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HOUSE BILL NO. 2037**FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by Senator Wagner
on February 20, 2017)

(Patron Prior to Substitute—Delegate Miller)

A *BILL to amend and reenact §§ 38.2-3407.3 and 38.2-3407.13:2 of the Code of Virginia, relating to health insurance; calculation of cost-sharing provisions; payments to nonparticipating physicians.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3407.3 and 38.2-3407.13:2 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. *When there is no amount actually paid or payable to the provider by the insurer, health services plan, or health maintenance organization for the services provided, the insurer, health services plan, or health maintenance organization shall use such insurer's, health services plan's, or health maintenance organization's pre-established allowed amount to calculate the amount payable by the insured for such services.* 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.

§ 38.2-3407.13:2. Claims paid to insureds for services from nonparticipating physicians.

When an insurer, health services plan or health maintenance organization follows a policy of sending its payment to the insured, subscriber or enrollee for a claim for services received from a nonparticipating physician or osteopath, the insurer, health services plan or health maintenance organization shall: (i) include language in the certificate or evidence of coverage of the insured, subscriber or enrollee that notifies the insured, subscriber or enrollee of the responsibility to apply the plan payment to the claim from such nonparticipating provider, (ii) include this language with any such payment sent to the insured, subscriber or enrollee, ~~and~~ (iii) include the name and any last known address of the nonparticipating provider on the explanation of benefits statement, *and (iv) make the payment by a check payable jointly to both the insured, subscriber or enrollee and the nonparticipating physician or osteopath.*