**A** **BILL**

TO AMEND CHAPTER 71, TITLE 38 OF THE 1976 CODE, RELATING TO ACCIDENT AND HEALTH INSURANCE, BY ADDING ARTICLE 16, TO PROVIDE THAT ALL HEALTH INSURANCE CARRIERS SHALL OFFER SHARED SAVINGS INCENTIVE PROGRAMS AS A COMPONENT OF ALL HEALTH INSURANCE PLANS, SUBJECT TO CERTAIN EXCEPTIONS, TO PROVIDE REQUIREMENTS CONCERNING THE ESTABLISHMENT OF THESE PROGRAMS, TO PROVIDE FOR THE OFFERING OF INCENTIVES TO HEALTH PLAN ENROLLEES CONCERNING CERTAIN COVERED SHOPPABLE HEALTH CARE SERVICES, TO PROVIDE THAT SHARED SAVINGS INCENTIVE PAYMENTS ARE NOT ADMINISTRATIVE EXPENSES FOR THE CARRIER THAT PAID THEM FOR RATE DEVELOPMENT OR RATE FILING PURPOSES, TO PROVIDE REPORTING REQUIREMENTS, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 71, Title 38 of the 1976 Code is amended by adding:

“ARTICLE 16

Right to Shop for Health Insurance

Section 38‑71‑1610. For the purposes of this article:

(1) ‘Insurance carrier’ or ‘carrier’ means a health insurance company, a health maintenance organization, preferred provider arrangement administrators, a fraternal benefit society, a nonprofit hospital or medical service organization operating a licensed health plan, a self‑insured employer subject to state regulation, or any other entity offering coverage in this State that is subject to the requirements of the Patient Protection and Affordable Care Act, 42 U.S.C. Section 18001, et seq., and that is licensed to do business by the department.

(2) ‘Program’ means a shared savings incentive program established by a carrier pursuant to this article.

(3) ‘Shoppable health care service’ means a health care service for which a carrier offers a shared savings incentive payment under a program established by the carrier pursuant to this article. A shoppable heath care service includes, at a minimum, some combination of:

(a) physical and occupational therapy services;

(b) obstetrical and gynecological services;

(c) radiology and imaging services; and

(d) laboratory services.

Section 38‑71‑1620. Before a carrier that establishes a program pursuant to this article may offer the program to an enrollee, the carrier shall file a description of the program with the department in the manner determined by the department. The department may review this filing to determine if the carrier’s program complies with the requirements of this article. A filing and supporting documentation made pursuant to this section is confidential until the filing is reviewed.

Section 38‑71‑1630. Except for a health plan offered through the federally facilitated marketplace, a carrier shall make a program available as a component of all health plans offered by the carrier in this State. A carrier may make the program available as a component of a health plan offered by the carrier through the federally facilitated marketplace. Annually at enrollment or renewal, a carrier shall provide notice about the availability of the program to an enrollee who is enrolled in a health plan eligible for the program.

Section 38‑71‑1640. (A) A carrier shall develop and implement a program for enrollees in a health plan who elect to receive shoppable health care services that are covered by the plan. The program shall provide incentives from providers that charge less than the average price paid by the carrier for the shoppable health care service.

(B) An incentive may be calculated as a percentage of the difference in price, as a flat dollar amount, or by some other reasonable methodology approved by the department. The carrier may provide the incentive as a cash payment to the enrollee or as a reduction in the enrollee’s cost sharing or premium payment. For a service that is paid for by the enrollee under the plan’s deductible provision, the carrier may provide the incentive by crediting a higher amount than the provider’s actual charge toward the enrollee’s deductible.

(C) The program must provide enrollees with at least forty percent of the carrier’s saved costs for each service or category of shoppable health care service resulting from shopping by enrollees. Compliance with this requirement may be demonstrated in the aggregate of plans offered in this State based on a reasonably anticipated mix of claims. A carrier is not required to provide a payment or credit to an enrollee if the carrier’s saved cost is fifty dollars or less.

(D) A carrier may determine the methodology for calculating the average price paid by the carrier for a shoppable health care service and the process an enrollee must use to document if the provider chosen by the enrollee costs less than the average price paid by the carrier.

Section 38‑71‑1650. If an enrollee elects to receive a shoppable health care service from an out‑of‑network provider that results or would otherwise result in a shared savings incentive payment, then a carrier shall apply the amount paid for the shoppable health care service toward the enrollee’s member cost sharing, as specified in the enrollee’s health plan, as if the health care service were provided by a network provider.

Section 38‑71‑1660. A shared savings incentive payment made by a carrier in accordance with this article is not an administrative expense of the carrier for rate development or rate filing purposes.

Section 38‑71‑1670. (A) Annually on March first, a carrier shall file with the department information from the most recent calendar year concerning the:

(1) total number of shared savings incentive payments made pursuant to this article;

(2) utilization of shoppable health care services, by category of service, for which shared savings incentive payments have been made;

(3) total shared savings incentive payments made to enrollees;

(4) average amount of shared savings incentive payments made, by service, for such transactions;

(5) total savings achieved below the average prices, by service, for such transactions; and

(6) total number and percentage of a carrier’s enrollees that participated in such transactions.

(B) Annually by April first, the department shall submit an aggregate report for all carriers filing the information required by subsection (A) to the Senate Banking and Insurance Committee and the House of Representatives Labor, Commerce and Industry Committee.

Section 38‑71‑1680. The department may adopt rules as necessary to implement this article.”

SECTION 2. (A) The Department of Insurance may grant a waiver from the requirement in Section 38‑71‑1630, as added by this act, that a shared savings incentive program be made available as a component of all health plans if the Department of Insurance determines that a waiver is justified on the basis of criteria specified in regulations adopted by the Department of Insurance. A waiver request and supporting documentation is confidential until the Department of Insurance grants or denies the waiver request. The Department of Insurance may not grant a waiver after January 1, 2022.

(B) A carrier shall file information with the Department of Insurance pursuant to Section 38‑71‑1670(A), as added by this act, beginning on March 1, 2023. The Department of Insurance shall submit an aggregate report pursuant to Section 38-71-1670(B), as added by this act, beginning on April 1, 2023.

SECTION 3. This act takes effect upon approval by the Governor.

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