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HOUSE BILL NO. 1058

Offered January 8, 2014

A BILL to amend and reenact § 65.2-605 of the Code of Virginia, relating to workers' compensation; liability of employer for medical services.

Patron—Kilgore

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-605 of the Code of Virginia is amended and reenacted as follows:

§ 65.2-605. Liability of employer for medical services ordered by Commission; malpractice.

A. The pecuniary liability of the employer for medical, surgical, and hospital service herein required when ordered by the Commission shall be limited to such charges as prevail in the same community for similar treatment when such treatment is paid for by the injured person and the employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of § 65.2-603, but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident and shall be compensated for as such.

B. For health care services rendered to a claimant on or after July 1, 2014, the charge master used by a health care provider for health care services rendered to a claimant shall be the same charge master used by a health care provider when providing health care services to patients other than claimants.

C. When such treatment has been rendered by an assistant-at-surgery, for health care rendered on or after July 1, 2014, the pecuniary liability of the employer for medical, surgical, and hospital service herein required when ordered by the Commission shall be limited to those services as coded and billed consistent with the then current Physician Fee Schedule Relative Value file also known as the "RVU file."

D. For health care provided on or after July 1, 2014, multiple procedures shall be coded and billed.

E. No advance authorization for the medical treatment or testing of an injured employee is required as a condition for payment of services rendered. However, if an authorized provider requests preauthorization or precertification for treatment or tests of an employee and submits to the insurer or self-insurer a request for authorization of treatment or testing by authorized medical provider in the form set forth in this subsection (hereafter referred to as the Request Form), the insurer or self-insurer shall respond, in writing, to the request within five business days from its receipt. A written request or response under this subsection shall be transmitted by facsimile or electronic mail. Any response to such a request shall be sent directly to the requesting authorized medical provider. If the insurer or self-insurer fails to respond by completing Section 3 of the Request Form and faxing or emailing the completed Request Form to the requesting provider within five business days, the treatment or testing stands preapproved so long as this case is with an authorized provider for a compensable injury or condition. If advance authorization procedures for medical providers are governed by an applicable provider contract, the preauthorization procedure used by the provider and insurer or self-insurer may vary from the provisions of this subsection. The Request Form shall be substantially in the following format:

REQUEST FOR AUTHORIZATION OF TREATMENT OR TESTING BY AUTHORIZED MEDICAL PROVIDER

Advance authorization for the medical treatment or testing of an injured employee is not required by the Virginia Workers' Compensation Act as a condition for payment of services rendered. However, an authorized medical provider may request advanced authorization for treatment or testing by completing Sections 1 and 2 of this form and faxing or emailing the same to the insurer/self-insurer. The insurer/self-insurer shall respond to this request within five business days of receipt of this form by completing Section 3 of this form. If the insurer/self-insurer fails to respond to this request within the five-day period, the treatment or testing stands preapproved. See subsection G of § 65.2-605 of the Code of Virginia.

SECTION 1. IDENTIFYING INFORMATION

*Last Name*_____ *First Name* _____ *M.I.* __

SSN or Board Tracking# _____ *Date of Accident* _____

Employer Name _____

Insurer/Self-Insurer Name _____

Adjuster _____
Insurer/Self-Insurer Phone Number _____
Insurer/Self-Insurer Email _____
Insurer/Self-Insurer Fax Number _____

SECTION 2. REQUEST FOR TREATMENT OR TESTING AUTHORIZATION

Diagnosis _____ ICD-9 Code _____
Requested Treatment or Testing _____ CPT/DRG Code _____
Who is to provide treatment or testing? _____
Reason for treatment or testing _____
Requesting authorized medical provider _____
Address _____ City _____ State __ Zip Code ____
Phone Number _____ Fax Number _____ Email _____

I hereby certify that this completed form was
[] Faxed to the requesting medical provider
[] Emailed on this the _____ of _____, _____
(day) (month) (year)

_____
Signature of Authorized Requesting Medical Provider

SECTION 3. RESPONSE OF INSURER TO REQUEST FOR TREATMENT OR TESTING AUTHORIZATION

(Check appropriate item(s) and return to requesting Medical Provider by Fax or Email)

[] The requested Treatment or Testing is authorized
[] The requested Treatment or Testing is not authorized because it is:
[] a. Not related to the on-the-job injury
[] b. Not reasonably required to effect a cure, give relief, or restore employee to suitable employment
[] c. Not being provided by an authorized, panel or referral medical provider;
[] d. Additional information needed (specify)
[] e. Other (specify)

I hereby certify that this Response was
[] Faxed to the requesting medical provider
[] Emailed on this the _____ of _____, _____
(day) (month) (year)

_____
Signature of Insurer/Self-Insurer Representative

No employer or workers' compensation insurance carrier may impose preauthorization requirements for (i) emergency services rendered to a claimant or (ii) health care services rendered to a claimant in the treatment of an injury or illness for which the employer or workers' compensation insurance carrier has not admitted liability or authorized payment for such health care services.

F. Payment for health care services shall be subject to the following requirements:

1. As used in this subsection, "employers and employers' workers' compensation insurance carriers" includes the uninsured employer's fund and any guaranty fund;

2. Employers and employers' workers' compensation insurance carriers shall:

a. Make available all billing and reimbursement requirements, together with applicable documentation, to health care providers or make the same available via the Internet in real time;

b. Enable health care providers to electronically verify if a claim has been reported by an employee or employer;

c. Accept reports from health care providers electronically; and

d. Accept claims from health care providers electronically;

3. Except as provided in provider agreements with employers or employers' workers' compensation insurance carriers, payment for health care services shall be made to the health care provider within 40 days after receipt of each separate itemization of the health care services provided. If the itemization or a portion thereof is contested, denied, or considered incomplete, the employer or the employer's workers'

compensation insurance carrier shall notify the health care provider within 30 days after receipt of the itemization that the itemization is contested, denied, or considered incomplete and shall include the following information:

a. The reasons for contesting or denying the itemization or the reasons the itemization is considered incomplete;

b. If the itemization is considered incomplete, all additional information required to make a decision; and

c. The remedies available to the health care provider if the health care provider disagrees.

Payment due for any properly documented health care services that are neither contested within the 30-day period nor paid within the 40-day period, as required by this subsection, shall be increased by 15 percent, together with interest at the judgment rate of interest as provided in § 6.2-302 retroactive to the date of receipt of the itemization; and

4. An employer's liability to a health care provider under this section shall not affect its liability to an employee.

G. No health care provider shall submit a claim to the Commission contesting the sufficiency of payment for health care services rendered to a claimant on or after July 1, 2014, unless such claim is filed within two years from the date of service for which payment is sought, the date the employer or workers' compensation carrier notifies by encrypted email or by telefax to the health care provider that no further payments shall be made for the specific date of health care services, or the date a medical award covering such date of service for a specific item or treatment in question becomes final, whichever occurs later.