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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 400

AN ACT TO AMEND TITLES 18, 29, AND 31 OF THE DELAWARE CODE RELATING TO COMMON SUMMARY
PAYMENT FORMS AND PROTECTION OF SENSITIVE HEALTH CARE SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 33, Title 18 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 3370F. Common Summary of Payment Form.

4 (a) Definitions. For purposes of this section:

5 (1) "Health carrier" means any entity subject to the insurance laws and regulations of this State, or subject to
6 the jurisdiction of the Commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for or
7 reimburse any of the health-care services, including, but not limited to, an insurance company, health service
8 corporation, health maintenance organization, managed care organization, and any other entity providing a plan of
9 health insurance or health benefits subject to state insurance regulation. "Health Carrier" also includes any third-party
10 administrator or other entity that adjusts, administers or settles claims in connection with health benefit plans.

11 (2) "Insured Member" means the policyholder or subscriber named under a health insurance policy or
12 subscriber contract and any dependent, including minor dependents, covered under the insurance contract or subscriber
13 name.

14 (3) " Sensitive health care services" shall include any of the following:

15 a. Reproductive services.

16 b. Contraceptive services.

17 c. Pre- and post-natal services.

18 d. Pregnancy testing and counseling.

19 e. Abortion services.

20 f. Diagnosis and treatment of vaginal infections.

21 g. Management of abnormal Pap smears.

- 22 h. Testing, treatment, and prevention of sexually transmitted diseases.
- 23 i. Fertility services.
- 24 j. Gender transition- related services.
- 25 k. Testing, treatment, and prevention of HIV, AIDS and PREP services.
- 26 l. Hepatitis B and C testing, treatment, and medications.
- 27 m. Substance use disorder services, including medication and treatment.
- 28 n. Mental health services.
- 29 o. Office visits for assessment of risk of sexual or pregnancy coercion.
- 30 p. Sexual violence services.
- 31 q. Domestic violence treatment, support, and counseling services.

32 (b) The Department shall develop a common summary of payment form to be used by all health carriers in
33 Delaware and provided to health care consumers with respect to provider claims submitted to the health carrier as follows:

34 (1) Health carriers conducting business shall not specify or describe sensitive health care services in a
35 common summary of payment form.

36 (2) The common summary of payment form must show the insured member's responsibility, if any, for
37 payment of a health care provider claim.

38 (3) Health carriers shall not be obligated to issue a common summary of payment form for provider claims
39 that consist solely of requests for co-payment. In the event that the insured member has no liability for payment for a
40 procedure or service the common summary of payment form shall not be issued by the health carrier.

41 (4) The common summary of payment form may be exchanged securely through electronic means in
42 accordance with §107 of this title and shall include a disclaimer that any communication, by electronic means, is
43 subject to any applicable state or federal regulations related to data privacy.

44 (c) If the insured member has received sensitive health care services, health carriers shall issue a common
45 summary of payment form only to the insured member receiving care unless the insured member receiving care agrees, in
46 writing or verbally on a recorded telephone line, that a third party may receive the common summary of payment form.

47 (d) Health carriers may establish a standard method of delivery of common summary of payment forms. Health
48 carriers shall permit the following individuals to choose, in writing, an alternative method of receiving the common
49 summary of payment form, if the treating insured member has consented in advance ,to their receipt of the common
50 summary payment form: (1) a policyholder or subscriber who is legally authorized to consent to care for the treating
51 insured member; (2) another insured member who is legally authorized to consent to the treating insured member; or (3)
52 another person who has the exclusive legal authorization to consent to care for the treating insured member.

(e) The alternative methods of receiving the common summary of payment forms shall include: (1) sending a paper form to the address of the policyholder or subscriber; (2) sending a paper form to the address of the insured member; (3) sending a paper form to any alternate address upon request of the insured member; or (4) allowing the policyholder or subscriber, the insured member, or both, to access the form through electronic means; provided, however, that such access is provided in compliance with all applicable State and federal laws and regulations pertaining to data privacy including subpart A of 45 CFR 160, subpart C of 45 CFR 164, §107 of this title, Chapter 86 of this title and Chapter 12 of Title 16.

(f) The preferred method of receipt selected pursuant to subsections (d) and (e) shall be valid until the insured member submits a request in writing or on a recorded line for a different method; provided, however, that a health carrier shall not be required to maintain more than 1 alternate address for an insured member. Health carriers shall comply with an insured member's request pursuant to this subsection, no later than 3 business days after receipt of the request and acknowledge the insured member's request using the insured member's preferred method of delivery.

(g) The insured member's ability to request the preferred method of receipt pursuant to subsection (e) shall be communicated in plain language and in a clear and conspicuous manner in coverage documents, member privacy communications and on every common summary of payment form and shall be conspicuously displayed on the health carrier's member website and online portals for individual members.

(h) The Department must provide guidance to health carriers for purposes of implementing and promoting guidance with this section. Such guidance shall include:

(1) A plan to educate health carriers and their billing staff involved in processing insurance claims.

(2) Reporting to the Department both compliance and noncompliance, with this section, including the number and type of complaints associated with noncompliance.

(i) The Division of Public Health, in collaboration with health care providers, shall develop a plan to educate professional and administrative staff, responsible for patient registration and confidentiality education in hospitals, medical offices, community health centers, and school-based health centers to promote compliance with this section.

(j) The Division of Professional Regulations shall work with the Division of Public Health to provide guidance and provide educational materials to health care providers and their administrative staff.

(k) Nothing contained in this section shall supersede any general or special law related to informed consent of minors.

Section 2. Amend Chapter 35, Title 18 of the Delaware Code by adding a new subchapter by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter VI. Common Summary of Payment Forms For Sensitive Healthcare Services

§ 3592. Common Summary of Payment Form.

(a) Definitions. For purposes of this section:

(1) "Health carrier" means any entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the Commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for or reimburse any of the health-care services, including, but not limited to, an insurance company, health service corporation, health maintenance organization, managed care organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. "Health Carrier" also includes any third-party administrator or other entity that adjusts, administers or settles claims in connection with health benefit plans.

(2) "Insured Member" means the policyholder or subscriber named under a health insurance policy or subscriber contract and any dependent, including minor dependents, covered under the insurance contract or subscriber name.

(3) "Sensitive health care services" shall include any of the following:

- a. Reproductive services.
- b. Contraceptive services.
- c. Pre- and post-natal services.
- d. Pregnancy testing and counseling.
- e. Abortion services.
- f. Diagnosis and treatment of vaginal infections.
- g. Management of abnormal Pap smears.
- h. Testing, treatment, and prevention of sexually transmitted diseases.
- i. Fertility services.
- j. Gender transition- related services.
- k. Testing, treatment, and prevention of HIV, AIDS and PREP services.
- l. Hepatitis B and C testing, treatment and medications.
- m. Substance use disorder services, including medication and treatment.
- n. Mental health services.
- o. Office visits for assessment of risk of sexual or pregnancy coercion.
- p. Sexual violence services.
- q. Domestic violence treatment, support, and counseling services.

(b) The Department shall develop a common summary of payment form to be used by all health carriers in Delaware and provided to health care consumers with respect to provider claims submitted to the health carrier as follows:

(1) Health carriers conducting business shall not specify or describe sensitive health care services in a common summary of payment form.

(2) The common summary of payment form must show the insured member's responsibility, if any, for payment of a health care provider claim.

(3) Health carriers shall not be obligated to issue a common summary of payment form for provider claims that consist solely of requests for co-payment. In the event that the insured member has no liability for payment for a procedure or service the common summary of payment form shall not be issued by the health carrier.

(4) The common summary of payment form may be exchanged securely through electronic means in accordance with §107 of this title and shall include a disclaimer that any communication, by electronic means, is subject to any applicable state or federal regulations related to data privacy.

(c) If the insured member has received sensitive health care services, health carriers shall issue a common summary of payment form only to the insured member receiving care unless the insured member receiving care agrees, in writing or verbally on a recorded telephone line, that a third party may receive the common summary of payment form.

(d) Health carriers may establish a standard method of delivery of common summary of payment forms. Health carriers shall permit the following individuals to choose, in writing, an alternative method of receiving the common summary of payment form, if the treating insured member has consented in advance to their receipt of the common summary payment form: (1) a policyholder or subscriber who is legally authorized to consent to care for the treating insured member; (2) another insured member who is legally authorized to consent to the treating insured member; or (3) another person who has the exclusive legal authorization to consent to care for the treating insured member.

(e) The alternative methods of receiving the common summary of payment forms shall include: (1) sending a paper form to the address of the policyholder or subscriber; (2) sending a paper form to the address of the insured member; (3) sending a paper form to any alternate address upon request of the insured member; or (4) allowing the policyholder or subscriber, the insured member, or both, to access the form through electronic means; provided, however, that such access is provided in compliance with all applicable State and federal laws and regulations pertaining to data privacy including subpart A of 45 CFR 160, subpart C of 45 CFR 164, §107 of this title, Chapter 86 of this title and Chapter 12 of Title 16.

(f) The preferred method of receipt selected pursuant to subsections (d) and (e) shall be valid until the insured member submits a request in writing or on a recorded line for a different method; provided, however, that a health carrier shall not be required to maintain more than 1 alternate address for an insured member. Health carriers shall comply with an insured member's request pursuant to this subsection, no later than 3 business days after receipt of the request and acknowledge the insured member's request using the insured member's preferred method of delivery.

(g) The insured member's ability to request the preferred method of receipt pursuant to subsection (e) shall be communicated in plain language and in a clear and conspicuous manner in coverage documents, member privacy communications and on every common summary of payment form and shall be conspicuously displayed on the health carrier's member website and online portals for individual members.

(h) The Department must provide guidance to health carriers for purposes of implementing and promoting compliance with this section. Such guidance shall include:

(1) A plan to educate health carriers and their billing staff involved in processing insurance claims.

(2) Reporting to the Department both compliance and noncompliance, with this section, including the number and type of complaints associated with noncompliance.

(i) The Division of Public Health, in conjunction with health care providers, shall develop a plan to educate professional and administrative staff, responsible for patient registration and confidentiality education in hospitals, medical offices, community health centers, and school-based health centers, to promote compliance with this section.

(j) The Division of Professional Regulations shall work with the Division of Public Health to provide guidance and provide educational materials to health care providers and their administrative staff.

(k) Nothing contained in this section shall supersede any general or special law related to informed consent of minors.

Section 3. Amend Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5216. Common Summary of Payment Form.

(a) Definitions. For purposes of this section:

(1) "Health carrier" means any entity subject to the insurance laws and regulations of this State. "Health carrier" includes any entity providing health-care insurance under a health-care insurance plan for state employees provided under this chapter. "Health Carrier" also includes any third-party administrator or other entity that adjusts, administers or settles claims in connection with health benefit plans.

(2) "Insured Member" means the policyholder or subscriber named under a health insurance policy or subscriber contract and any dependent, including minor dependents, covered under the insurance contract or subscriber name.

(3) "Sensitive health care services" shall include any of the following:

a. Reproductive services.

b. Contraceptive services.

c. Pre- and post-natal services.

- d. Pregnancy testing and counseling.
- e. Abortion services.
- f. Diagnosis and treatment of vaginal infections.
- g. Management of abnormal Pap smears.
- h. Testing, treatment, and prevention of sexually transmitted diseases.
- i. Fertility services.
- j. Gender transition- related services.
- k. Testing, treatment, and prevention of HIV, AIDS and PREP services.
- l. Hepatitis B and C testing, treatment and medications.
- m. Substance use disorder services, including medication and treatment.
- n. Mental health services.
- o. Office visits for assessment of risk of sexual or pregnancy coercion.
- p. Sexual violence services.
- q. Domestic violence treatment, support, and counseling services.

(b) The Department of Insurance shall develop a common summary of payment form to be used by all health carriers in Delaware and provided to health care consumers with respect to provider claims submitted to the health carrier as follows:

(1) Health carriers conducting business shall not specify or describe sensitive health care services in a common summary of payment form.

(2) The common summary of payment form must show the insured member's responsibility, if any, for payment of a health care provider claim.

(3) Health carriers shall not be obligated to issue a common summary of payment form for provider claims that consist solely of requests for co-payment. In the event that the insured member has no liability for payment for a procedure or service the common summary of payment form shall not be issued by the health carrier.

(4) The common summary of payment form may be exchanged securely through electronic means and shall include a disclaimer that any communication, by electronic means, is subject to any applicable state or federal regulations related to data privacy.

(c) If the insured member has received sensitive health care services, health carriers shall issue a common summary of payment form only to the insured member receiving care unless the insured member receiving care agrees, in writing or verbally on a recorded telephone line, that a third party may receive the common summary of payment form.

(d) Health carriers may establish a standard method of delivery of common summary of payment forms. Health carriers shall permit the following individuals to choose, in writing, an alternative method of receiving the common summary of payment form, if the treating insured member has consented in advance to their receipt of the common summary payment form: (1) a policyholder or subscriber who is legally authorized to consent to care for the treating insured member; (2) another insured member who is legally authorized to consent to the treating insured member; or (3) another person who has the exclusive legal authorization to consent to care for the treating insured member.

(e) The alternative methods of receiving the common summary of payment forms shall include: (1) sending a paper form to the address of the policyholder or subscriber; (2) sending a paper form to the address of the insured member; (3) sending a paper form to any alternate address upon request of the insured member; or (4) allowing the policyholder or subscriber, the insured member, or both, to access the form through electronic means; provided, however, that such access is provided in compliance with all applicable State and federal laws and regulations pertaining to data privacy including subpart A of 45 CFR 160, subpart C of 45 CFR 164, and Chapter 12 of Title 16.

(f) The preferred method of receipt selected pursuant to subsections (d) and (e) shall be valid until the insured member submits a request in writing or on a recorded line for a different method; provided, however, that a health carrier shall not be required to maintain more than 1 alternate address for an insured member. Health carriers shall comply with an insured member's request pursuant to this subsection, no later than 3 business days after receipt of the request and acknowledge the insured member's request using the insured member's preferred method of delivery.

(g) The insured member's ability to request the preferred method of receipt pursuant to subsection (e) shall be communicated in plain language and in a clear and conspicuous manner in coverage documents, member privacy communications and on every common summary of payment form and shall be conspicuously displayed on the health carrier's member website and online portals for individual members.

(h) The Department of Insurance must provide guidance to health carriers for purposes of implementing and promoting compliance with this section. Such guidance shall include:

(1) A plan to educate health carriers and their billing staff involved in processing insurance claims.

(2) Reporting to the Department of Insurance both compliance and noncompliance with this section, including the number and types of complaints associated with noncompliance.

(i) The Division of Public Health, in conjunction with health care providers, shall develop a plan to educate professionals and administrative staff, responsible for patient registration and confidentiality education in hospitals, medical offices, community health centers, and school-based health centers, to promote compliance with this section.

(j) The Division of Professional Regulations shall work with the Division of Public Health to provide guidance and provide educational materials issued by the Department of Insurance to health care providers and their administrative staff.

(k) Nothing contained in this section shall supersede any general or special law related to informed consent of minors.

Section 4. Amend Chapter 5, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 531. Billing Restrictions for Sensitive Health Care Services.

(a) Definitions. For purposes of this section:

(1) “Carrier” means any entity that provides health insurance under § 505(3) of this title.

(2) “Health benefit plan” means any assistance provided to an individual under § 505(3) of this title.

(3) “Recipient” means any person as defined in §502 of this title.

(4) “Sensitive health care services” shall include:

a. Reproductive services.

b. Contraceptive services.

c. Pre- and post-natal services.

d. Pregnancy testing and counseling.

e. Abortion services.

f. Diagnosis and treatment of vaginal infections.

g. Management of abnormal Pap smears.

h. Testing, treatment, and prevention of sexually transmitted diseases.

i. Fertility services.

j. Gender transition-related services.

k. Testing, treatment, and prevention of HIV, AIDS, and PREP services.

l. Hepatitis B and C testing, treatment, and medications.

m. Substance use disorder services, including medication and treatment.

n. Mental health services.

o. Office visits for assessment of risk of sexual or pregnancy coercion.

p. Sexual violence services.

q. Domestic violence treatment, support, and counseling services.

(b) Unless otherwise required by law no carrier shall divulge, directly or indirectly, including by sending a bill or explanation of benefits, information concerning the sensitive health care services received by a recipient under any health benefit plan to any person other than providers and care coordinators caring for the recipient and employees of the carrier in the course of the carrier’s internal operations. The carrier may only divulge information concerning the sensitive health care

services if the recipient who received the sensitive health care services requests the information from the carrier and authorizes, in writing or verbally on a recorded telephone line, the sending of a bill or explanation of benefits.

(c) The Division of Public Health must provide and make available educational materials to all recipients, concerning the suppression of sensitive health care services under this section.

(d) Nothing contained in this section shall supersede any general or special law related to informed consent of minors.

Section 5. The Department of Insurance and the Division of Public Health may adopt rules and regulations, including implementation deadlines, to implement Sections 1-4 of this Act.

Section 6. This Act shall be known and may be cited as the "Delaware Patient Privacy Act".

Section 7. Subsections (h) and (i) of Sections 1-3 shall take effect 1 year after the effective date of this Act.

SYNOPSIS

The ability of insured dependents and other insured members to receive confidential sensitive health care services without the knowledge of the insured policyholder is greatly impeded through traditional billing processes utilized by health insurers. The most frequent form used is an explanation of benefit (EOB) sent to the policyholder after anyone covered under the policy receives care. The lack of confidentiality for sensitive health care services can often result in insured members simply avoiding necessary health care.

This Act amends Titles 18, 29, and 31 to require both individual and group health carriers, including those providing coverage under the State health insurance plans, to use a common summary of payment form, developed by the Department of Insurance, for defined sensitive health care services. The Act prohibits the health carriers from specifying any defined sensitive health care services in the form, allows health carriers to address the form to the insured member, allows insured members to choose their preferred method of receiving said form, and precludes health carriers from sending the form when there is no payment liability for the visit or service provided. The Act also amends Title 31 to provide that any carrier providing health insurance to Medicaid recipients may not divulge defined sensitive health care services without the recipient's express written or telephone recorded consent. The Department of Insurance is required to issue guidance to health insurers within 1 year of enactment. The Division of Public Health is required to establish a plan to educate health care providers and staff of hospitals, medical offices, community health centers and school-based health centers to promote compliance with this Act within 1 year of enactment.