IN THE GENERAL ASSEMBLY STATE OF _____

Be it enacted by the People of the State of _____, represented in the General Assembly.

Section 1. Title. This act shall be known as and may be cited as the Transparency in Downcoding Act.

Section 2. Purpose. The Legislature hereby finds and declares that:

(a) Downcoding of medical claims, when done without clear justification or transparency, undermines fair payment of healthcare providers and threatens the stability of physician practices;

(b) Improper downcoding may result in harm to patients by disincentivizing care for individuals with complex medical conditions;

(c) It is in the public interest to ensure that all coding adjustments are clinically supported, transparent, appealable, and free from discriminatory targeting.

Section 3. Definitions.

(a) "CARC" refers to Claim Adjustment Reason Codes, which provide the reason for a financial adjustment specific to particular claim or service referenced in the transmitted Accredited Standards Committee (ASC) X12 835 standard transaction adopted by the Department of Health and Human Services under 45 CFR 162.1602.

(b) "Downcoding" means the unilateral alteration by a health insurer of the level of evaluation and management service code or other service code submitted on a claim, resulting in a lower payment.[1]

(c) "Health insurer" means an entity, including an insurance company authorized to issue health insurance, a Health Maintenance Organization (HMO), or any other entity providing a plan of health insurance, health benefits or health care services, and contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. For purposes of this Act, "health insurer" includes a third-party administrator or other payer responsible for adjudicating claims.

(d) "RARC" refers to Remittance Advice Remark Codes, which provide supplemental information about a financial adjustment indicated by a CARC or information about remittance processing.

Section 4. Prohibition of Automatic Downcoding

(a) A health insurer shall not use an automated process, system, or tool to downcode a claim. An automated tool includes, but is not limited to, for the purposes of this section, the use of artificial intelligence.

(b) Downcoding decisions shall be made by a physician licensed in the state of [insert state] and of the same specialty as the treating physician, who shall perform a documented review of the clinical information supporting the billed service.[2]

[1] DRAFTING NOTE: Legislators may consider defining an "adverse determination" in related statutes as "a determination by a payer that results in the denial, reduction, or adjustment of reimbursement, including downcoding, whether full or partial, of a claim" for purposes of establishing more protections for physicians and patients when a claim is downcoded.

[2] DRAFTING NOTE: Some health plans may prohibit physicians from submitting additional clinical information to support the billed services as it becomes available without triggering the appeals process. If such practices are occurring within the state, legislators may wish to clarify that health plans must review any submitted supporting clinical documentation without requiring that the claim be advanced to the appeals process.

Section 5. Prohibition on Diagnosis-Based Downcoding

A health insurer shall not downcode a claim based solely on the reported diagnosis code(s).

Section 6. Notification Requirements for Downcoded Claims

When a claim is downcoded, the health insurer shall notify the physician using the appropriate CARC and RARC to clearly indicate that the claim has been downcoded and provide:

(a) The specific reason for the downcoding, including reference to the clinical criteria used to justify the downcoding;

(b) The original and revised service codes and payment amounts;

(c) The National Provider Identifier of the physician who is responsible for the downcoding decision, as well as the physician's credentials, board certifications, and areas of specialty expertise and training; and

(d) A notice of the right to appeal as described in Section 7. [3]

Section 7. Appeal Process for Downcoded Claims

(a) Health insurers shall provide physicians with a clear and accessible process for appealing downcoded claims, including a written or electronic notice detailing how to initiate an appeal, contact information for the individual managing the appeal, reasonable timelines for submission of an appeal that are no less than [180] days, and timelines for adjudication of the appeal consistent with applicable state law or regulations governing utilization review.[4]

(b) Physicians shall have the right to appeal in batches of similar claims involving substantially similar downcoding issues, without restriction.

[3] DRAFTING NOTE: Legislators can clarify that the appeals process used to appeal pre-claim, concurrent, and post-claim denials is applicable to appealing downcoded claims.

[4] AMA policy requires that a decision on appeal be communicated to physician and patients within 24 hours for urgent care and within 10 calendar days for non-urgent care.

Section 8. **Protections for Patients with Chronic Conditions**

(a) Health insurers shall not use downcoding practices in a targeted or discriminatory manner against physicians who routinely treat patients with complex or chronic conditions.

(b) Any pattern or practice of discriminatory downcoding identified by the Insurance Commissioner or other regulatory authority shall be subject to enforcement actions, including fines, restitution, or suspension of health insurer licensure in this state.

Section 9. Enforcement and Penalties

Violations of this Act shall be enforceable by the Department of Insurance and may include, but not be limited to:

(a) Monetary penalties of up to $50,000 per violation; and

(b) Orders to reprocess improperly downcoded claims with interest.

Section 10. Effective.

This Act shall become effective immediately upon being enacted into law.

Section 11. Severability.

If any provision of this Act is held by a court to be invalid, such invalidity shall not affect the remaining provisions of this Act, and to this end the provisions of this Act are hereby declared severable.