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HOUSE BILL NO. 360

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions on February 10, 2022)

(Patron Prior to Substitute—Delegate Fowler)

A BILL to amend and reenact § 38.2-3407.15:2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3407.15:7, relating to health insurance; carrier disclosure of certain information.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3407.15:2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-3407.15:7 as follows:

§ 38.2-3407.15:2. Carrier contracts; required provisions regarding prior authorization.

A. As used in this section, unless the context requires a different meaning:

"Carrier" has the same meaning ascribed thereto in subsection A of § 38.2-3407.15.

"Prior authorization" means the approval process used by a carrier before certain drug benefits may be provided.

"Provider contract" has the same meaning ascribed thereto in subsection A of § 38.2-3407.15.

"Supplementation" means a request communicated by the carrier to the prescriber or his designee, for additional information, limited to items specifically requested on the applicable prior authorization request, necessary to approve or deny a prior authorization request.

B. Any provider contract between a carrier and a participating health care provider with prescriptive authority, or its contracting agent, shall contain specific provisions that:

1. Require the carrier to, in a method of its choosing, accept telephonic, facsimile, or electronic submission of prior authorization requests that are delivered from e-prescribing systems, electronic health record systems, and health information exchange platforms that utilize the National Council for Prescription Drug Programs' SCRIPT standards;

2. Require that the carrier communicate to the prescriber or his designee within 24 hours, including weekend hours, of submission of an urgent prior authorization request to the carrier, if submitted telephonically or in an alternate method directed by the carrier, that the request is approved, denied, or requires supplementation;

3. Require that the carrier communicate electronically, telephonically, or by facsimile to the prescriber or his designee, within two business days of submission of a fully completed prior authorization request, that the request is approved, denied, or requires supplementation;

4. Require that the carrier communicate electronically, telephonically, or by facsimile to the prescriber or his designee, within two business days of submission of a properly completed supplementation from the prescriber or his designee, that the request is approved or denied;

5. Require that if the prior authorization request is denied, the carrier shall communicate electronically, telephonically, or by facsimile to the prescriber or his designee, within the timeframes established by subdivision 3 or 4, as applicable, the reasons for the denial;

6. Require that prior authorization approved by another carrier be honored, upon the carrier's receipt from the prescriber or his designee of a record demonstrating the previous carrier's prior authorization approval or any written or electronic evidence of the previous carrier's coverage of such drug, at least for the initial 30 days of a member's prescription drug benefit coverage under a new health plan, subject to the provisions of the new carrier's evidence of coverage;

7. Require that a tracking system be used by the carrier for all prior authorization requests and that the identification information be provided electronically, telephonically, or by facsimile to the prescriber or his designee, upon the carrier's response to the prior authorization request;

8. Require that the carrier's prescription drug formularies, all drug benefits subject to prior authorization by the carrier, all of the carrier's prior authorization procedures, and all prior authorization request forms accepted by the carrier be made available through one central location on the carrier's website and that such information be updated by the carrier within seven days of approved changes;

9. Require a carrier to honor a prior authorization issued by the carrier for a drug, other than an opioid, regardless of changes in dosages of such drug, provided such drug is prescribed consistent with U.S. Food and Drug Administration-labeled dosages;

10. Require a carrier to honor a prior authorization issued by the carrier for a drug regardless of whether the covered person changes plans with the same carrier and the drug is a covered benefit with the current health plan;

11. Require a carrier, when requiring a prescriber to provide supplemental information that is in the covered individual's health record or electronic health record, to identify the specific information

required;

12. Require that no prior authorization be required for at least one drug prescribed for substance abuse medication-assisted treatment, provided that (i) the drug is a covered benefit, (ii) the prescription does not exceed the FDA-labeled dosages, and (iii) the drug is prescribed consistent with the regulations of the Board of Medicine;

13. Require that when any carrier has previously approved prior authorization for any drug prescribed for the treatment of a mental disorder listed in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, no additional prior authorization shall be required by the carrier, provided that (i) the drug is a covered benefit; (ii) the prescription does not exceed the FDA-labeled dosages; (iii) the prescription has been continuously issued for no fewer than three months; and (iv) the prescriber performs an annual review of the patient to evaluate the drug's continued efficacy, changes in the patient's health status, and potential contraindications. Nothing in this subdivision shall prohibit a carrier from requiring prior authorization for any drug that is not listed on its prescription drug formulary at the time the initial prescription for the drug is issued; ~~and~~

14. Require a carrier to honor a prior authorization issued by the carrier for a drug regardless of whether the drug is removed from the carrier's prescription drug formulary after the initial prescription for that drug is issued, provided that the drug and prescription are consistent with the applicable provisions of subdivision 13*;*

15. Require a carrier, beginning July 1, 2025, notwithstanding the provisions of subdivision 1 or any other provision of this section, to establish and maintain an online process that (i) links directly to e-prescribing systems and electronic health record systems that utilize the National Council for Prescription Drug Programs SCRIPT standard; (ii) can accept electronic prior authorization requests from a provider; (iii) can approve electronic prior authorization requests for which no additional information is needed by the carrier to process the prior authorization request, no clinical review is required, and that meet the carrier's criteria for approval; and (iv) otherwise meets the requirements of this section. No carrier shall (a) impose a charge or fee on a participating health care provider for accessing the online process required by this subdivision or (b) access, absent provider consent, provider data via the online process other than for the enrollee; and

16. Require a participating health care provider, beginning July 1, 2025, to ensure that any e-prescribing system or electronic health record system owned by or contracted for the provider to maintain an enrollee's health record has the ability to access the electronic prior authorization process established by a carrier as required by subdivision 15 and the real time cost information data for a covered prescription drug made available by a carrier pursuant to § 38.2-3407.15:7. A provider may request a waiver of compliance under this subdivision for undue hardship for a period not to exceed 12 months.

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

D. This section shall apply with respect to any contract between a carrier and a participating health care provider, or its contracting agent, that is entered into, amended, extended, or renewed on or after January 1, 2016.

E. Notwithstanding any law to the contrary, the provisions of this section shall not apply to:

1. Coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare), Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid), Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq. (CHIP), 5 U.S.C. § 8901 et seq. (federal employees), or 10 U.S.C. § 1071 et seq. (TRICARE);

2. Accident only, credit or disability insurance, long-term care insurance, TRICARE supplement, Medicare supplement, or workers' compensation coverages;

3. Any dental services plan or optometric services plan as defined in § 38.2-4501; or

4. Any health maintenance organization that (i) contracts with one multispecialty group of physicians who are employed by and are shareholders of the multispecialty group, which multispecialty group of physicians may also contract with health care providers in the community; (ii) provides and arranges for the provision of physician services by such multispecialty group physicians or by such contracted health care providers in the community; and (iii) receives and processes at least 85 percent of prescription drug prior authorization requests in a manner that is interoperable with e-prescribing systems, electronic health records, and health information exchange platforms.

§ 38.2-3407.15:7. Carrier provision of certain prescription drug information.

A. As used in this section:

"Carrier" has the same meaning as provided in § 38.2-3407.15.

"Cost-sharing requirement" has the same meaning as provided in § 38.2-3438.

"Enrollee" has the same meaning as provided in § 38.2-3407.10.

"Pharmacy benefits manager" has the same meaning as provided in § 38.2-3465.

"Provider" has the same meaning as provided in § 38.2-3407.10.

B. Beginning July 1, 2025, any carrier or its pharmacy benefits manager shall provide real-time cost information data to enrollees and contracted providers for a covered prescription drug, including any cost-sharing requirement or prior authorization requirements, and shall ensure that the data is accurate. Such cost information data shall be available to the provider in a format that a provider can access and understand such as through the provider's e-prescribing system or electronic health record system for which the carrier or pharmacy benefits manager or its designated subcontractor has adopted that utilizes the National Council for Prescription Drug Programs SCRIPT standard from which the provider makes the request.

2. That the State Corporation Commission's Bureau of Insurance (the Bureau) shall, in coordination with the Secretary of Health and Human Resources, establish a work group to assess the current status of electronic prior authorization in the Commonwealth and make recommendations regarding the implementation of electronic prior authorization, which may include a single standardized process as required by this act, including any recommendations for necessary statutory or regulatory changes. The work group shall include relevant stakeholders, including representatives from the Virginia Association of Health Plans, the Medical Society of Virginia, the National Council for Prescription Drug Programs, and the Virginia Hospital and Healthcare Association, and other parties with an interest in the underlying technology. The work group shall report its findings and recommendations to the Chairmen of the Senate Committee on Commerce and Labor and the House Committee on Commerce and Energy by November 1, 2022.

3. That the provisions of the first enactment of this act shall not become effective unless reenacted by the 2023 Session of the General Assembly.