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Final Regulation Agency Background Document

Agency name	Virginia Workers' Compensation Commission
Virginia Administrative Code (VAC) citation(s)	16 VAC 30-16-10, et seq.
Regulation title(s)	Workers' Compensation Electronic Medical Billing
Action title	E-billing Regulation
Date this document prepared	November 15, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The intent of this new regulation is to adopt and implement infrastructure under which (i) providers of workers' compensation medical services ("providers") shall submit their billing, claims, case management, health records and all supporting documentation electronically to employers or employers' workers' compensation insurance carriers ("payers") and (ii) payers shall return actual payment, claim status, and remittance information electronically to providers that submit their billing and required supporting documentation electronically. The regulation will establish standards and methods for such electronic submissions and transactions that are consistent with the electronic medical billing and payment guidelines of the International Association of Industrial Accident Boards and Commissions. The regulation does not require any reporting to or enforcement by the Virginia Workers' Compensation Commission or any other governmental agency.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

None.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The final regulation entitled Electronic Medical Billing was adopted by the Virginia Workers' Compensation Commission on November 5, 2018.

Mandate and Impetus

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no changes to previously reported information.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

The Virginia Workers' Compensation Commission is promulgating the regulation in accordance with the provisions of Subsection H of Section 65.2-605.1 of the Code of Virginia; Chapter 621 of the 2015 Acts of Assembly

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

Promulgated pursuant to the direction of the Virginia General Assembly in Chapter 621 of the 2015 Acts of Assembly, the purpose of the regulation is to provide a legal framework for electronic billing, processing, and payment of medical services and products provided to an injured worker subject to the Virginia Workers' Compensation Act. The proposed regulation will expedite the submission, processing and payment of bills for medical services rendered to injured workers pursuant to the Virginia Workers'

Compensation Act utilizing nationally recognized standards

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

After consideration of the comments received, the proposed regulation has been revised to: (a) clarify and broaden the exemption for small medical providers; (b) add an exemption for small volume payers; (c) clarify the requirements for electronic payment; (d) make the regulation consistent with the provisions of the prompt-pay statute (Va. Code. 65.2-605.1); and (e) change the mandatory effective date to July 1, 2019.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The regulation is designed to assist workers' compensation payers and medical providers to promptly process payment of bills for medical services in Virginia workers' compensation cases. There are no known disadvantages to the public or the Commonwealth. The regulation does not require any reporting to or enforcement by the Virginia Workers' Compensation Commission or any other governmental agency.

Requirements More Restrictive than Federal

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no applicable federal regulations that govern the payment of medical services rendered to injured workers pursuant to the Virginia Workers' Compensation Act.

Agencies, Localities, and Other Entities Particularly Affected

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no changes to previously reported information.

Localities Particularly Affected

There are no changes to previously reported information.

Other Entities Particularly Affected

There are no changes to previously reported information.

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Darlene Oudecker, Rising MS	Posed questions about provider exemptions, requested a small payer exemption, expressed concerns about required electronic payments	The proposed regulation was revised to clarify and expand the small provider exemption, add an exemption for small payers and allow providers and payers to agree to any alternate payment method, not just an alternate electronic payment method.
Kevin C. Tribout, Optum	Expressed support for the proposed regulation generally and in specific areas. Did not recommend any changes.	Previous recommendations from this commenter were incorporated in the proposed regulation.
Karen Simonton, OrthoVirginia	Expressed support for the regulation generally. Suggested that the 21-day period for a payer to accept or reject a claim was too long, asked whether the requirement to submit notes electronically could be eliminated and asked about redress for noncompliance.	The 21-day period was expanded to 45 days in order to comply with the requirements of subsection B of Va. Code Sec. 65.2-605.1. In order to determine whether a medical service is related to a compensable work injury, workers' compensation payers must have the corresponding notes, so this requirement is unchanged. Disputes between a provider and payer concerning noncompliance with the regulation may be brought before the Commission for adjudication like any other dispute.
Wayne Carlson, Landin Inc.	Identified inconsistencies between provisions of the proposed regulation and the Companion Guide concerning electronic payments. Requested an exemption for small payers.	The Companion Guide was revised to eliminate the inconsistencies. The proposed regulation was revised to clarify and expand the small provider exemption, add an exemption for small payers and allow providers and payers to agree to any

30-16-50 A 3			Added "1" following B to capture section renumbering.	This is a technical change made necessary by the inclusion of new subsection B 2.
30-16-50 A 4*		Regulation was to be effective December 31, 2018.	Changed mandatory effective date from December 31, 2018 to July 1, 2019.	Changed the effective date to give affected parties more time to prepare for compliance and to allow for earlier voluntary compliance.
30-16-50 A 4			Added clause "unless exempted from this process in accordance with subsection B 2 of this section" to recognize new exemption for small payers.	This is a technical change made necessary by the inclusion of new subsection B 2.
30-16-50 A 5*		Regulation was to be effective December 31, 2018.	Changed mandatory effective date from December 31, 2018 to July 1, 2019.	Changed the effective date to give affected parties more time to prepare for compliance and to allow for earlier voluntary compliance.
30-16-50 A 5			Added "1" following B to capture section renumbering.	This is a technical change made necessary by the inclusion of new subsection B 2.
30-16-50 B 1*			Changed the small provider exemption to exempt medical providers with 15 or fewer full time employees <u>or</u> that have submitted fewer than 250 bills for treatment of work injuries in the past calendar year. The latter is a new exemption qualification that replaces the previous criteria of workers' compensation billing constituting less than 10% of the provider's practice.	In the previous stage, the criteria for the exemption required providers to meet both requirements of the exemption. In response to comments that the regulation was overly burdensome on the small medical provider, the first requirement of the exemption was expanded to exclude medical providers with 15 or fewer full time employees, up from the 10 of fewer full time employees set forth in the previous stage. The regulation was also changed to make the exemption applicable if the provider meets either of the criteria, as opposed to both. The change to the second criteria was made because the second

				criteria in the previous stage was not entirely clear and difficult to determine. The new requirement of having submitted fewer than 250 bills for workers' compensation treatment in the past calendar year is more definite and easy to ascertain.
30-16-50 B 2*			This new subsection exempts payers who processed fewer than 250 bills for treatment of workers' compensation injuries in the past calendar year.	This new exemption from small volume payers was added in response to comments received requesting same.
30-16-50 D 7			Added "a complete or" to clarify that acceptance of a bill, whether complete or incomplete does not satisfy the notification requirements of the Virginia Workers' Compensation Act.	The Virginia Workers' Compensation Act contains many notification requirements. This change clarifies that acceptance of a medical bill by a payer, whether the bill is complete or incomplete, does not satisfy any of those notification requirements.
30-16-50 D 8			Former subsection D 9 was renumbered as D 8. Former subsection D 8 was deleted. This provision from the previous stage that stated, "Acceptance of a complete or incomplete medical bill by a payer does begin the time period by which a payer shall accept or deny liability for any alleged claim related to such medical treatment pursuant to § 65.2-605.1 of the Code of Virginia".	Former subsection D 8, taken from the IAIABC model regulation was intended to address statutory time limits for accepting or contesting an injured workers' claim. However, no such time limits exist under the Virginia Workers' Compensation Act. Also, the provision was inconsistent with the prompt-pay statute. The provision was deleted in its entirety.
30-16-50 F 4*			Added clause "that have been billed electronically in accordance with this	The portion of 65. 2-605.1 requiring adoption of this e-billing regulation specifies that electronic

			chapter” to clarify that electronic payment is only required for bills submitted electronically.	payment is only required for bills that have been submitted electronically. This change to the previous stage of the regulation makes that clear.
30-16-50 F 4*			Deleted “electronic” as a modifier for “alternate method” of payment.	This change from the previous stage allows providers and payers to agree to any form of alternate payment, not just alternate electronic forms of payment.
30-16-50 G			Added “1” following B to capture section renumbering.	This is a technical change made necessary by the inclusion of new subsection B 2.
30-16-50 I			Added “2” following B to capture section renumbering.	This is a technical change made necessary by the inclusion of new subsection B 2.
30-16-60 A 1*			Added “A payer may subsequently reject a complete medical bill or any portion thereof that is contested or denied in accordance with the requirements of subsection B of § 65.2-605.1 of the Code of Virginia.”	This language clarifies the payer’s ability to subsequently contest or deny a bill that is initially accepted as complete.
30-16-60 A 2*			Changed 21 calendar days to 45 calendar days for the time period by which an payer must either reject or make complete an incomplete medical bill.	This change was made because 45 days is required by the prompt-pay statute, 65.2-605.1 of the Code of Virginia
30-16-60 A 2 b*			Added “and the requirements of subsection B of § 65.2-605.1 of the Code of Virginia.”	This change was made to clarify that requirements of the prompt-pay statute apply to rejections of electronic medical bills.
30-16-60 D*			Added “and shall comply with all requirements of subsection B of § 65.2-605.1 of the Code of Virginia.”	This change was made to clarify that requirements of the prompt-pay statute apply to rejections of electronic medical bills.

30-16-60 F 1*			Changed “within two business days of” to “as soon as practicable but not more than 45 calendar days after”	This change was made because 45 days is required by the prompt-pay statute, but the revised regulation also encourages payers to reject incomplete bills as soon as practicable to speed the process.
30-16-60 I*			Deleted this subsection which read, “A payer shall not reject or deny a medical bill except as provided in subsection A of this section. When rejecting or denying a medical bill, the payer shall also communicate to the health care provider the reasons for the medical bill’s rejection or denial.”	This provision was duplicative of subsection 30-16-60 D and was not needed

Detail of All Changes Proposed in this Regulatory Action

*Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of updated requirements
30-16-10		Specifies that the regulation applies to medical services rendered to injured workers pursuant to the Virginia Workers’ Compensation Act.	Language was added to clarify the applicability of regulation.
30-16-10*		Voluntary compliance with regulation may begin December 31, 2018; mandatory compliance effective July 1, 2019.	Changed the effective date to give affected parties more time to prepare for compliance and to allow for earlier voluntary compliance.

30-16-30		Sets forth the electronic medical bill processing standards to be used by payers and providers.	Provides clarity and uniformity in billing standards
30-16-40		Sets forth the billing codes and modifiers that are valid in workers' compensation transactions	Provides clarity and uniformity in billing standards
30-16-50		Sets forth the requirements for implementing electronic medical billing and exemptions therefrom	Provides clarity and uniformity in how bills for workers' compensation medical services are to be submitted, processed and paid electronically as well as exemptions from the electronic billing and payment requirements.
30-16-50-A 1		Specifies that the regulation applies to medical services rendered to injured workers pursuant to the Virginia Workers' Compensation Act.	Language was added to clarify the applicability of regulation.
30-16-50-A 2		Added a clause to recognize the exemption for small volume payers added to the final regulation.	This is a technical change made necessary by the inclusion of new subsection B 2.
30-16-50-A 3		Added "1" following B to capture section renumbering.	This is a technical change made necessary by the inclusion of new subsection B 2.
30-16-50-A 4*		Changed mandatory effective date from December 31, 2018 to July 1, 2019.	Changed the effective date to give affected parties more time to prepare for compliance and to allow for earlier voluntary compliance.
30-16-50-A 4		Added clause "unless exempted from this process in accordance with subsection B 2 of this section" to recognize new exemption for small payers.	This is a technical change made necessary by the inclusion of new subsection B 2.
30-16-50-A 5*		Changed mandatory effective date from December 31, 2018 to July 1, 2019.	Changed the effective date to give affected parties more time to prepare for compliance and to allow for earlier voluntary compliance.
30-16-50-A 5		Added "1" following B to capture section renumbering.	This is a technical change made necessary by the inclusion of new subsection B 2.
30-16-50-B 1		Changed the small provider exemption to exempt medical providers with 15 or fewer full time employees <u>or</u> that have submitted fewer than 250 bills for treatment of work injuries in the past calendar year. The latter is a new exemption qualification that replaces the previous criteria of workers' compensation billing	In the previous stage, the criteria for the exemption required providers to meet both requirements of the exemption. In response to comments that the regulation was overly burdensome on the small medical provider, the first requirement of the exemption was expanded to exclude medical providers with 15 or fewer full time employees, up from the 10 of

		constituting less than 10% of the provider's practice.	fewer full time employees set forth in the previous stage. The regulation was also changed to make the exemption applicable if the provider meets either of the criteria, as opposed to both. The change to the second criteria was made because the second criteria in the previous stage was not entirely clear and difficult to determine. The new requirement of having submitted fewer than 250 bills for workers' compensation treatment in the past calendar year is more definite and easy to ascertain.
30-16-50 B 2		This new subsection exempts payers who processed fewer than 250 bills for treatment of workers' compensation injuries in the past calendar year.	This new exemption fro small volume payers was added in response to comments received requesting same.
30-16-50 D 7		Added "a complete or" to clarify that acceptance of a bill, whether complete or incomplete does not satisfy the notification requirements of the Virginia Workers' Compensation Act.	The Virginia Workers' Compensation Act contains many notification requirements. This change clarifies that acceptance of a medical bill by a payer, whether the bill is complete or incomplete, does not satisfy any of those notification requirements.
30-16-50 D 8		Former subsection D 9 was renumbered as D 8. Former subsection D 8 was deleted. This provision from the previous stage that stated, "Acceptance of a complete or incomplete medical bill by a payer does begin the time period by which a payer shall accept or deny liability for any alleged claim related to such medical treatment pursuant to § 65.2-605.1 of the Code of Virginia".	Former subsection D 8, taken from the IAIABC model regulation was intended to address statutory time limits for accepting or contesting an injured workers' claim. However, no such time limits exist under the Virginia Workers' Compensation Act. Also, the provision was inconsistent with the prompt-pay statute. The provision was deleted in its entirety.
30-16-50 F 4*		Added clause "that have been billed electronically in accordance with this chapter" to clarify that electronic payment is only required for bills submitted electronically.	The portion of 65. 2-605.1 requiring adoption of this e-billing regulation specifies that electronic payment is only required for bills that have been submitted electronically. This change to the previous stage of the regulation makes that clear.
30-16-50 F 4*		Deleted "electronic" as a modifier for "alternate method" of payment.	This change from the previous stage allows providers and payers to agree to any form of alternate payment, not just alternate electronic forms of payment.
30-16-50 G		Added "1" following B to capture section renumbering.	This is a technical change made necessary by the inclusion of new subsection B 2.

30-16-50 I		Added "1" following B to capture section renumbering.	This is a technical change made necessary by the inclusion of new subsection B 2.
30-16-60		Sets forth the requirements upon payers upon receipt of electronic bills properly submitted by providers	Provides clarity and uniformity in how payers must process and respond to bills for workers' compensation medical services.
30-16-60 A 1*		Added "A payer may subsequently reject a complete medical bill or any portion thereof that is contested or denied in accordance with the requirements of subsection B of § 65.2-605.1 of the Code of Virginia."	This language clarifies the payer's ability to subsequently contest or deny a bill that is initially accepted as complete.
30-16-60 A 2*		Changed 21 calendar days to 45 calendar days for the time period by which a payer must either reject or make complete an incomplete medical bill.	This change was made because 45 days is required by the prompt-pay statute, 65.2-605.1 of the Code of Virginia
30-16-60 A 2 b*		Added "and the requirements of subsection B of § 65.2-605.1 of the Code of Virginia."	This change was made to clarify that requirements of the prompt-pay statute apply to rejections of electronic medical bills.
30-16-60 D*		Added "and shall comply with all requirements of subsection B of § 65.2-605.1 of the Code of Virginia."	This change was made to clarify that requirements of the prompt-pay statute apply to rejections of electronic medical bills.
30-16-60 F 1*		Changed "within two business days of" to "as soon as practicable but not more than 45 calendar days after"	This change was made because 45 days is required by the prompt-pay statute, but the revised regulation also encourages payers to reject incomplete bills as soon as practicable to speed the process.
30-16-60 I*		Deleted this subsection which read, "A payer shall not reject or deny a medical bill except as provided in subsection A of this section. When rejecting or denying a medical bill, the payer shall also communicate to the health care provider the reasons for the medical bill's rejection or denial."	This provision was duplicative of subsection 30-16-60 D and was not needed
30-16-80		Sets forth standards and requirements for communication between providers and payers related to medical bill processing.	Provides clarity and uniformity for communication between providers and payers related to medical bill processing
30-16-90		Sets for the requirements for necessary medical documentation.	Provides clarity and uniformity with respect to necessary medical documentation.

