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HOUSE BILL NO. 2158

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact § 32.1-325.2 of the Code of Virginia, relating to payor of last resort; third-party claims; right to recovery; transferability.

Patron—Fariss

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-325.2 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-325.2. Department is payor of last resort.

A. Insurers, including group health plans as defined in § 607(1) of the Employee Retirement Income Security Act of 1974, self-insured plans, health services plans, service benefit plans, health maintenance organizations, managed care organizations, pharmacy benefits managers, or other parties that are, by statute, contract, or agreement legally responsible for payment of a claim for a health care item or service, are prohibited from including any clause in health care contracts which would exclude enrolling an individual or in making any payment for benefits to the individual or on the individual's behalf for health care when the individual is eligible for medical assistance.

B. The Department of Medical Assistance Services shall be the payor of last resort to any insurer, including a group health plan as defined in § 607(1) of the Employee Retirement Income Security Act of 1974, a self-insured plan, a health services plan, a service benefit plan, a health maintenance organization, a managed care organization, a pharmacy benefits manager, or other party that is, by statute, contract, or agreement legally responsible for payment of a claim for a health care item or service for persons eligible for medical assistance in the Commonwealth. The above entities, as a condition of doing business in the Commonwealth or providing coverage to a resident of the Commonwealth, shall comply with the requirements set forth in 42 U.S.C. 1396a (a) (25) (F) 1396a(a)(25)(I) (i)-(iv).

C. To the extent the Department of Medical Assistance Services has made payment for medical services where a third party has a legal obligation to make payment for such services, the Commonwealth shall automatically acquire all rights to such payment from the third party.

D. For any claim where (i) the individual subject to the claim received medical services from a managed care organization that has entered into a contract with the Department and (ii) the Department has assigned its right of recovery for the claim to the managed care organization, the managed care organization will obtain all rights to payment from third parties that the Department would have obtained pursuant to subsection C.

E. Managed care organizations shall have a one-year period from the date a claim was paid in which to recover from a liable third-party payor. The managed care organization shall identify and bill such third party during such one-year period. After one year, the Department shall have the right to pursue any such claim that was not timely identified and billed by the managed care organization.

F. To the extent the Department of Medical Assistance Services is permitted by law to obtain recoveries from third parties, actions at law for such recoveries shall be decided under the same laws, rules and standards including applicable bases of liability and defenses as would apply if the individual receiving the services had brought the action directly, provided that nothing herein shall affect the sovereign immunity of the Commonwealth.

G. The term "insurer" as used herein in this section shall be deemed to include without limitation "insurance carriers."

H. All third-party payors shall accept the Commonwealth's right of recovery and the assignment to the Commonwealth of any right of an individual or other entity to payment from such third party for medical services for which payment has been made under the Commonwealth's plan for medical assistance services. A third-party payor that requires prior authorization for an item or service furnished to an individual eligible to receive medical assistance services under this title shall accept authorization for such services provided by the Commonwealth as if such authorization were the prior authorization made by the third-party payor for such item or service. A third-party payor shall not refuse to reimburse the Commonwealth for medical assistance services provided to a person entitled to receive such services based upon such third-party payor having not granted prior authorization for such services.

I. All third-party payors shall respond to the request for payment recovery within 60 calendar days

59 *after receipt of written proof of loss or claim for payment for medical services provided to an individual*
60 *entitled to receive medical assistance services who is covered by such third party. Failure of a*
61 *third-party payor to pay or deny a claim within 120 days after receipt of the claim creates an*
62 *uncontestable obligation to pay the claim.*

63 *J. A payment made by a third-party payor to the Department or its assignee shall be considered*
64 *final 24 months after payment is made. After that date, the amount of the payment is not subject to*
65 *adjustment.*