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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 261

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO COMMON SUMMARY PAYMENT FORM FOR SENSITIVE HEALTH CARE SERVICES.

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

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

§ 3371 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 costs of health-care services, including, but not limited to, an insurance company, health service corporation, maintenance 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) "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 & 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 assault services.

q. Domestic violence diagnosis, 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 a payer. Health carriers shall not specify or describe sensitive health care services in a common summary of payments form. The common summary of payment form shall be written in an easily readable and understandable format showing the consumer's responsibility, if any, for payment of a health care provider claim. The common summary of payment form shall include a disclaimer that any communication by electronic means is subject to any applicable state and federal laws and regulations related to data privacy. The Department shall allow the development and use of forms that may be exchanged securely through electronic means. 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.

(c) If the insured member has received sensitive health care services, as defined in subsection(a)(2), 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 insured member receiving care has consented ,in advance, to their receipt of the common summary of payment form: (1) a subscriber who is legally authorized to consent to care for the insured member; (2) an insured member who is legally authorized to consent to that member's own care; or (3) another party who has the exclusive legal authorization to consent to care for the insured member.

(e) The alternative methods of receiving the common summary of payments form shall include: (1) sending a paper form to the address of the 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 subscriber, the insured

member, or both to access the form through electronic means; provided, however, that such access is provided in compliance with any applicable state and federal laws and regulations pertaining to data privacy including subpart A of 45 CFR 160, subpart C of 45 CFR 164, Chapter 12B of Title 6 and Chapter 12 of Title 16.

(f) All health carriers shall also permit an individual not authorized under subsection (d) but who is legally authorized to consent to care for an insured member to request, and shall accommodate a reasonable request by such individual to receive, the forms on behalf of the member through any of the alternative methods enumerated in subsection (e), provided that the individual clearly states in writing that the disclosure of all or a part of the information could endanger the individual or the insured member. Upon receipt of such a request, health carriers shall not inquire as to the reasons for, or otherwise seek to confirm, the endangerment.

(g) The preferred method of receipt selected pursuant to subsections (d) and (e) shall be valid until the insured member submits a request in writing for a different method; provided, however, that a health carrier shall not be required to maintain more than 1 alternate address for a 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.

(h) In the event that the insured member has no liability for payment for any procedure or service, health carriers shall permit all insured members who are legally authorized to consent to care or parties legally authorized to consent to care for the insured member, to request suppression of common summary of payment forms for a specific service or procedure, in which case the common summary of payment form shall not be issued; provided, however, that the insured member clearly makes the request orally or in writing. The health carrier may request verification of the request in writing following an oral request. A health carrier shall not require an explanation as to the basis for an insured member's request to suppress the common summary of payment form, unless otherwise required by law or court order.

(i) The insured member's ability to request the preferred method of receipt pursuant to subsections (d) and (e) shall be communicated in plain language and in a clear and conspicuous manner in evidence of 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.

(j) The Department shall issue guidance as necessary to implement and enforce this section, which shall include requirements for reasonable reporting by health carriers to the Department regarding compliance and the number and type of complaints received regarding noncompliance with this section.

(k) The Department shall develop and implement a plan to educate providers and consumers regarding the rights of insured members and the responsibilities of health carriers to promote compliance with this section. The plan shall

include, but not be limited to, staff training and other education for hospitals, community health centers, school-based health centers, physicians, nurses, and other licensed health care professionals, as well as administrative staff including, but not limited to (1) all staff involved in patient registration and confidentiality education; and (2) billing staff involved in processing insurance claims. The plan shall be developed in consultation with groups representing health insurers, providers, and consumers, including consumer organizations and stakeholders concerned with protection of access to sensitive health care services.

Section 2. Nothing contained in this section shall supersede any general or special law related to the informed consent of minors.

Section 3. The Commissioner may adopt regulations to implement the requirements of Section 1.

Section 4. The guidance required under subsection (j) of Section 1 shall be issued or updated to meet the requirements of this Act no later than 3 months after the effective date of this Act.

Section 5. Subsection (k) of Section 1 shall take effect 6 months 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 significantly impacts young adults between the ages of 18-26 years of age that are on their parents' health insurance plans and adults covered as dependents under abusive spouse or family member's plans. This results in dependents simply avoiding necessary health care for these sensitive health care services.

This Act (1) requires health carriers to use a common summary of payment form, developed by the Department of Insurance, in collaboration with health insurers, for defined sensitive health care services; (2) prohibits the health carriers from specifying any defined sensitive health care services in the form; (3) allows health carriers to address the form to the insured member; (4) allows insured member to choose their preferred method of receiving said form; (5) allows the insured member to opt-out of receiving the form when there is no payment liability for the visit or service provided; (6) requires the Department of Insurance and Division of Public Health to educate health care providers and health carriers on the new law. The effective dates for guidance and education requirement are 3 and 6 months, respectively, after enactment.