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SENATE BILL NO. 1362

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 Wagner)

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 out-of-network providers of ancillary services; liability of covered person.

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 out-of-network provider of ancillary services; liability of covered person.

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

"Allowed amount" means the amount that a carrier is obligated to pay, pursuant to the terms of the covered person's health benefit plan, to a covered person for ancillary services provided to the covered person by an out-of-network provider. The allowed amount shall be net of any cost-sharing amount.

"Ancillary services" means screening, diagnostic, or laboratory services, including pathology services and diagnostic interpretations, that are covered services distributed and provided (i) for a covered person; (ii) in connection with or arising out of other health care services that the covered person receives from an in-network provider; (iii) by a practitioner who provides the services without a consultation, examination, meeting, or other personal contact with the covered person; and (iv) at a facility unaffiliated with the facility where the in-network provider provides covered services for the covered person. "Ancillary services" do not include services provided to a covered person in a hospital, ambulatory care facility, or government-owned facility.

"Balance billing" means charging a covered person who is insured through a health benefit plan that uses a provider network to recover from the covered person the portion of an out-of-network health care provider's fees or charges for ancillary services provided to the covered person by such out-of-network health care provider that is in excess of the allowed amount.

"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. "Carrier" does not include a multiple employer welfare arrangement.

"Cost-sharing" means a copayment, coinsurance, or deductible, or any other form of financial obligation of the covered person other than a premium or share of premium, or any combination of any of these financial obligations.

"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.

"Covered service" means a health care service that is covered under a covered person's health benefit plan.

"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 and 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 practitioner" or "practitioner" means any individual certified or licensed by any of the health regulatory boards within the Department of Health Professions, except individuals regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Health care services" has the same meaning ascribed thereto in § 38.2-3438.

"In-network provider" means a health care provider having a contract with a carrier to provide health care services to a covered person under a health benefit plan as a member of the health benefit plan's network.

"In-network provider's notice of liability for balance" means a written notice to a covered person that:

1. Informs the covered person which ancillary services cannot be performed at the practitioner's office and will be referred to an out-of-network provider;

2. Informs the covered person that he may be financially responsible for cost-sharing amounts attributable to using an out-of-network provider to provide the ancillary service;

3. Informs the covered person that any ancillary service that is provided by the out-of-network provider may not be a covered service and that the covered person may be subject to balance billing with respect to such an ancillary service, including an estimate of the out-of-network cost for any such ancillary service;

4. Informs the covered person that he will be notified in writing at the time of the provision of the health care services from the in-network provider if ancillary services need to be performed;

5. Advises the covered person to contact his health insurance carrier for more information about his covered services and provider network; and

6. Is signed by the covered person to acknowledge that he has read and understands the notice.

"Network" or "provider network" means the health care providers designated by a carrier to provide health care services to covered persons.

"Out-of-network provider" means any health care provider other than an in-network provider.

"Provider" or "health care provider" means any health care practitioner.

B. An in-network provider that directs or refers a covered person to an out-of-network provider for an ancillary service shall provide to the covered person an in-network provider's notice of liability for balance.

C. An out-of-network provider, prior to providing an ancillary service to the covered person, shall provide a good faith estimate of the out-of-network provider's charges for the ancillary service, absent unforeseen medical circumstances that might arise when the services are provided;

D. If the out-of-network provider, prior to providing an ancillary service to the covered person, failed to provide a written good faith estimate of the out-of-network provider's charges for the ancillary service, then (i) the covered person shall not owe or be liable to the out-of-network provider for the ancillary service any more than the allowed amount and (ii) the out-of-network provider shall not balance bill or collect any amount from the covered person for the ancillary service except for the allowed amount.

E. A carrier shall pay the allowed amount directly to the out-of-network provider.

F. Any communication from an out-of-network provider of an ancillary service to the covered person prior to the covered person's receipt of information from his carrier regarding the allowed amount for the ancillary service shall include a notice in at least 12-point boldface type stating that:

1. The covered person is not obligated to pay any amount to the out-of-network provider with respect to the ancillary service until his carrier determines the allowed amount and the covered person's cost-sharing amount; and

2. A covered person's obligation to the out-of-network provider with respect to the ancillary service shall not exceed the allowed amount and the covered person's cost-sharing amount unless the conditions set forth in subdivision D have been satisfied.

G. The Commission shall provide a notice on its website containing information for individuals relating to the protections provided by this section and information on how individuals may report and file complaints with the Commission.

H. Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and regulations as it may deem necessary to implement this section.

I. This section does not apply to the provision of emergency services as defined in § 38.2-3438.

J. 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, 2020.