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HOUSE BILL NO. 1820

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 5, 2015)

(Patron Prior to Substitute—Delegate Farrell)

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

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; assistants-at-surgery; coding.

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 charged to an injured person and the not ordered by the Commission, such charges being referred to in this section as the prevailing community rate. However, if an employer is a party to a contractual agreement with a workers' compensation health care provider, his professional entity, or his employer, for medical, surgical, or hospital services under which the provider has agreed to accept a specified amount of payment for his charges, the pecuniary liability of the employer for medical, surgical, and hospital services shall be governed by the provisions of that specific agreement and not by the prevailing community rate. In absence of a contract as referenced above, no employer shall reimburse the provider for an amount less than the prevailing community rate.

B. The Commission, by regulation, shall establish the prevailing community rate for medical, surgical, or hospital services in communities in the Commonwealth, as follows:

1. The prevailing community rate for medical, surgical, and hospital services shall be established by the Commission at an amount that is representative of the charge for the same services charged by providers in the community where the services are provided in the Commonwealth;

2. The Commission shall determine the number and geographic area of communities across the Commonwealth. In establishing the communities, the Commission shall consider the ability to obtain relevant charge data based on geographic area and such other criteria as are consistent with the purposes of this title;

3. In determining an amount that is representative of the charge of the same services charged by the same providers in a community, the Commission shall collect such charge data, by purchasing data from aggregators of such data or by other means that the Commission finds appropriate, it deems is necessary to obtain a representative sample of charges for such services by providers in the community. The data included in such samples shall not be based on charges developed by the provider for the sole or primary purpose of billing for services provided pursuant to this title. The data included in such samples shall be coded and billed with appropriate Current Procedural Terminology (CPT) codes and modifiers, Healthcare Common Procedure Coding System (HCPCS) codes and modifiers, International Classification of Diseases (ICD) codes, or Diagnosis Related Groups (DRG) codes, in the versions current as of the date of treatment, and for the initial base year the Commission shall use such charge data for services provided during the period January 1, 2014, through December 31, 2014. The initial prevailing community rate established by the Commission pursuant to this subsection shall be the prevailing community rate determined for calendar year 2014 as adjusted to reflect changes in the appropriate Index for 2015 as referenced in subsection C;

4. If the sample size of data of charges for such services by providers in a community is sufficient to serve as the basis for statistically significant results, as determined by the Commission, the Commission shall determine the mean, median, and mode of the charges for the same services. The Commission shall establish the prevailing community rate for the same service at the middle value of such mean, median, and mode of the charges for the same services;

5. If the sample size of data of charges for such services by providers in a community is not sufficient to serve as the basis for statistically significant results, as determined by the Commission, the Commission may consider additional data from communities adjacent to the community in the Commonwealth where the services were rendered in establishing the prevailing community rate; and

6. If the Commission is not able to determine a prevailing community rate for a newly issued CPT, HCPCS, ICD, or DRG billing codes, the prevailing community rate shall be the charge of the health care provider rendering the health care service until such time as a prevailing community rate can be calculated.

C. The Commission shall adjust each prevailing community rate initially established pursuant to

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60 subsection B to an amount that reflects the rate of increase, if any, over the previous 12 months in the
61 medical care component of the Consumer Price Index for All Urban Consumers (CPI-U) for the South
62 as published by the Bureau of Labor Statistics of the U.S. Department of Labor (the "Index"). The
63 Commission's first such adjustment shall cover the 12 months that follow the effective date of the
64 regulations establishing the prevailing community rate, and subsequent adjustments shall be made
65 annually thereafter. The Commission may make further adjustments to each prevailing community rate
66 over and above the Index and in doing so may consider access to health care, the need to control costs,
67 or factors deemed relevant by the Commission.

68 D. The Commission shall provide public access to information regarding the prevailing community
69 rate for services by code, including any adjustments made pursuant to subsection C, through the
70 Commission's website. No information provided on the website shall be provider-specific or disclose or
71 release the identity of any provider.

72 E. The employer shall not be liable in damages for malpractice by a physician or surgeon furnished
73 by him pursuant to the provisions of § 65.2-603, but the consequences of any such malpractice shall be
74 deemed part of the injury resulting from the accident and shall be compensated for as such.

75 B. F. The pecuniary liability of the employer for treatment pursuant to subsection A that is rendered
76 on or after July 1, 2014, by:

77 1. A nurse practitioner or physician assistant serving as an assistant-at-surgery shall be limited to no
78 more than 20 percent of the reimbursement due under subsection A to the physician performing the
79 surgery; and

80 2. An assistant surgeon in the same specialty as the primary surgeon shall be limited to no more than
81 50 percent of the reimbursement due under subsection A to the primary physician performing the
82 surgery.

83 C. G. Multiple procedures completed on a single surgical site associated with medical, surgical, and
84 hospital services pursuant to subsection A and rendered on or after July 1, 2014, shall be coded and
85 billed with appropriate Current Procedural Terminology (CPT) modifiers and paid according to the
86 National Correct Coding Initiative (NCCI) rules and the CPT as in effect at the time the health care was
87 provided to the claimant. The CPT and NCCI, as in effect at the time such health care was provided to
88 the claimant, shall serve as the basis for processing a health care provider's billing form or itemization
89 for such items as global and comprehensive billing and the unbundling of health care services. Hospital
90 in-patient health care services shall be coded and billed through the International Statistical Classification
91 of Diseases and Related Health Problems (ICD) as in effect at the time the health care was provided to
92 the claimant.

93 **2. That any prevailing community rate established pursuant to this act shall apply only to medical,**
94 **surgical, and hospital services provided on or after the date the Workers' Compensation**
95 **Commission establishes the prevailing community rate for the medical, surgical, or hospital**
96 **service.**

97 **3. That the Workers' Compensation Commission shall convene a work group of stakeholders to**
98 **review information and reports from the Virginia All-Payer Claims Database and make**
99 **recommendations as to whether such information and reports may be a benchmark or of use in**
100 **establishing the prevailing community rate. The Workers' Compensation Commission shall report**
101 **its findings and recommendations to the Chairmen of the House and Senate Commerce and Labor**
102 **Committees by December 15, 2015.**

103 **4. That the Workers' Compensation Commission shall promulgate regulations to implement the**
104 **provisions of this act to be effective within 280 days of its enactment. The Workers' Compensation**
105 **Commission shall utilize a group of stakeholders, including providers, claimants, insurance**
106 **carriers, employers, to assist in the development of necessary regulations and shall provide an**
107 **opportunity for public comment on the regulations prior to adoption.**

108 **5. That the Workers' Compensation Commission shall consult an advisory panel of providers,**
109 **claimants, insurance carriers, employers, and other persons determined by the Workers'**
110 **Compensation Commission, regarding the collection or purchase of data under subdivision B 3 of**
111 **§ 65.2-605 of the Code of Virginia as added by this act.**

112 **6. That the provisions of this act shall expire on July 1, 2018.**