

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, MAY 13, 2024

SEC - CLERK'S OFFICE
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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

2024 MAY 13 A 11:38
CASE NO. INS-2024-00014

Ex Parte: In the matter of
Rules Governing Balance Billing for
Out-of-Network Health Care Services

ORDER FOR NOTICE AND COMMENT

In 2020, the Virginia General Assembly enacted §§ 38.2-3445.01 – 38.2-3445.07 of the Code of Virginia ("Balance Billing Act"). The Balance Billing Act prohibits balance billing for certain services, establishing that when an enrollee receives emergency services from an out-of-network health care provider or receives out-of-network surgical or ancillary services at an in-network facility, the enrollee is not required to pay the out-of-network provider any amount that exceeds the applicable in-network cost-sharing requirement specified in the enrollee's health plan contract. The Balance Billing Act also, among other things, directs insurance carriers and providers to negotiate in good faith for payment of a commercially reasonable amount for relevant services and establishes certain arbitration proceedings for addressing disputes regarding claims payment amounts. However, the Balance Billing Act provides that "no carrier or provider shall initiate arbitration with such frequency as to indicate a general business practice."¹

As more fully addressed below, the Bureau of Insurance ("Bureau") seeks public comment on Virginia's regulations governing balance billing procedures and the balance billing arbitration process under the Balance Billing Act. Effective January 1, 2021, the State Corporation Commission ("Commission") adopted regulations entitled "Rules Governing

¹ Section 38.2-3445.05 D of the Code of Virginia.

Balance Billing for Out-of-Network Health Care Services" ("Rules") at 14 VAC 5-405-10 *et seq.*, of the Virginia Administrative Code to implement the Balance Billing Act. The Rules set forth procedures that address balance billing and the use of arbitration between health carriers and out-of-network providers. Additionally, on November 22, 2021, the Bureau issued Administrative Letter 2021-04 addressing issues relating to the Balance Billing Act's prohibition against using arbitration as a general business practice and the requirements that providers and carriers negotiate in good faith regarding the applicable commercially reasonable payment prior to filing an arbitration request.

Following several years of experience after arbitration filings and decisions began in 2021, the Bureau is seeking public comment on the Rules as well as the practices, procedures and implementation of the Balance Billing Act. In particular, the Bureau is interested in receiving comments regarding the "general business practice" standard identified in § 38.2-3445.05 D of the Balance Billing Act and, specifically, what a "general business practice" is, how it may be further clarified or defined; what other standard(s) or compliance measures can be used to determine that arbitration requests are not being filed "with such frequency as to indicate a general business practice;" and what standards or measurements the Bureau could use to monitor and assess the parties' compliance with good faith negotiation requirements. Additionally, the Bureau is seeking public comment to determine the impact of a series of arbitration outcomes on what is considered a commercially reasonable payment amount.

NOW THE COMMISSION directs the Bureau to receive public comment on the Rules, including the definition and application of "general business practice" under the Balance Billing Act, the standards or measurements that the Bureau could use to monitor and assess the parties' compliance with good faith negotiation requirements, and whether it would be appropriate for

carriers to pay an adjusted commercially reasonable amount based on a series of arbitration outcomes.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. INS-2024-00014 for purposes of receiving input from the public and Life & Health interested persons in this matter.

(2) All persons who desire to provide comments on the Rules may file such comments on or before July 5, 2024, with the Clerk of the Commission, State Corporation Commission, c/o Document Control Center, PO Box 2118, Richmond, Virginia 23218; or may submit comments electronically by following the instructions on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. All comments shall refer to Case No. INS-2024-00014.

(3) The Commission's Division of Information Resources is directed to post this Order on the Commission's website: scc.virginia.gov/pages/Case-Information.

(4) The Bureau shall provide notice of this order to all carriers licensed in Virginia to write accident and sickness insurance and to all Life & Health interested persons.

(5) The Commission's Office of General Counsel shall forward a copy of this Order to the Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(6) The Bureau shall file with the Clerk of the Commission a certificate of compliance with the notice requirements of Ordering Paragraph (4) above.

(7) This matter is continued.

A COPY hereof shall be sent by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424 at

MBrowder@oag.state.va.us; and a copy hereof shall be delivered to the Commission's Office of General Counsel and to the Bureau of Insurance in care of Deputy Commissioner Julie S.

Blauvelt.