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SENATE BILL NO. 426

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact § 32.1-325.1 of the Code of Virginia, relating to Medicaid; appeals of agency determinations.

Patron—Ruff

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-325.1 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-325.1. Adverse initial determination of overpayment; appeals of agency determinations.

A. The Director shall make an initial determination as to whether an overpayment has been made to a provider in accordance with the state plan for medical assistance, the provisions of § 2.2-4019 and applicable federal law. The initial determination shall be issued within 180 days of the receipt of the appeal request. If the agency does not render a decision within 180 days, the decision is deemed to be in favor of the provider.

B. An appeal of the Director's initial determination concerning provider reimbursement shall be heard in accordance with § 2.2-4020 of the Administrative Process Act (§ 2.2-4020 et seq.) and the state plan for medical assistance provided for in § 32.1-325. The hearing officer appointed pursuant to § 2.2-4024 shall conduct the appeal and submit a recommended decision to the Director within 120 days of the agency's receipt of the appeal request. The Director shall consider the parties' exceptions and issue the final agency case decision within ~~sixty~~ *60* days of receipt of the hearing officer's recommended decision. If the Director does not render a final agency case decision within ~~sixty~~ *60* days of the receipt of the hearing officer's recommended decision, the decision is deemed to be in favor of the provider. The Director shall adopt the hearing officer's recommended decision unless to do so would be an error of law or Department policy. Any final agency case decision in which the Director rejects a hearing officer's recommended decision shall state with particularity the basis for rejection. Prior to a final agency case decision issued in accordance with § 2.2-4023, the Director may not undertake recovery of any overpayment amount paid to the provider through offset or other means. Once a final determination of overpayment has been made, the Director shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial or the final determination of overpayment. Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 from the date the Director's determination becomes final. Nothing in § 32.1-313 shall be construed to require interest payments on any portion of overpayment other than the unpaid balance referenced herein.

C. The burden of proof in informal and formal administrative appeals is on the provider. The agency shall reimburse a provider for reasonable and necessary attorneys' fees and costs associated with an informal or formal administrative appeal if the provider substantially prevails on the merits of the appeal and the agency's position is not substantially justified, unless special circumstances would make an award unjust. In any case in which a provider has recovered attorneys' fees and costs associated with an informal or formal administrative appeal, the provider shall not be entitled to recover those same attorneys' fees and costs in a subsequent judicial proceeding.

D. *Recommended and final case decisions shall be made in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), based on the whole evidentiary record, and limited to a determination of whether the Director's initial decision was within the scope of his statutory or legal authority. No recommended or final case decision shall be based on principles of contract law or equity.*

E. Court review of final agency determinations concerning provider reimbursement shall be made in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

In any case in which a final determination of overpayment has been reversed in a subsequent judicial proceeding, the provider shall be reimbursed that portion of the payment to which he is entitled plus any applicable interest, within ~~thirty~~ *30* days of the subsequent judicial order.