

SENATE BILL NO. 98

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on _____)

(Patron Prior to Substitute--Senator Favola)

A BILL to amend and reenact § 38.2-3407.15:2 of the Code of Virginia, relating to health insurance; prior authorization.

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 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;

2. Require that the carrier communicate to the prescriber or his designee within 24 hours, including weekend hours, of submission of an urgent prior authorization request to the carrier, if submitted

27 telephonically or in an alternate method directed by the carrier, that the request is approved, denied, or
28 requires supplementation;

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

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

35 5. Require that if a prior authorization request is approved and services or supplies have been
36 scheduled, provided, or delivered to the patient consistent with the authorization, the carrier shall not
37 revoke, limit, condition, modify, or restrict that authorization unless (i) there is evidence that the
38 authorization was obtained based on fraud or misrepresentation; (ii) final actions by the U.S. Food and
39 Drug Administration, other regulatory agencies, or the manufacturer remove the drug from the market,
40 limit its use in a manner that affects the authorization, or communicate a patient safety issue that would
41 affect the authorization alone or in combination with other authorizations; (iii) a combination of drugs
42 prescribed would cause a drug interaction; or (iv) a generic or biosimilar is added to the prescription drug
43 formulary. Nothing in this section shall require a carrier to cover any benefit not otherwise covered or
44 cover a prescription drug if the enrollee is no longer covered by a health plan on the date the prescription
45 drug was scheduled, provided, or delivered;

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

49 ~~6.~~ 7. Require that prior authorization approved by another carrier be honored, upon the carrier's
50 receipt from the prescriber or his designee of a record demonstrating the previous carrier's prior
51 authorization approval or any written or electronic evidence of the previous carrier's coverage of such
52 drug, at least for the initial ~~30~~ 90 days of a member's prescription drug benefit coverage under a new health

53 plan, subject to the provisions of the new carrier's evidence of coverage and any exception listed in
54 subdivision 5;

55 ~~7-8.~~ Require that a tracking system be used by the carrier for all prior authorization requests and
56 that the identification information be provided electronically, telephonically, or by facsimile to the
57 prescriber or his designee, upon the carrier's response to the prior authorization request;

58 ~~8-9.~~ Require that the carrier's prescription drug formularies, all drug benefits subject to prior
59 authorization by the carrier, all of the carrier's prior authorization procedures, and all prior authorization
60 request forms accepted by the carrier be made available through one central location on the carrier's
61 website and that such information be updated by the carrier within seven days of approved changes;

62 ~~9-10.~~ Require a carrier to honor a prior authorization issued by the carrier for a drug, other than
63 an opioid, regardless of changes in dosages of such drug, provided such drug is prescribed consistent with
64 U.S. Food and Drug Administration-labeled dosages;

65 ~~10-11.~~ Require a carrier to honor a prior authorization issued by the carrier for a drug regardless
66 of whether the covered person changes plans with the same carrier and the drug is a covered benefit with
67 the current health plan;

68 ~~11-12.~~ Require a carrier, when requiring a prescriber to provide supplemental information that is
69 in the covered individual's health record or electronic health record, to identify the specific information
70 required;

71 ~~12-13.~~ Require that no prior authorization be required for at least one drug prescribed for substance
72 abuse medication-assisted treatment, provided that (i) the drug is a covered benefit, (ii) the prescription
73 does not exceed the FDA-labeled dosages, and (iii) the drug is prescribed consistent with the regulations
74 of the Board of Medicine;

75 ~~13-14.~~ Require that when any carrier has previously approved prior authorization for any drug
76 prescribed for the treatment of a mental disorder listed in the most recent edition of the Diagnostic and
77 Statistical Manual of Mental Disorders published by the American Psychiatric Association, no additional
78 prior authorization shall be required by the carrier, provided that (i) the drug is a covered benefit; (ii) the
79 prescription does not exceed the FDA-labeled dosages; (iii) the prescription has been continuously issued

80 for no fewer than three months; and (iv) the prescriber performs an annual review of the patient to evaluate
81 the drug's continued efficacy, changes in the patient's health status, and potential contraindications.
82 Nothing in this subdivision shall prohibit a carrier from requiring prior authorization for any drug that is
83 not listed on its prescription drug formulary at the time the initial prescription for the drug is issued;

84 ~~14-15.~~ 15. Require a carrier to honor a prior authorization issued by the carrier for a drug regardless
85 of whether the drug is removed from the carrier's prescription drug formulary after the initial prescription
86 for that drug is issued, provided that the drug and prescription are consistent with the applicable provisions
87 of subdivision ~~13~~ 14;

88 ~~15-16.~~ 16. Require a carrier, beginning July 1, 2025, notwithstanding the provisions of subdivision 1
89 or any other provision of this section, to establish and maintain an online process that (i) links directly to
90 all e-prescribing systems and electronic health record systems that utilize the National Council for
91 Prescription Drug Programs SCRIPT standard and the National Council for Prescription Drug Programs
92 Real Time Benefit Standard; (ii) can accept electronic prior authorization requests from a provider; (iii)
93 can approve electronic prior authorization requests (a) for which no additional information is needed by
94 the carrier to process the prior authorization request, (b) for which no clinical review is required, and (c)
95 that meet the carrier's criteria for approval; and (iv) links directly to real-time patient out-of-pocket costs
96 for the office visit, considering copayment and deductible, and (v) otherwise meets the requirements of
97 this section. No carrier shall (a) impose a fee or charge on any person for accessing the online process as
98 required by this subdivision or (b) access, absent provider consent, provider data via the online process
99 other than for the enrollee. No later than July 1, 2024, a carrier shall provide contact information of any
100 third-party vendor or other entity the carrier will use to meet the requirements of this subdivision or the
101 requirements of § 38.2-3407.15:7 to any provider that requests such information. A carrier that posts such
102 contact information on its website shall be considered to have met this requirement; and

103 ~~16-17.~~ 17. Require a participating health care provider, beginning July 1, 2025, to ensure that any e-
104 prescribing system or electronic health record system owned by or contracted for the provider to maintain
105 an enrollee's health record has the ability to access, at the point of prescribing, the electronic prior
106 authorization process established by a carrier as required by subdivision ~~15~~ 16 and the real-time patient-

107 specific benefit information, including out-of-pocket costs and more affordable medication alternatives
108 made available by a carrier pursuant to § 38.2-3407.15:7. A provider may request a waiver of compliance
109 under this subdivision for undue hardship for a period specified by the appropriate regulatory authority
110 with the Health and Human Resources Secretariat.

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

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

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

117 1. Coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.
118 (Medicare), Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid), Title XXI of the
119 Social Security Act, 42 U.S.C. § 1397aa et seq. (CHIP), 5 U.S.C. § 8901 et seq. (federal employees), or
120 10 U.S.C. § 1071 et seq. (TRICARE);

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

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

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

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