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SENATE BILL NO. 766

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on February 25, 2020)

(Patron Prior to Substitute—Senator Barker)

A BILL to amend and reenact §§ 32.1-330.2 and 38.2-3407.4 of the Code of Virginia, relating to health care; explanation of benefits; sensitive health care services.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-330.2 and 38.2-3407.4 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-330.2. Medicaid managed care programs; program information documents; plain language required.

A. Whenever medical assistance services pursuant to this chapter are furnished through managed care programs, the Board of Medical Assistance Services shall require that all program information documents furnished recipients covered thereunder shall be written in nontechnical, readily understandable language, using words of common, everyday usage.

B. Each sponsor or administrator of any such managed care program shall test the readability of its program information documents by use of the Flesch Readability Formula, as set forth in Rudolf Flesch, *The Art of Readable Writing* (1949, as revised 1974), and no program information document shall be used unless it achieves a Flesch total readability score of ~~forty~~ 40 or more. The requirements of this subsection shall not apply to language ~~which~~ that is mandated by federal or state laws, regulations, or agencies.

C. All program information documents within the scope of this section, and all amendments thereto, shall be filed with the Department of Medical Assistance Services in advance of their use and distribution, accompanied by certificates setting forth the Flesch scores and certifying compliance with the requirements of this section. Any program information document ~~which~~ that is exempt from the requirements of subsection B shall be accompanied by a documentation of the federal or state law, regulation, or agency mandate that authorizes the exemption.

D. For the purpose of this section, the term "program information documents" means all forms, brochures, handbooks, or other documentation (i) provided recipients covered under Medicaid managed care programs; and (ii) describing the programs' medical care coverages and the rights and responsibilities of recipients covered thereunder. Further, the term "recipient" ~~shall include~~ includes potential recipients and recipients.

E. Each contract between the Department and a sponsor or administrator that contracts with the Department to provide services through the Medicaid managed care program shall require that the sponsor or administrator provide each recipient covered under its program with an explanation of benefits that complies with the requirements of § 38.2-3407.4.

§ 38.2-3407.4. Explanation of benefits.

A. As used in this section:

"Carrier" means any insurer issuing an accident and sickness insurance policy, corporation issuing subscription contracts, health maintenance organization, or managed care organization.

"Explanation of benefits" means a form provided by a carrier that explains the amounts covered under a policy or plan and shows the amounts payable by a covered person or recipient to a health care provider.

"Managed care organization" means a sponsor or administrator that contracts with the Department of Medical Assistance Services to provide services through the Medicaid managed care program.

"Sensitive health care services" includes health care services that a covered person or recipient may reasonably be expected to prefer not be disclosed to another person, such as services related to reproductive health, mental health, or substance use disorders, provided that the specific health care services that constitute sensitive health care services shall be as specified in regulations adopted by the Commission that define sensitive health care services as required by subdivision D 4.

B. Each insurer issuing an accident and sickness insurance policy, a corporation issuing subscription contracts, and each health maintenance organization carrier shall file for approval provide to covered persons or recipients an explanation of benefits forms in a form approved by the Commission. These explanation of benefit forms shall be subject to the requirements of § 38.2-316 or § 38.2-4306, as applicable.

B. C. The explanation of benefits shall accurately and clearly set forth the benefits payable under the contract or program.

C. D. The Commission ~~may issue~~ shall adopt regulations to establish that:

60 1. Establish standards for the accuracy and clarity of the information presented in an explanation of
61 benefits;

62 D. The term "explanation of benefits" as used in this section shall include any form provided by an
63 insurer, health services plan or health maintenance organization which explains the amounts covered
64 under a policy or plan or shows the amounts payable by a covered person to a health care provider;

65 2. Establish alternative methods of delivery of the explanation of benefits that permit (i) a subscriber
66 who is legally authorized to consent to care for a covered person or recipient, (ii) a covered person or
67 recipient who is legally authorized to consent to that covered person's or recipient's own care, or (iii)
68 another party who has the exclusive legal authorization to consent to care for the covered person or
69 recipient to receive the explanation of benefits by an alternative method, provided that such alternative
70 method is in compliance with the provisions of 45 C.F.R. § 164.522 regarding the right to request
71 privacy protection for protected health information;

72 3. Require the carrier to take all reasonable actions to ensure that its internal processes and systems
73 prohibit the identification or description of sensitive health care services in its explanations of benefits;
74 and

75 4. Define "sensitive health care services." In developing that definition, the Commission shall
76 consider the recommendations of the National Committee on Vital and Health Statistics and similar
77 regulations in other states and shall consult with experts in fields including infectious disease,
78 reproductive and sexual health, domestic violence and sexual assault, mental health, and substance use
79 disorders.

80 E. A carrier that requires a covered person to make a request for confidential communications in
81 writing in accordance with 45 C.F.R. § 164.522(b) shall accept the form of the explanation of benefits
82 approved by the Commission.

83 2. That by November 1, 2020, the State Corporation Commission shall commence a proceeding in
84 accordance with its rules of practice and procedure for the adoption of the regulations that are
85 required by subsection D of § 38.2-3407.4 of the Code of Virginia as amended and reenacted by
86 this act.

87 3. That the provisions of the first enactment of this act shall become effective 90 days after the
88 date the State Corporation Commission enters a final order adopting the regulations pursuant to
89 the proceeding commenced pursuant to the second enactment of this act.