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SENATE BILL NO. 1685

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 31, 2019)

(Patron Prior to Substitute—Senator Dunnavant)

A *BILL to amend and reenact § 38.2-3407.10:1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3407.10:2, relating to health insurance; credentialing; mental health services.*

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3407.10:1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-3407.10:2 as follows:

§ 38.2-3407.10:1. Reimbursement for services rendered during pendency of physician's or mental health professional's credentialing application.

A. As used in this section:

"Carrier" means an entity subject to the insurance laws and regulations of the Commonwealth and subject to the jurisdiction of the Commission that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services *or mental health services*, including an insurer licensed to sell accident and sickness insurance, a health maintenance organization, a health services plan, or any other entity providing a plan of health insurance, health benefits, ~~or~~ health care services, *or mental health services*.

"Covered person" means a policyholder, subscriber, enrollee, participant, or other individual covered by a health benefit plan.

"Health benefit plan" means a policy, contract, certificate, or agreement offered by a carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

"Mental health professional" has the meaning ascribed thereto in § 54.1-2400.1.

"Mental health services" means benefits with respect to items or services provided by mental health professionals for mental health conditions as defined under the terms of a health benefit plan.

"Network" means a group of participating physicians *or mental health professionals* who provide health care services under the carrier's health benefit plan that requires or creates incentives for a covered person to use the participating physicians *or mental health professionals*.

"New provider applicant" means a physician *or mental health professional* who has submitted a completed credentialing application to a carrier.

"Participating mental health professional" means a mental health professional who is managed, under contract with, or employed by a carrier and who 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 carrier.

"Participating physician" means a physician who is managed, under contract with, or employed by a carrier and who has agreed to provide health care services *or mental health services* to covered persons with an expectation of receiving payments, other than coinsurance, copayments, or deductibles, directly or indirectly from the carrier.

"Physician" means a doctor of medicine or osteopathic medicine holding an active license from the Board of Medicine.

B. A carrier that credentials the physicians *or mental health professionals* in its network shall establish reasonable protocols and procedures for reimbursing new provider applicants, after being credentialed by the carrier, for health care services *or mental health services* provided to covered persons during the period in which the applicant's completed credentialing application is pending. At a minimum, the protocols and procedures shall:

1. Apply only if the ~~physician's~~ *new provider applicant's* credentialing application is approved by the carrier;

2. Permit ~~physician~~ reimbursement *to a new provider applicant* for services rendered from the date the ~~physician's~~ *new provider applicant's* completed credentialing application is received for consideration by the carrier;

3. Apply only if a contractual relationship exists between the carrier and the ~~physician~~ *new provider applicant* or entity for whom the ~~physician~~ *new provider applicant* is employed or engaged; and

4. Require that any reimbursement be paid at the in-network rate that the ~~physician~~ *new provider applicant* would have received had he been, at the time the covered health care services were provided, a credentialed participating physician *or mental health professional* in the network for the applicable health benefit plan.

C. Nothing in this section shall require reimbursement of ~~physician-rendered~~ *the new provider*

60 *applicant-rendered* services that are not benefits or services covered by the carrier's health benefit plan.

61 D. Nothing in this section requires a carrier to pay reimbursement at the contracted in-network rate
62 for any covered medical services provided by the new provider applicant if the new provider applicant's
63 credentialing application is not approved or the carrier is otherwise not willing to contract with the new
64 provider applicant.

65 E. Payments made or retroactive denials of payments made under this section shall be governed by
66 § 38.2-3407.15.

67 F. If a payment is made by the carrier to a ~~physician~~ *new provider applicant* or any entity that
68 employs or engages such ~~physician~~ *new provider applicant* under this section for a covered service, the
69 patient shall only be responsible for any coinsurance, copayments, or deductibles permitted under the
70 insurance contract with the carrier or participating provider agreement with the *physician or mental*
71 *health professional*. If the new provider applicant is not credentialed by the carrier, the new provider
72 applicant or any entity that employs or engages such *physician or mental health professional* shall not
73 collect any amount from the patient for health care services *or mental health services* provided from the
74 date the completed credentialing application was submitted to the carrier until the applicant received
75 notification from the carrier that credentialing was denied.

76 G. New provider applicants, in order to submit claims to the carrier pursuant to this section, shall
77 provide written or electronic notice to covered persons in advance of treatment that they have submitted
78 a credentialing application to the carrier of the covered person, stating that the carrier is in the process
79 of obtaining and verifying the following pursuant to credentialing regulations:

80 "Notice of Provider credentialing and re-credentialing.

81 Your health insurance carrier is required to establish and maintain a comprehensive credentialing
82 verification program to ensure that its physicians and *mental health professionals* meet the minimum
83 standards of professional licensure or certification. Written supporting documentation for (i) physicians
84 or (ii) *mental health professionals* who have completed their residency or fellowship requirements for
85 their specialty area more than 12 months prior to the credentialing decision shall include:

- 86 1. Current valid license and history of licensure or certification;
- 87 2. Status of hospital privileges, if applicable;
- 88 3. Valid U.S. Drug Enforcement Administration certificate, if applicable;
- 89 4. Information from the National Practitioner Data Bank, as available;
- 90 5. Education and training, including postgraduate training, if applicable;
- 91 6. Specialty board certification status, if applicable;
- 92 7. Practice or work history covering at least the past five years; and
- 93 8. Current, adequate malpractice insurance and malpractice history covering at least the past five
94 years.

95 Your health insurance carrier is in the process of obtaining and verifying the above information in
96 order to determine if your *physician or mental health professional* will be credentialed or not."

97 H. The provisions of this section shall not apply to coverages issued by a Medicare Advantage plan
98 or, but shall apply to health maintenance organizations that issue coverage pursuant to Title XIX of the
99 Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid).

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

102 **§ 38.2-3407.10:2. Credentialing of private mental health agencies.**

103 A. As used in this section, "carrier," "covered person," and "health benefit plan," have the same
104 meaning ascribed thereto in § 38.2-3407.10:1.

105 "Mental health professional" means a person who by education and experience is professionally
106 qualified to provide counseling interventions designed to facilitate an individual's achievement of human
107 development goals and remediate mental, emotional, or behavioral disorders and associated distresses
108 that interfere with mental health and development.

109 "Network" means a group of participating mental health professionals who provide mental health
110 services under the carrier's health benefit plan that requires or creates incentives for a covered person
111 to use the participating mental health professionals.

112 "Private mental health agency" means a practice group of mental health professionals at least one of
113 whom is licensed under Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1.

114 B. A carrier that credentials the mental health professionals in its network may establish reasonable
115 protocols and procedures for credentialing private mental health agencies. Upon approval by a carrier
116 of a credentialing application made by a private mental health agency, any mental health professional
117 employed or engaged by such agency shall be deemed credentialed pursuant to the approved
118 credentialing application of the private mental health agency. If a carrier opts to credential a private
119 mental health agency, at a minimum the protocols and procedures established by the carrier shall:

- 120 1. Apply only if the private mental health agency's credentialing application is approved by the
121 carrier; and

122 2. *Require a private mental health agency to maintain minimum audit report requirements, as*
123 *determined by the Department of Behavioral Health and Developmental Services.*
124 C. *The Commission shall have no jurisdiction to adjudicate individual controversies arising out of*
125 *this section.*