

SENATE BILL NO. 1261

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

on January 31, 2023)

(Patron Prior to Substitute--Senator Dunnavant)

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; electronic prior authorization and disclosure of certain information; out-of-pocket costs; report.

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;

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

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

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

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

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

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

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

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

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

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

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

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

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

78 15. Require a carrier, beginning July 1, 2025, notwithstanding the provisions of subdivision 1 or
79 any other provision of this section, to establish and maintain an online process that (i) links directly to all
80 e-prescribing systems and electronic health record systems that utilize the National Council for
81 Prescription Drug Programs SCRIPT standard and the National Council for Prescription Drug Programs
82 Real Time Benefit Standard; (ii) can accept electronic prior authorization requests from a provider; (iii)
83 can approve electronic prior authorization requests (a) for which no additional information is needed by
84 the carrier to process the prior authorization request, (b) for which no clinical review is required, and (c)
85 that meet the carrier's criteria for approval; and (iv) links directly to real-time patient out-of-pocket costs
86 for the office visit, considering copayment and deductible, and (v) otherwise meets the requirements of
87 this section. No carrier shall (a) impose a fee or charge on any person for accessing the online process as
88 required by this subdivision or (b) access, absent provider consent, provider data via the online process
89 other than for the enrollee. No later than July 1, 2024, a carrier shall provide contact information of any
90 third-party vendor or other entity the carrier will use to meet the requirements of this subdivision or the
91 requirements of § 38.2-3407.15:8 to any provider that requests such information. A carrier that posts such
92 contact information on its website shall be considered to have met this requirement; and

93 16. Require a participating health care provider, beginning July 1, 2025, to ensure that any e-
94 prescribing system or electronic health record system owned by or contracted for the provider to maintain
95 an enrollee's health record has the ability to access, at the point of prescribing, the electronic prior
96 authorization process established by a carrier as required by subdivision 15 and the real-time patient-
97 specific benefit information, including out-of-pocket costs and more affordable medication alternatives
98 made available by a carrier pursuant to § 38.2-3407.15:8. A provider may request a waiver of compliance
99 under this subdivision for undue hardship for a period specified by the appropriate regulatory authority
100 with the Health and Human Resources Secretariat.

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

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

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

107 1. Coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.
108 (Medicare), Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid), Title XXI of the
109 Social Security Act, 42 U.S.C. § 1397aa et seq. (CHIP), 5 U.S.C. § 8901 et seq. (federal employees), or
110 10 U.S.C. § 1071 et seq. (TRICARE);

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

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

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

121 **§ 38.2-3407.15:7. Carrier provision of certain information.**

122 A. As used in this section:

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

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

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

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

127 B. Beginning July 1, 2025, any carrier or its pharmacy benefits manager shall provide real-time
128 patient-specific benefit information to enrollees and contracted providers for the office visit, including
129 any out-of-pocket costs and more affordable medication alternatives or prior authorization requirements.

130 and shall ensure that the data is accurate. Such cost information data shall be available to the provider at
131 the point of prescribing in an accessible and understandable format, such as through the provider's e-
132 prescribing system or electronic health record system that the carrier or pharmacy benefits manager or its
133 designated subcontractor has adopted that utilizes the National Council for Prescription Drug Programs
134 SCRIPT standard and the National Council for Prescription Drug Programs Real Time Benefit Standard
135 from which the provider makes the request.

136 **2. That the State Corporation Commission's Bureau of Insurance (the Bureau) shall, in coordination**
137 **with the Secretary of Health and Human Resources and subject to the availability of nongeneral**
138 **funds appropriated to the State Corporation Commission, establish a work group to (i) assess**
139 **progress toward implementing electronic prior authorization and real-time cost benefit information**
140 **for prescription drugs, as required by this act, including monitoring and evaluating the impact of**
141 **any state or federal developments; (ii) evaluate and make recommendations to establish a process**
142 **for electronic prior authorization for surgery and other procedures in order to maximize efficiency**
143 **and minimize delays; (iii) evaluate and make recommendations to establish an online process for a**
144 **real-time link at the point of prescribing for any available prescription coupons, and (iv) make**
145 **recommendations for any additional statutory changes required to facilitate such implementation**
146 **or to establish such processes. The work group shall include relevant stakeholders, including**
147 **representatives from the Virginia Association of Health Plans, the Medical Society of Virginia, the**
148 **Virginia Hospital and Healthcare Association, the Virginia Pharmacists Association, and other**
149 **parties with an interest in the underlying technology. The work group shall report its findings and**
150 **recommendations to the Chairmen of the Senate Committees on Commerce and Labor and**
151 **Education and Health and the House Committees on Commerce and Energy and Health, Welfare**
152 **and Institutions annually by November 1 and shall make its final report by November 1, 2025.**

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