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SENATE BILL NO. 1301

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend the Code of Virginia by adding a section numbered 38.2-3407.13:3, relating to health insurance; balance billing by nonparticipating providers; express contracts.

Patron—Vogel

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 38.2-3407.13:3 as follows:

§ 38.2-3407.13:3. Balance billing by nonparticipating providers; liability of covered person when no express contract.

A. As used in this section, unless the context requires otherwise:

"Allowed amount" means the contractually agreed-upon amount paid by a carrier to a participating provider or the amount required to be paid under the terms of the health benefit plan for out-of-network covered benefits provided to the covered person.

"Balance billing" means efforts by a nonparticipating provider to collect from a covered person the portion of the nonparticipating provider's charges or fees remaining unpaid after receipt of partial payment from the covered person's carrier or any other third-party payer, where (i) the nonparticipating provider has provided health care services to the covered person and (ii) the carrier that issued the covered person's health benefit plan declines to pay all of the nonparticipating provider's charges and fees.

"Carrier" means any entity that is authorized to sell, offer, or provide a health benefit plan, including an entity providing a plan of health insurance, an accident and sickness insurance company, a health maintenance organization, a corporation offering a health benefit plan, a fraternal benefit society, or other entity that provides health benefit plans subject to state insurance regulation. "Insurer" does not include a multiple employer welfare arrangement.

"Covered person" means a policyholder, subscriber, enrollee, participant, or other individual who is entitled to health care services provided, arranged for, paid for, or reimbursed pursuant to a health benefit plan.

"Express contract" means a written agreement, in a form approved by the Commission, that is entered into between a covered person and a nonparticipating provider, and signed by the covered person while he is competent and not under duress, (i) in which the covered person affirmatively undertakes and agrees to pay, and acknowledges his liability for, the fees and costs of the nonparticipating provider for specified health care services provided by the nonparticipating provider to the extent that the charges or fees are not paid by the covered person's carrier or any other third-party payer and (ii) that includes the following disclosures:

1. That the nonparticipating provider is not included in the provider network of the covered person's health benefit plan;

2. The total amount, stated in dollars, of the charges and fees that the nonparticipating provider has agreed to charge the covered person for the health care services, including any amounts (i) that may be paid by the covered person's carrier under the health benefit plan pursuant to an assignment of benefits and (ii) paid by any other third-party payer;

3. The total amount, stated in dollars, of the charges and fees described in subdivision 2 that the that the covered person has agreed to pay;

4. If applicable, the amount of any discount from the nonparticipating provider's chargemaster rate, or its equivalent, received by the covered person; and

5. That if additional health care services are required after the execution of the agreement, the covered person is not liable for the nonparticipating provider's charges and fees for such additional health care services unless an addendum to the agreement addressing liability for such additional amounts is executed by both parties.

"Health benefit plan" means an arrangement for the delivery of health care, on an individual or group basis, in which a health carrier undertakes to provide, arrange for, pay for, or reimburse any of the costs of health care services for a covered person that is offered in accordance with the laws of any state. "Health benefit plan" does not include short-term travel, accident only, limited or specified disease, or individual conversion policies or contracts, nor policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any

other similar coverage under state or federal governmental plans.

"Health care services" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

"Nonparticipating provider" means a provider that is not a participating health care entity under a covered person's health benefit plan.

"Participating provider" means a provider that, under contract with the health carrier or with its contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payments, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

"Provider" means any hospital, physician, or other person authorized by statute, licensed, or certified to furnish health care services.

"Reasonable value of a health care service" means the market value, and not a chargemaster or equivalent price, of the health care service provided, which market value shall be determined on the basis of the amounts that a provider generally receives for providing the health care service, which may be ascertained from the amounts the nonparticipating provider accepts in satisfaction of billed fees and charges from any one or more of the following: (i) the U.S. Treasury if a patient is enrolled in Medicare, (ii) carriers if a patient is a covered person under a health benefit plan in which the provider is a participating provider, and (iii) uninsured patients who prior to the provision of the health care service negotiated a discount on the fees and charges therefor and paid such negotiated amount in full when billed.

B. If a nonparticipating provider and a covered person enter into an express contract prior to the time the health care services are provided, then the nonparticipating provider may engage in balance billing to collect from the covered person the unpaid portion of the nonparticipating provider's charges or fees as provided in the express contract.

C. If a nonparticipating provider and a covered person have not entered into an express contract prior to the time the health care services are provided to the covered person, then:

1. The covered person and nonparticipating provider shall not be deemed to have entered into a binding contract for the provision of the health care services, without regard to whether the covered person or his personal representative may have executed a financial responsibility agreement, authorization for treatment, assignment of benefits, or other instrument that does not constitute an express contract under this section; and

2. The covered person shall be obligated by an implied contract to pay the reasonable value of the health care services provided by the nonparticipating provider, less any amount received by the nonparticipating provider from the covered person's carrier or any other third-party payer with respect to the provision of such services. If the covered person fails to pay the amount of such obligation, the nonparticipating provider may balance bill the covered person therefor.

D. The nonparticipating provider shall bear the burden of establishing by a preponderance of the evidence that it has entered into an express contract with a covered person.

E. Pursuant to the authority granted by § 38.2-223, the Commission shall promulgate regulations for the form of express contracts, which shall include standards for readability and the minimum size of print.

F. The Commission shall have no jurisdiction to adjudicate individual controversies arising out of this section.

2. That the provisions of this act shall become effective on January 1, 2018.