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SENATE BILL NO. 964

Offered January 14, 2009

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A BILL to amend and reenact §§ 38.2-3407.3 and 38.2-5805 of the Code of Virginia, relating to accident and sickness insurance; cost-sharing provisions.

Patron—Blevins

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3407.3 and 38.2-5805 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-3407.3. Calculation of cost-sharing provisions.

A. An insurer, health services plan, or health maintenance organization that issues an accident and sickness insurance policy or contract pursuant to which the insured, subscriber, or enrollee is required to pay a specified percentage of the cost of covered services, shall calculate such amount payable based upon an amount not to exceed the total amount actually paid or payable to the provider of such services for the services provided to the insured, subscriber, or enrollee.

However, if the insurer, health services plan, or health maintenance organization has agreed to pay the provider of the covered services a fixed rate or charge for a covered service without regard to the provider's actual charge for the service provided to the insured, subscriber, or enrollee, and the provider's actual charge for the service is less than the fixed rate or charge that the insurer, health services plan, or health maintenance organization has agreed to pay for the covered service, then the insurer, health services plan, or health maintenance organization shall calculate the amount payable by the insured, subscriber, or enrollee based upon an amount not to exceed the provider's actual charge for the service provided to the insured, subscriber, or enrollee. When an insured, subscriber, or enrollee receives covered services outside the insurer's, health services plan's, or health maintenance organization's provider network, and such entity utilizes another insurer's, health services plan's, or health maintenance organization's provider network located outside the Commonwealth, such entity may satisfy the obligation of this section by using the cost of services as reported by the out-of-state insurer, health services plan, or health maintenance organization when calculating the insured's, subscriber's, or enrollee's percentage of the cost of covered services.

B. Any insurer, health services plan, or health maintenance organization failing to administer its contracts as set forth herein shall be deemed to have committed a knowing and willful violation of this section, and shall be punished as set forth in subsection A of § 38.2-218. Each claim payment found to have been calculated in noncompliance with this section shall be deemed a separate and distinct violation, and shall further be deemed a violation subject to subdivision D 1 c of § 38.2-218, permitting the Commission to require restitution in addition to any other penalties.

§ 38.2-5805. Provider contracts.

A. Each health carrier subject to subsection B of § 38.2-5801 shall file with the Commission a list of the current providers who have executed a contract directly with the health carrier or indirectly through an intermediary organization for the purpose of providing health care services pursuant to an MCHIP or for the benefit of a covered person of an MCHIP. The list shall include the names and localities of the providers. The list shall be updated by the health carrier at least annually and more frequently as required by the Commission in accordance with provisions in this title or by the State Health Commissioner in accordance with provisions in Title 32.1.

B. Every contract with a provider of health care services enabling an MCHIP to provide health care services shall be in writing.

C. *When an MCHIP has agreed to pay the provider of health care services a fixed rate or charge for a covered service without regard to the provider's actual charge for the service provided to the covered person, and the provider's actual charge for the service is less than the fixed rate or charge that the MCHIP has agreed to pay the provider for the covered service, then:*

1. The MCHIP shall calculate the amount payable by the covered person based upon an amount not to exceed the provider's actual charge for the service provided to the covered person; and

2. The covered person shall not be liable to the provider for any amount, other than any required copayment, in excess of the specified percentage of the cost of the covered service that is calculated as provided in subdivision 1.

D. When the health carrier is a health maintenance organization, the contracts with providers

enabling the MCHIP to provide health care services to the covered persons shall contain a "hold harmless" clause setting forth that, in the event such health carrier fails to pay for health care services as set forth in the contract, the covered persons shall not be liable to the provider for any sums owed by the health carrier. The following requirements shall apply to such contracts:

1. Such contracts shall require that if the provider terminates the agreement, the provider shall give the health carrier at least sixty days' advance notice of termination.

2. No provider party to such a contract, or agent, trustee or assignee thereof, may maintain any action at law against a covered person to collect sums owed by the health carrier.

3. If there is an intermediary organization enabling a health carrier subject to subsection B of § 38.2-5801 to provide health care services by means of the intermediary organization's own contracts with health care providers, the contracts between the intermediary organization and its providers shall be in writing.

4. The contracts shall set forth that, in the event either the health carrier or the intermediary organization fails to pay for health care services as set forth in the contracts between the intermediary organization and its providers, or in the contract between the intermediary organization and the health carrier, the covered person shall not be liable to the provider for any sums owed by either the intermediary organization or the health carrier.

5. No provider party to such a contract, or agent, trustee or assignee thereof, may maintain any action at law against a covered person to collect sums owed by the health carrier or the intermediary organization.

6. An agreement to provide health care services between an intermediary organization and a health carrier subject to subsection B of § 38.2-5801 shall require that if the intermediary organization terminates the agreement, the intermediary organization shall give the health carrier at least sixty days' advance notice of termination.

7. An agreement to provide health care services between an intermediary organization and a provider shall require that if the provider terminates the agreement, the provider shall give the intermediary organization at least sixty days' advance notice of termination.

8. Each such health carrier and intermediary organization shall be responsible for maintaining its executed contracts enabling it to provide health care services. These contracts shall be available for the Commission's review and examination for a period of five years after the expiration of any such contract.

9. The "hold harmless" clause required by this section shall read essentially as set forth in this subdivision. The health carrier may use a corresponding provision of different wording approved by the Commission that is not less favorable in any respect to the covered persons.

Hold Harmless Clause

—Provider] hereby agrees that in no event, including, but not limited to nonpayment by the MCHIP or its health carrier, the insolvency of the —health carrier], or breach of this agreement, shall —Provider] bill, charge, collect a deposit from; seek compensation, remuneration or reimbursement from; or have any recourse against subscribers or persons other than the health carrier for services provided pursuant to this Agreement. This provision shall not prohibit collection of any applicable copayments or deductibles billed in accordance with the terms of the subscriber agreement for the MCHIP.

—Provider] further agrees that (i) this provision shall survive the termination of this Agreement regardless of the cause giving rise to such termination and shall be construed to be for the benefit of the plan's subscribers and (ii) this provision supersedes any oral or written agreement to the contrary now existing or hereafter entered into between —Provider] and the subscriber or persons acting on the subscriber's behalf.

10. If there is an intermediary organization between the health carrier and the health care providers, the hold harmless clause set forth in subdivision 5 shall be amended to include nonpayment by the plan, the health carrier, and the intermediary organization and shall be included in any contract between the intermediary organization and health care providers and in any contract between the health carrier on behalf of the MCHIP and the intermediary organization.

~~D~~ *E*. The Commission may specify for each type of health carrier other than a health maintenance organization the circumstances, if any, under which a health carrier for an MCHIP shall contract with a provider with the "hold harmless" clause described in subsection C. The Commission may specify also the extent to which certain accounting treatment, reserves, net worth or surplus shall be required for liabilities arising from provider contracts without the "hold harmless" clause.