (i) the drug is a covered benefit, (ii) the prescription does not
75 exceed the FDA-labeled dosages, and (iii) the drug is prescribed consistent with the regulations of the Board
76 of Medicine;

77 14. Require that when any carrier has previously approved prior authorization for any drug prescribed for
78 the treatment of a mental disorder listed in the most recent edition of the Diagnostic and Statistical Manual of
79 Mental Disorders published by the American Psychiatric Association, no additional prior authorization shall
80 be required by the carrier, provided that (i) the drug is a covered benefit; (ii) the prescription does not exceed
81 the FDA-labeled dosages; (iii) the prescription has been continuously issued for no fewer than three months;
82 and (iv) the prescriber performs an annual review of the patient to evaluate the drug's continued efficacy,
83 changes in the patient's health status, and potential contraindications. Nothing in this subdivision shall
84 prohibit a carrier from requiring prior authorization for any drug that is not listed on its prescription drug
85 formulary at the time the initial prescription for the drug is issued;

86 15. Require a carrier to honor a prior authorization issued by the carrier for a drug regardless of whether
87 the drug is removed from the carrier's prescription drug formulary after the initial prescription for that drug is
88 issued, provided that the drug and prescription are consistent with the applicable provisions of subdivision
89 14;

90 16. Require a carrier, beginning July 1, 2025, notwithstanding the provisions of subdivision 1 or any other
91 provision of this section, to establish and maintain an online process that (i) links directly to all e-prescribing
92 systems and electronic health record systems that utilize the National Council for Prescription Drug Programs
93 SCRIPT standard and the National Council for Prescription Drug Programs Real Time Benefit Standard; (ii)
94 can accept electronic prior authorization requests from a provider; (iii) can approve electronic prior
95 authorization requests (a) for which no additional information is needed by the carrier to process the prior
96 authorization request, (b) for which no clinical review is required, and (c) that meet the carrier's criteria for
97 approval; (iv) links directly to real-time patient out-of-pocket costs for the prescription drug, considering
98 copayment and deductible; and (v) otherwise meets the requirements of this section. No carrier shall (a)
99 impose a fee or charge on any person for accessing the online process as required by this subdivision or (b)
100 access, absent provider consent, provider data via the online process other than for the enrollee. No later than
101 July 1, 2024, a carrier shall provide contact information of any third-party vendor or other entity the carrier
102 will use to meet the requirements of this subdivision or the requirements of § 38.2-3407.15:7 to any provider
103 that requests such information. A carrier that posts such contact information on its website shall be
104 considered to have met this requirement; and

105 17. Require a participating health care provider, beginning July 1, 2025, to ensure that any e-prescribing
106 system or electronic health record system owned by or contracted for the provider to maintain an enrollee's
107 health record has the ability to access, at the point of prescribing, the electronic prior authorization process
108 established by a carrier as required by subdivision 16 and the real-time patient-specific benefit information,
109 including out-of-pocket costs and more affordable medication alternatives made available by a carrier
110 pursuant to § 38.2-3407.15:7. A provider may request a waiver of compliance under this subdivision for
111 undue hardship for a period specified by the appropriate regulatory authority with the Health and Human
112 Resources Secretariat.

113 C. The Commission shall have no jurisdiction to adjudicate individual controversies arising out of this
114 section.

115 D. This section shall apply with respect to any contract between a carrier and a participating health care
116 provider or its contracting agent that is entered into, amended, extended, or renewed on or after January 1,
117 2016.

118 E. Notwithstanding any law to the contrary, the provisions of this section shall not apply to:

119 1. Coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.
120 (Medicare), Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid), Title XXI of the
121 Social Security Act, 42 U.S.C. § 1397aa et seq. (CHIP), 5 U.S.C. § 8901 et seq. (federal employees), or 10
122 U.S.C. § 1071 et seq. (TRICARE);
123 2. Accident only, credit or disability insurance, long-term care insurance, TRICARE supplement,
124 Medicare supplement, or workers' compensation coverages;
125 3. Any dental services plan or optometric services plan as defined in § 38.2-4501; or
126 4. Any health maintenance organization that (i) contracts with one multispecialty group of physicians who
127 are employed by and are shareholders of the multispecialty group, which multispecialty group of physicians
128 may also contract with health care providers in the community; (ii) provides and arranges for the provision of
129 physician services by such multispecialty group physicians or by such contracted health care providers in the
130 community; and (iii) receives and processes at least 85 percent of prescription drug prior authorization
131 requests in a manner that is interoperable with e-prescribing systems, electronic health records, and health
132 information exchange platforms.
133 **2. That the provisions of this act shall apply to contracts entered into, amended, or renewed on or after**
134 **January 1, 2027.**

ENROLLED

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