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SENATE BILL NO. 681

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 7, 2022)

(Patron Prior to Substitute—Senator Obenshain)

A BILL to amend and reenact §§ 8.01-27.5 and 59.1-200 of the Code of Virginia, relating to duty of in-network providers to submit claims to health insurers; Virginia Consumer Protection Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-27.5 and 59.1-200 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-27.5. Duty of in-network providers to submit claims to health insurers; liability of covered patients for unbilled health care services.

A. As used in this section:

"Covered patient" means a patient whose health care services are covered under terms of a health care policy.

"Health care policy" means any health care plan, subscription contract, evidence of coverage, certificate, health services plan, medical or hospital services plan, accident and sickness insurance policy or certificate, or other similar certificate, policy, contract, or arrangement, and any endorsement or rider thereto, offered, arranged, issued, or administered by a health insurer to an individual or a group contract holder to cover all or a portion of the cost of individuals, or their eligible dependents, receiving covered health care services. "Health care policy" includes coverages issued pursuant to (i) Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2 (state employees); (ii) § 2.2-1204 (local choice); (iii) 5 U.S.C. § 8901 et seq. (federal employees); (iv) an employee welfare benefit plan as defined in 29 U.S.C. § 1002 (1) of the Employee Retirement Income Security Act of 1974 (ERISA) that is self-insured or self-funded; and (v) 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), or Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq. (CHIP). "Health care policy" does not include (a) Chapter 55 of Title 10 of the United States Code, 10 U.S.C. § 1071 et seq. (TRICARE); (b) subscription contracts for one or more dental or optometric services plans that are subject to Chapter 45 (§ 38.2-4500 et seq.) of Title 38.2; (c) insurance policies that provide coverage, singly or in combination, for death, dismemberment, disability, or hospital and medical care caused by or necessitated as a result of accident or specified kinds of accidents, including student accident, sports accident, blanket accident, specific accident, and accidental death and dismemberment policies; (d) credit life insurance and credit accident and sickness insurance issued pursuant to Chapter 37.1 (§ 38.2-3717 et seq.) of Title 38.2; (e) insurance policies that provide payments when an insured is disabled or unable to work because of illness, disease, or injury, including incidental benefits; (f) long-term care insurance as defined in § 38.2-5200; (g) plans providing only limited health care services under § 38.2-4300 unless offered by endorsement or rider to a group health benefit plan; (h) TRICARE supplement, Medicare supplement, or workers' compensation coverages; or (i) medical expense coverage issued pursuant to § 38.2-2201.

"Health care provider" has the same meaning ascribed to the term in § 8.01-581.1.

"Health care services" means items or services furnished to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

"Health insurer" means any entity that is the issuer or sponsor of a health care policy.

"In-network provider" means a health care provider that is employed by or has entered into a provider agreement with the health insurer that has issued the health care policy or is a participating provider with such health insurer, under which agreement or conditions of participation the health care provider has agreed to provide health care services to covered patients.

"Patient" means an individual who receives health care services from a health care provider, or any person authorized by law to consent on behalf of the individual incapable of making an informed decision, or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian, or as otherwise provided by law.

"Provider agreement" means a contract, agreement, or arrangement between a health care provider and a health insurer, or a health insurer's network, provider panel, intermediary, or representative, under which the health care provider has agreed to provide health care services to patients with coverage under a health care policy issued by the health insurer and to accept payment from the health insurer for the health care services provided.

B. An in-network provider that provides health care services to a covered patient shall submit its claim to the health insurer for the health care services in accordance with the terms of the applicable provider agreement or as permitted under applicable federal or state laws or regulations, provided that the covered patient provides the in-network provider with information required by the terms of the

covered patient's health care policy's plan documents, including the information that is required to verify the individual's coverage under the health care policy, within not fewer than 21 business days before the deadline for the in-network provider to submit its claim to the health insurer as required by the terms of the provider agreement. If an in-network provider does not submit its claim to the health insurer in accordance with the requirements of this subsection, then (i) the covered patient shall have no obligation to pay for health care services for which the in-network provider was required to submit its claim, (ii) the in-network provider shall not have the benefit of the liens provided by §§ 8.01-66.2 and 8.01-66.9 with regard to health care services for which the in-network provider was required to submit its claim, and (iii) the in-network provider shall be prohibited from recovering payment for any of the health care services for which it was required to submit its claim from an insurer providing medical expense benefits to the covered patient under a policy of motor vehicle liability insurance pursuant to § 38.2-2201, by exercising an assignment of the covered patient's rights to the medical expense benefits or by other means. If the in-network provider submits its claim to the health insurer in accordance with the requirements of this subsection, the covered patient or the health insurer shall be obligated to pay for the health care services in accordance with the terms of the provider agreement or health care policy's plan documents. To the extent that self-insured or self-funded plans governed by ERISA or 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), or Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq. (CHIP) provide otherwise, health care providers shall be permitted to submit claims and coordinate benefits as provided for in the provider agreements or plan documents or as required under applicable federal and state laws and regulations.

C. Any knowing violation of the provisions of this section shall constitute a prohibited practice in accordance with § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

§ 59.1-200. Prohibited practices.

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class";
8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

In any action brought under this subdivision, the refusal by any person, or any employee, agent, or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed;
11. Misrepresenting by the use of any written or documentary material that appears to be an invoice or bill for merchandise or services previously ordered;
12. Notwithstanding any other provision of law, using in any manner the words "wholesale," "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the goods or services advertised or offered for sale;
13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages, or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth,

or under federal statutes or regulations;

13a. Failing to provide to a consumer, or failing to use or include in any written document or material provided to or executed by a consumer, in connection with a consumer transaction any statement, disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection with the consumer transaction;

14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction;

15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515, 3.2-6516, or 3.2-6519 is a violation of this chapter;

16. Failing to disclose all conditions, charges, or fees relating to:

a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the agreement;

16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of receiving overpayments. If the credit balance information is incorporated into statements of account furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;

18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);

19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et seq.);

20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et seq.);

21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-207.17 et seq.);

22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);

23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-424 et seq.);

24. Violating any provision of § 54.1-1505;

25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6 (§ 59.1-207.34 et seq.);

26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);

28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);

29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et seq.);

30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et seq.);

31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);

32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

183 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
184 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
185 35. Using the consumer's social security number as the consumer's account number with the supplier,
186 if the consumer has requested in writing that the supplier use an alternate number not associated with
187 the consumer's social security number;
188 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
189 37. Violating any provision of § 8.01-40.2;
190 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
191 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
192 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
193 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
194 (§ 59.1-525 et seq.);
195 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
196 43. Violating any provision of § 59.1-443.2;
197 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
198 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
199 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
200 47. Violating any provision of § 18.2-239;
201 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
202 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has
203 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
204 presumption that a supplier has reason to know a children's product was recalled if notice of the recall
205 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale
206 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to
207 children's products that are used, secondhand or "seconds";
208 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
209 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
210 52. Violating any provision of § 8.2-317.1;
211 53. Violating subsection A of § 9.1-149.1;
212 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
213 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
214 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
215 which defective drywall has been permanently installed or affixed;
216 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
217 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in
218 § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
219 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
220 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;
221 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
222 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;
223 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);
224 59. Violating any provision of subsection E of § 32.1-126;
225 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed
226 under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;
227 61. Violating any provision of § 2.2-2001.5;
228 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;
229 63. Violating any provision of § 6.2-312;
230 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;
231 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2; and
232 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.); and
233 67. *Knowingly violating any provision of § 8.01-27.5.*
234 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
235 lease solely by reason of the failure of such contract or lease to comply with any other law of the
236 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
237 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
238 such contract or lease.