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Proposed 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	September 29, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The intent of the proposed 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 proposed 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.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person'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 new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is 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.

The new regulation will contain provisions addressing (1) formats for electronic medical bill processing; (2) billing code sets; (3) electronic medical billing, reimbursement and documentation; (4) employer, insurance carrier, managed care organization or agents' receipt of medical bills from health care providers; (5) communication between health care providers and payers; and (6) medical documentation necessary for billing adjudication. No existing regulations are being changed.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

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 identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a 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.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

None.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Virginia Workers' Compensation Commission is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to James J. Szablewicz, Chief Deputy Commissioner, Virginia Workers' Compensation Commission, 1000 DMV

Drive, Richmond, Virginia 23220, phone: (804) 205-3097, fax: (804) 823-6936. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures	None anticipated.
Projected cost of the new regulations or changes to existing regulations on localities.	None anticipated.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Workers' compensation insurers and their third-party administrators, self-insured employers, medical providers who render services to injured workers pursuant to the Virginia Workers' Compensation Act.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Unknown.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	Unknown.
Beneficial impact the regulation is designed to produce.	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.
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no known viable alternatives to accomplish the mandate of Subsection H of Section 65.2-605.1 of the Code of Virginia and Chapter 621 of the 2015 Acts of Assembly.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no known alternative regulatory methods of accomplishing the mandate of Subsection H of Section 65.2-605.1 of the Code of Virginia and Chapter 621 of the 2015 Acts of Assembly. Health care providers that employ 10 or fewer full-time employees are exempt from the regulation as are medical providers for which workers’ compensation services constitute less than 10% of its practice.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Not applicable

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
None	None	None

No comments were received following publication of the NOIRA

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

None.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements

If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	Proposed new chapter-section number, if	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements

	applicable		

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
30-16-30	Sets forth the electronic medical bill processing standards to be used by payers and providers.	Unknown.	Provides clarity and uniformity in billing standards
30-16-40	Sets forth the billing codes and modifiers that are valid in workers' compensation transactions	Unknown	Provides clarity and uniformity in billing standards
30-16-50	Sets forth the requirements for implementing electronic medical billing and exemptions therefrom	Unknown	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.
30-16-60	Sets forth the requirements upon payers upon receipt of electronic bills properly submitted by providers	Unknown	Provides clarity and uniformity in how payers must process and respond to bills for workers' compensation medical services.
30-16-80	Sets forth standards and requirements for communication between providers and payers related to medical bill processing.	Unknown	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.	Unknown beyond Rule 4.2 of the Rules of the Virginia Workers' Compensation Commission (subsection 2 of 16 VAC 30-50-50)	Provides clarity and uniformity with respect to necessary medical documentation.

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation includes changes since the emergency regulation, please create two charts: 1) a chart describing changes from the **pre-emergency** regulation to the proposed regulation as described in the paragraph above, and 2) a chart describing changes from the **emergency** regulation to the proposed regulation. For the second chart please use the following title: “Changes from the Emergency Regulation.” In this case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.