

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 3, 2020

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. INS-2019-00081

*Ex Parte:* In the matter of Adopting New Rules  
Governing Health Insurance Balance Billing

ORDER GRANTING MOTION FOR EXTENSION OF TIME

By Order To Take Notice of Revised Proposed Rules ("Order") entered January 14, 2020, the State Corporation Commission ("Commission") gave notice of the Bureau of Insurance's ("Bureau") revisions to proposed new rules to be promulgated at Chapter 235 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Health Insurance Balance Billing" ("Rules"), which would add new rules at 14 VAC 5-235-10 through 14 VAC 5-235-30. The Order, together with the revised proposed Rules, were subsequently forwarded to the Virginia Registrar of Regulations and published in the *Virginia Register of Regulations*.

In the Order, the Commission further directed "[a]ll interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the adoption of, the revised proposed Rules" to "file such comments or hearing request on or before March 20, 2020."

Following entry of the Order, on February 26, 2020, the Virginia Hospital and Healthcare Association ("VHHA") and Medical Society of Virginia ("MSV") jointly filed a Motion for Extension of Time To Submit Comments on Revised Proposed Rules ("Motion"), requesting that the Commission amend the Order "to give all interested parties until April 20, 2020, to file comments and request a hearing regarding the Revised Proposed Rules." The VHHA and MSV

cited, as the basis for their request, "legislation now pending before the General Assembly" that relate to the revised proposed Rules.

NOW THE COMMISSION, having considered the Motion, is of the opinion that the Motion should be granted and that the Order be modified to give interested persons an extension of time to comment or request a hearing on the Bureau's revised proposed Rules.

Accordingly, IT IS ORDERED THAT:

(1) The Motion for Extension of Time To Submit Comments on Revised Proposed Rules, jointly filed by the Virginia Hospital and Healthcare Association and Medical Society of Virginia on February 26, 2020, is granted.

(2) The Commission's January 14, 2020 Order To Take Notice of Revised Proposed Rules is modified solely to permit all interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the adoption of, the revised proposed Rules to file such comments or hearing request on or before April 24, 2020, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. As stated in the Order, interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2019-00081.

(3) The Bureau forthwith shall provide notice of this Order Granting Motion for Extension of Time to all health carriers licensed in Virginia to offer a managed care health insurance plan and to all interested persons, including those persons who previously submitted comments and requested a hearing on the Bureau's proposed Rules.

(4) The Commission's Division of Information Resources shall make available this Order Granting Motion for Extension of Time on the Commission's website:

<http://www.scc.virginia.gov/case>.

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (3) above.

(6) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

C. Meade Browder, Jr., Senior Assistant Attorney General, and Katherine C. Creef, Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie S. Blauvelt.

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, JANUARY 14, 2020

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. INS-2019-00081

*Ex Parte:* In the matter of Adopting New  
Rules Governing Health Insurance Balance Billing

ORDER TO TAKE NOTICE OF REVISED PROPOSED RULES

By Order to Take Notice ("Order") entered June 6, 2019, interested persons were ordered to take notice that subsequent to August 9, 2019, the State Corporation Commission ("Commission") would consider the entry of an order adopting proposed new rules to be promulgated at Chapter 235 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Health Insurance Balance Billing" ("Rules"), which would add new rules at 14 VAC 5-235-10 through 14 VAC 5-235-30, unless on or before August 9, 2019, any person objecting to the adoption of the proposed Rules filed a request for hearing with the Clerk of the Commission ("Clerk").

The Order also required interested persons to file their comments in support or in opposition to the proposed Rules with the Clerk on or before August 9, 2019.

Following the submission of numerous comments to the Clerk as well as requests for hearing, the Commission entered an Order Scheduling Hearing on August 14, 2019 ("Scheduling Order"). The Scheduling Order set a hearing on September 12, 2019, for the Commission to receive additional public comment on the proposed Rules, as well as required the Bureau of Insurance ("Bureau") to file with the Clerk a response to the legal issues raised in the comments

by September 17, 2019, and allowed any interested persons to file with the Clerk a reply to the Bureau's response by September 27, 2019.

Pursuant to the Scheduling Order, the Commission received additional public comment on the proposed Rules at hearing held on September 12, 2019. The Bureau subsequently filed a response on September 17, 2019, which addressed the legal issues raised by the written comments submitted to the Commission as well as the comments received during the hearing on September 12, 2019. Several interested persons filed replies to the Bureau's response on or before September 27, 2019.

The Commission entered an Order Scheduling Oral Argument on October 4, 2019, which scheduled oral argument on October 31, 2019, to address legal issues concerning the proposed Rules, including the Commission's authority under Titles 12.1 and 38.2 of the Code of Virginia to issue the proposed Rules. The Order Scheduling Oral Argument required any interested person or entity desiring to provide legal argument at hearing to comply with the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, as well as file with the Clerk a notification of intent to participate in the legal argument, along with the name(s) of any counsel representing the interested person or entity in the legal argument, by October 24, 2019.

Pursuant to the Order Scheduling Oral Argument, the Commission held a hearing on October 31, 2019, and heard oral argument from interested persons and the Bureau addressing legal issues concerning the proposed Rules.

The Bureau has considered the comments received as well as the arguments provided by interested persons and entities concerning the proposed Rules. In an effort to address these concerns, the Bureau has proposed several revisions and clarifications to the proposed Rules. The Bureau's proposed revisions include: (a) changes to the definitions in 14 VAC 5-235-10,

which add a definition of "balance bill" and clarify the definition of "out-of-network provider" to include only provider groups; (b) adding a subsection to 14 VAC 5-235-20 A, that provider contracts must contain a provision which requires a health carrier to notify a facility at least 30 days prior to the date any provider group at such facility will no longer be participating in the provider network in any one of the carrier's health benefit plans; (c) clarifications to 14 VAC 5-235-20 A to make the subsection consistent with changes to the definitions in 14 VAC 5-235-10; (d) adding a new 14 VAC 5-235-20 B to provide that breach of a provider contract brought about by non-compliance with 14 VAC 5-235-20 A shall not constitute a material breach if the party at fault takes responsibility for the balance bill amount owed; and (e) revising 14 VAC 5-235-20 C to require that health carriers shall seek to amend provider contracts to comply with 14 VAC 5-235-20 A as soon as practicable and deleting the requirement to do so within 90 days after the effective date of the regulation.

The Bureau further recommends that the proposed Rules and the recommended revisions to these proposed Rules be subject to an additional comment period expiring March 20, 2020.

NOW THE COMMISSION, having considered the comments, the Bureau's proposed modifications and revisions to the proposed Rules, is of the opinion that interested persons should have an opportunity to comment on the Bureau's revised proposed Rules by March 20, 2020.

Accordingly, IT IS ORDERED THAT:

(1) The revised proposed Rules entitled "Rules Governing Health Insurance Balance Billing," recommended to be set out at 14 VAC 5-235-10 through 14 VAC 5-235-30, are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the adoption of, the revised proposed Rules shall file such comments or hearing request on or before March 20, 2020, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2019-00081.

(3) The Bureau forthwith shall provide notice of the revised proposed Rules to all health carriers licensed in Virginia to offer a managed care health insurance plan and to all interested persons, including those persons who previously submitted comments and requested a hearing on the Bureau's proposed Rules.

(4) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(5) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: <http://www.scc.virginia.gov/case>.

(6) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (3) above.

(7) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:  
Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor,  
Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's  
Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie S.  
Blauvelt.

STATE CORPORATION COMMISSION, BUREAU OF INSURANCE

Rules Governing Health Insurance Balance Billing

CHAPTER 235

RULES GOVERNING HEALTH INSURANCE BALANCE BILLING

**14VAC5-235-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

[ "Balance bill" means the amount for elective health care services the out-of-network provider will accept as payment in full that exceeds the sum of: (i) the covered person's in-network cost-sharing requirements; and (ii) payments made by the health carrier for covered benefits. ]

"Cost-sharing requirement," "in-network provider," and "provider group" shall have the meanings set forth in § 38.2-3445.1 of the Code of Virginia.

"Covered benefits," "covered person," "emergency services," "facility," "health benefit plan," "health care provider," "health carrier," "managed care plan," and "network" shall have the meanings set forth in § 38.2-3438 of the Code of Virginia.

"Elective health care services" means covered benefits rendered to a covered person that are not emergency services.

"Out-of-network provider" means a [ ~~health care provider or~~ ] provider group that is not contracted with a health carrier to provide health care services to a covered person under a health benefit plan as a member of the health benefit plan's network.

**14VAC5-235-20. Balance billing of provider services.**

A. [ Any No ] provider contract [ with a facility ] entered into by [ ~~and between a facility and~~ ] a health carrier offering a managed care plan shall [ fail to ] contain [ a the following provisions:

1. A ] provision that requires the [ health carrier to notify the facility at least 30 days prior to the date any provider group at the facility will no longer be participating in the provider network in any one of the health carrier's health benefit plans.

2. A provision that requires the ] facility to notify a covered person no later than at the time of preadmission or preregistration if the covered person will or is likely to receive elective health care services from an out-of-network provider and document in writing that this notice was provided to the covered person. Prior to the covered person's receipt of elective health care services, the facility shall obtain written consent from the covered person [ to ] either [ (i) to ] accept [ or not accept ] any necessary health care services from [ in-network out-of-network ] providers [ ~~only or (ii) accept any necessary health care services from out-of-network providers~~ ] . The notice provided to the covered person shall state that elective health care services received from an out-of-network provider may result in amounts owed in addition to any cost-sharing requirements.

[ B. ~~Any provider contract entered into by and between a facility and a health carrier offering a managed care plan shall also contain a~~ 3. A ] provision that [ ~~notifies a facility states~~ ] that [ a facility's or health carrier's ] failure to comply with requirements of [ ~~subsection subsections~~ ] A [ 1 and A 2 ] of this section shall result in the [ facility party at fault ] being financially responsible for any [ balance bill for ] elective health care services rendered by the out-of-network provider [ ~~to the extent that the cost of these services exceeds the covered person's in-network cost sharing requirements~~ ] .

[ ~~C. B.~~ Any breach of the provider contract brought about by noncompliance with subsection A of this section shall not constitute a material breach if the party at fault takes responsibility for the balance bill amount owed. ]

[ ~~D. C.~~ ] A health carrier offering a managed care plan shall seek to amend its provider contracts to comply with the provisions of [ ~~subsections subsection~~ ] A [ ~~and B~~ ] of this section as soon as practicable [ ~~but no later than (insert date 90 days after the effective date of this regulation)~~ ] .

D. The notice requirement contained in subsection A of this section applies notwithstanding the provisions of § 38.2-3445.1 of the Code of Virginia.

**14VAC5-235-30. Severability.**

If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 6, 2019

COMMONWEALTH OF VIRGINIA, *ex rel.*  
STATE CORPORATION COMMISSION

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CASE NO. INS-2019-00081

*Ex Parte:* In the matter of Adopting New  
Rules Governing Health Insurance Balance Billing

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy also may be found at the Commission's website: <http://www.scc.virginia.gov/case>.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to promulgate new rules at Chapter 235 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Health Insurance Balance Billing," which are recommended to be set out at 14 VAC 5-235-10 through 14 VAC 5-235-30.

The proposed new rules are necessary in light of the enactment of § 38.2-3445.1 of the Code, which takes effect on July 1, 2019, by the 2019 General Assembly and based on the complaints the Bureau has received related to surprise balance billing. The provisions of the new chapter are intended to remove the burden from the covered person and allow them to actively

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choose whether they receive health care services from an in-network or out-of-network provider at an in-network facility for non-emergency services.

NOW THE COMMISSION is of the opinion that the proposal to adopt new rules recommended to be set out at Chapter 235 in the Virginia Administrative Code as submitted by the Bureau should be considered for adoption with a proposed effective date of October 1, 2019.

Accordingly, IT IS ORDERED THAT:

(1) The proposed new rules entitled "Rules Governing Health Insurance Balance Billing," recommended to be set out at 14 VAC 5-235-10 through 14 VAC 5-235-30, are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the adoption of, proposed Chapter 235 shall file such comments or hearing request on or before August 9, 2019, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2019-00081.

(3) If no written request for a hearing on the adoption of the proposed new rules as outlined in this Order is received on or before August 9, 2019, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the rules as submitted by the Bureau.

(4) The Bureau forthwith shall provide notice of the proposal to all health carriers licensed in Virginia to offer a managed care health insurance plan and to all interested persons.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: <http://www.scc.virginia.gov/case>.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:  
Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor,  
Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's  
Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie S.  
Blauvelt.

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STATE CORPORATION COMMISSION, BUREAU OF INSURANCE

Rules Governing Health Insurance Balance Billing

CHAPTER 235

RULES GOVERNING HEALTH INSURANCE BALANCE BILLING

**14VAC5-235-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Cost-sharing requirement," "in-network provider," and "provider group" shall have the meanings set forth in § 38.2-3445.1 of the Code of Virginia.

"Covered benefits," "covered person," "emergency services," "facility," "health benefit plan," "health care provider," "health carrier," "managed care plan," and "network" shall have the meanings set forth in § 38.2-3438 of the Code of Virginia.

"Elective health care services" means covered benefits rendered to a covered person that are not emergency services.

"Out-of-network provider" means a health care provider or provider group that is not contracted with a health carrier to provide health care services to a covered person under a health benefit plan as a member of the health benefit plan's network.

**14VAC5-235-20. Balance billing of provider services.**

A. Any provider contract entered into by and between a facility and a health carrier offering a managed care plan shall contain a provision that requires the facility to notify a covered person no later than at the time of pre-admission or pre-registration if the covered person will or is likely to receive elective health care services from an out-of-network provider and document in writing

that this notice was provided to the covered person. Prior to the covered person's receipt of elective health care services, the facility shall obtain written consent from the covered person to either: (i) accept any necessary health care services from in-network providers only; or (ii) accept any necessary health care services from out-of-network providers. The notice provided to the covered person shall state that elective health care services received from an out-of-network provider may result in amounts owed in addition to any cost-sharing requirements.

B. Any provider contract entered into by and between a facility and a health carrier offering a managed care plan shall also contain a provision that notifies a facility that failure to comply with requirements of subsection A of this section shall result in the facility being financially responsible for any elective health care services rendered by the out-of-network provider to the extent that the cost of these services exceeds the covered person's in-network cost-sharing requirements.

C. A health carrier offering a managed care plan shall seek to amend its provider contracts to comply with the provisions of subsections A and B of this section as soon as practicable but no later than 90 days after the effective date of this regulation.

D. The notice requirement contained in subsection A of this section applies notwithstanding the provisions of § 38.2-3445.1 of the Code of Virginia.

**14VAC5-235-30. Severability.**

If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.