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1 **HOUSE BILL NO. 2773**

2 Offered January 17, 2025

3 A BILL to amend and reenact §§ 38.2-3407.22, 38.2-3465, 38.2-3466, and 38.2-3467 of the Code of Virginia
4 and to amend the Code of Virginia by adding sections numbered 38.2-3467.1 and 38.2-3467.2, relating to
5 health insurance; ensuring fairness in cost-sharing; pharmacy benefits managers; compensation and
6 duties; civil penalty.

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8 Referred to Committee on Labor and Commerce

9 Be it enacted by the General Assembly of Virginia:

10 1. That §§ 38.2-3407.22, 38.2-3465, 38.2-3466, and 38.2-3467 of the Code of Virginia are amended and
11 reenacted and that the Code of Virginia is amended by adding sections numbered 38.2-3467.1 and
12 38.2-3467.2 as follows:13 **§ 38.2-3407.22. Ensuring fairness in cost-sharing; protected information.**

14 A. As used in this section:

15 "Carrier" has the same meaning as set forth in § 38.2-3407.10; however, "carrier" also includes any person
16 required to be licensed pursuant to this title that offers or operates a managed care health insurance plan
17 subject to the requirements of Chapter 58 (§ 38.2-5800 et seq.) or that provides or arranges for the provision
18 of health care services, health plans, networks, or provider panels that are subject to regulation as the business
19 of insurance. "Carrier" also includes any health insurance issuer that offers health insurance coverage, as
20 defined in § 38.2-3431.

21 "Enrollee" means any person entitled to health care services from a carrier.

22 "Health care services" means items or services furnished to any individual for the purpose of preventing,
23 alleviating, curing, or healing human illness, injury, or physical disability.24 "Defined cost-sharing" means a deductible payment or coinsurance amount imposed on an enrollee for a
25 covered prescription drug under the enrollee's health plan.26 "Health plan" means any individual or group health care plan, subscription contract, evidence of coverage,
27 certificate, health services plan, medical or hospital services plan, accident or sickness insurance policy or
28 certificate, managed care health insurance plan, or other similar certificate, policy, contract, or arrangement,
29 and any endorsement or rider thereto, to cover all or a portion of the cost of persons receiving covered health
30 care services, that is subject to state regulation and that is required to be offered, arranged, or issued in the
31 Commonwealth by a carrier licensed under this title. "Health plan" includes a state or local government
32 employer plan. "Health plan" does not mean include (i) a state or local government employer plan, including
33 the state employee health plan under § 2.2-2818.2; (ii) coverages issued pursuant to Title XVIII of the Social
34 Security Act, 42 U.S.C. § 1395 et seq. (Medicare), Title XIX of the Social Security Act, 42 U.S.C. § 1396 et
35 seq. (Medicaid), Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq. (CHIP), 5 U.S.C. § 8901 et
36 seq. (federal employees), or 10 U.S.C. § 1071 et seq. (TRICARE) or (iii); (iii) accident only, credit or
37 disability insurance, long-term care insurance, TRICARE supplement, Medicare Supplement, or workers'
38 compensation coverages; or (iv) an employee welfare benefit plan, as defined in section 3 (1) of the Employee
39 Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1), that is self-insured or self-funded.

40 "Pharmacy benefits manager" has the same meaning as set forth in § 38.2-3407.15.4.

41 "Price protection rebate" means a negotiated price concession that accrues directly or indirectly to the
42 carrier, or other party on behalf of the carrier, in the event of an increase in the wholesale acquisition cost of
43 a drug above a specified threshold.44 "Rebate" means (i) negotiated price concessions, including base price concessions and reasonable
45 estimates of any price protection rebates and performance-based price concessions, whether described as a
46 rebate or otherwise, that may accrue directly or indirectly to a carrier, health plan, or pharmacy benefits
47 manager during the coverage year from a manufacturer, dispensing pharmacy, or other party in connection
48 with the dispensing or administration of a prescription drug and (ii) reasonable estimates of any negotiated
49 price concessions, fees, or other administrative costs that are passed through, or are reasonably anticipated to
50 be passed through, to the carrier, health plan, or pharmacy benefits manager and serve to reduce the liability
51 of the carrier, health plan, or pharmacy benefits manager for a prescription drug.52 B. When contracting with a carrier or health plan to administer pharmacy benefits, a pharmacy benefits
53 manager shall offer the carrier or health plan the option of extending point of sale rebates to enrollees of the
54 plan. An enrollee's defined cost-sharing for each prescription drug shall be calculated at the point of sale
55 based on a price that is reduced by an amount equal to at least 80 percent of all rebates received or expected
56 to be received based on information known to the carrier at the time of the transaction in connection with the

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59 dispensing or administration of the prescription drug.

60 C. The provisions of this section shall only apply to a carrier, health plan, or pharmacy benefits manager.
61 Nothing in this section shall preclude a carrier from decreasing an enrollee's defined cost-sharing for each
62 prescription drug by an amount greater than that required under subsection B.

63 D. In implementing the requirements of this section, the Commission shall only regulate a carrier to the
64 extent permissible under applicable law.

65 D. E. In complying with the provisions of this section, a carrier, health plan, pharmacy benefits manager,
66 or its respective agents shall not publish or otherwise reveal information regarding the actual amount of
67 rebates a carrier, health plan, or pharmacy benefits manager receives on a product or therapeutic class of
68 products on a product-specific, manufacturer-specific, or pharmacy-specific basis. Such information shall be
69 protected as a trade secret and shall not be a public record as defined by the Virginia Public Records Act (§
70 42.1-76 et seq.) or disclosed, directly or indirectly, in a manner that would allow for the identification of an
71 individual product, therapeutic class of products, or manufacturer, or in a manner that has the potential to
72 compromise the financial, competitive, or proprietary nature of the information. A carrier, health plan, or
73 pharmacy benefits manager shall require any vendor or third party with which the carrier, health plan, or
74 pharmacy benefits manager contracts for that performs health care or administrative services on behalf of the
75 carrier, health plan, or pharmacy benefits manager that and may receive or have access to rebate information
76 to comply with the confidentiality provisions of this subsection related to protection of information regarding
77 the amount of rebates a carrier, health plan, or pharmacy benefits manager receives on a product specific,
78 manufacturer specific, or pharmacy specific basis.

79 E. The Commission may, pursuant to the provisions of § 38.2-223, adopt such rules and regulations as
80 may be necessary to implement and enforce the provisions of this section.

81 **§ 38.2-3465. Definitions.**

82 A. As used in this article, unless the context requires a different meaning:

83 "Aggregate retained rebate percentage" means the sum total dollar amount of a pharmacy benefits
84 manager's retained rebates relating to all carrier clients of such pharmacy benefits manager divided by the
85 sum total dollar amount of all rebates received by such pharmacy benefits manager relating to all such clients.

86 "Carrier" has the same meaning ascribed thereto in subsection A of § 38.2-3407.15. However, "carrier"
87 does not include a nonprofit health maintenance organization that operates as a group model whose internal
88 pharmacy operation exclusively serves the members or patients of the nonprofit health maintenance
89 organization.

90 "Claim" means a request from a pharmacy or pharmacist to be reimbursed for the cost of administering,
91 filling, or refilling a prescription for a drug or for providing a medical supply or device.

92 "Claims processing services" means the administrative services performed in connection with the
93 processing and adjudicating of claims relating to pharmacist services that include (i) receiving payments for
94 pharmacist services, (ii) making payments to pharmacists or pharmacies for pharmacist services, or (iii) both
95 receiving and making payments.

96 "Contract pharmacy" means a pharmacy operating under contract with a 340B-covered entity to provide
97 dispensing services to the 340B-covered entity, as described in 75 Fed. Reg. 10272 (March 5, 2010) or any
98 superseding guidance published thereafter.

99 "Covered entity" means an entity described in § 340B(a)(4) of the federal Public Health Service Act, 42
100 U.S.C. § 256B(a)(4). "Covered entity" does not include a hospital as defined in § 32.1-123 or 37.2-100.

101 "Covered individual" means an individual receiving prescription medication coverage or reimbursement
102 provided by a pharmacy benefits manager or a carrier under a health benefit plan.

103 "Defined cost-sharing" means a deductible payment or coinsurance amount imposed on an enrollee for a
104 covered prescription drug under the enrollee's health benefit plan.

105 "Enrollee" means any person entitled to health care services from a carrier.

106 "Health benefit plan" has the same meaning ascribed thereto in § 38.2-3438. "Health benefit plan" does
107 not include a state or local government employer plan, including the state employee health insurance plan
108 under § 2.2-2818.2.

109 "Health care services" means items or services furnished to any individual for the purpose of preventing,
110 diagnosing, alleviating, curing, or healing human illness, injury, or physical disability.

111 "Mail order pharmacy" means a pharmacy whose primary business is to receive prescriptions by mail or
112 through electronic submissions and to dispense medication to covered individuals through the use of the
113 United States mail or other common or contract carrier services and that provides any consultation with
114 covered individuals electronically rather than face-to-face.

115 "Pharmacy benefits management fee" means a fee that covers the cost of providing one or more pharmacy
116 benefits management services and that does not exceed the value of the service actually performed by the
117 pharmacy benefits manager.

118 "Pharmacy benefits management services" means the administration or management of prescription drug
119 benefits provided by a carrier for the benefit of covered individuals (i) negotiating the price of prescription

120 drugs, including negotiating and contracting for direct or indirect rebates, discounts, or other price
 121 concessions; (ii) managing any aspect of a prescription drug benefit, including the processing and payment
 122 of claims for prescription drugs, the performance of drug utilization reviews, the processing of drug prior
 123 authorization requests for prescription drugs, the adjudication of appeals or grievances related to the
 124 prescription drug benefit, contracting with network pharmacies, controlling the cost of covered prescription
 125 drugs, or the provision of services related thereto; (iii) performing any administrative, managerial, clinical,
 126 pricing, financial, reimbursement, or billing service; and (iv) providing such other services as the
 127 Commissioner may define by regulation. "Pharmacy benefits management services" does not include any
 128 service provided by a nonprofit health maintenance organization that operates as a group model, provided
 129 that the service is furnished through the internal pharmacy operation exclusively serves the members or
 130 patients of the nonprofit health maintenance organization.

131 "Pharmacy benefits manager" or "PBM" means an entity that performs, pursuant to a written agreement
 132 with a carrier or health benefit plan, either directly or indirectly provides one or more pharmacy benefits
 133 management services on behalf of the carrier or health benefit plan and any agent, contractor, intermediary,
 134 affiliate, subsidiary, or related entity that facilitates, provides, directs, or oversees the provision of pharmacy
 135 benefits management services. "Pharmacy benefits manager" includes an entity acting for a PBM in a
 136 contractual relationship in the performance of pharmacy benefits management services for a carrier, nonprofit
 137 hospital, or third-party payor under a health program administered by the Commonwealth.

138 "Pharmacy benefits manager affiliate" means a business, pharmacy, or pharmacist that directly or
 139 indirectly, through one or more intermediaries, owns or controls, is owned or controlled by, or is under
 140 common ownership interest or control with a pharmacy benefits manager.

141 "Pharmacy benefits manager duty" means the duty of a pharmacy benefits manager to perform pharmacy
 142 benefits management services with care, skill, prudence, diligence, fairness, transparency, and
 143 professionalism and for the best interests of the enrollee, the health benefit plan, and the provider, in
 144 accordance with § 38.2-3467.2 and any Commission regulations. "Pharmacy benefits manager duty"
 145 includes duties of care and good faith and fair dealing.

146 "Price protection rebate" means a negotiated price concession that accrues directly or indirectly to the
 147 carrier, or other party on behalf of the carrier, in the event of an increase in the wholesale acquisition cost of
 148 a drug above a specified threshold.

149 "Rebate" means a discount or other price concession, including without limitation incentives,
 150 disbursements, and reasonable estimates of a volume-based discount, or a payment that is (i) based on
 151 utilization of a prescription drug and (ii) paid by a manufacturer or third party, directly or indirectly, to a
 152 pharmacy benefits manager, pharmacy services administrative organization, or pharmacy after a claim has
 153 been processed and paid at a pharmacy (i) negotiated price concessions, including base price concessions,
 154 whether described as a rebate or otherwise, and reasonable estimates of any price protection rebates and
 155 performance-based price concessions, that may accrue directly or indirectly to a carrier or health benefit
 156 plan during the coverage year from a manufacturer, dispensing pharmacy, or other party in connection with
 157 the dispensing or administration of a prescription drug and (ii) reasonable estimates of any negotiated price
 158 concessions, fees, or other administrative costs that are passed through, or are reasonably anticipated to be
 159 passed through, to the carrier or health benefit plan and serve to reduce the liability of the carrier or health
 160 benefit plan for a prescription drug.

161 "Retail community pharmacy" means a pharmacy that is open to the public, serves walk-in customers, and
 162 makes available face-to-face consultations between licensed pharmacists and persons to whom medications
 163 are dispensed.

164 "Retained rebate" means a rebate that is not passed on to a health benefit plan.

165 "Retained rebate percentage" means the sum total dollar amount of a pharmacy benefits manager's
 166 retained rebates relating to a health benefit plan divided by the sum total dollar amount of all rebates received
 167 by such pharmacy benefits manager relating to such health benefit plan.

168 "Spread pricing" means the model of prescription drug pricing in which the pharmacy benefits manager
 169 charges a health benefit plan a contracted price for prescription drugs, and the contracted price for the
 170 prescription drugs differs from the amount the pharmacy benefits manager directly or indirectly pays the
 171 pharmacist or pharmacy for pharmacist services.

172 **§ 38.2-3466. License required to provide pharmacy benefits management services; requirements for
 173 a license, renewal, and revocation or suspension; civil penalty.**

174 A. Unless otherwise covered by a license as a carrier, no person shall provide pharmacy benefits
 175 management services or otherwise act as a pharmacy benefits manager in the Commonwealth without first
 176 obtaining a license in a manner and in a form prescribed by the Commission.

177 B. Each applicant for a license as a pharmacy benefits manager shall make application to the Commission,
 178 in the form and containing the information listed in subsection C and any other information the Commission
 179 prescribes. The Commission may require any documents reasonably necessary to verify the information
 180 contained in an application. Each applicant shall, at the time of applying for a license, pay a nonrefundable

181 application processing fee in an amount and in a manner prescribed by the Commission. The fee shall be
182 collected by the Commission and paid directly into the state treasury and credited to the "Bureau of Insurance
183 Special Fund — State Corporation Commission" for the maintenance of the Bureau of Insurance as provided
184 in subsection B of § 38.2-400.

185 C. An applicant for a license as a pharmacy benefits manager shall provide the Commission the following
186 information:

- 187 1. The name, address, and telephone contact number of the pharmacy benefits manager;
- 188 2. The name and address of each person with management or control over the pharmacy benefits manager;
- 189 3. The name and address of each person with a beneficial ownership interest in the pharmacy benefits
190 manager; and

191 4. If the pharmacy benefits manager registrant (i) is a partnership or other unincorporated association, a
192 limited liability company, or a corporation and (ii) has five or more partners, members, or stockholders, the
193 registrant shall specify its legal structure and the total number of its partners, members, or stockholders who,
194 directly or indirectly, own, control, hold with the power to vote, or hold proxies representing 10 percent or
195 more of the voting securities of any other person.

196 D. An applicant shall provide the Commissioner with a signed statement indicating that, to the best of its
197 knowledge, no officer with management or control of the pharmacy benefits manager has been convicted of a
198 felony or has violated any of the requirements of state law applicable to pharmacy benefits managers, or, if
199 the applicant cannot provide such a statement, a signed statement describing the relevant conviction or
200 violation.

201 E. Except where prohibited by state or federal law, by submitting an application for a license, the
202 applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process
203 on the applicant in any action or proceeding arising in the Commonwealth out of or in connection with the
204 exercise of the license. Such appointment of the clerk of the Commission as agent for service of process shall
205 be irrevocable during the period within which a cause of action against the applicant may arise out of
206 transactions with respect to subjects of pharmacy benefits management *services* in the Commonwealth.
207 Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et
208 seq.).

209 F. Each applicant that has complied with the provisions of this article and Commission regulations is
210 entitled to and shall receive a license in the form the Commission prescribes.

211 G. Each pharmacy benefits manager shall renew its license annually and shall, at the time of renewal, pay
212 a renewal fee in an amount and in a manner prescribed by the Commission. The fee shall be collected by the
213 Commission and paid directly into the state treasury and credited to the "Bureau of Insurance Special Fund —
214 State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B
215 of § 38.2-400.

216 H. The Commission may refuse to issue or renew a license or may revoke or suspend a license if it finds
217 that the applicant or license holder has not complied with the provisions of this article or Commission
218 regulations.

219 I. A person that violates the provisions of this section may be subject to a civil penalty of \$5,000 for each
220 day on which such violation occurs. The Commission may adopt such rules or establish such guidelines as
221 may be necessary to enforce the provisions of this section.

222 **§ 38.2-3467. Prohibited conduct by carriers and pharmacy benefits managers; civil penalty.**

223 A. No carrier on its own or through its contracted pharmacy benefits manager or representative of a
224 pharmacy benefits manager shall:

225 1. Cause or knowingly permit the use of any advertisement, promotion, solicitation, representation,
226 proposal, or offer that is untrue;

227 2. Charge a pharmacist or pharmacy a fee related to the adjudication of a claim other than a reasonable fee
228 for an initial claim submission;

229 3. Reimburse a pharmacy or pharmacist an amount less than the amount that the pharmacy benefits
230 manager reimburses a pharmacy benefits manager affiliate for providing the same pharmacist services,
231 calculated on a per-unit basis using the same generic product identifier or generic code number and reflecting
232 all drug manufacturer's rebates, direct and indirect administrative fees, and costs and any remuneration;

233 4. Penalize or retaliate against a pharmacist or pharmacy for exercising rights provided pursuant to the
234 provisions of this article;

235 5. Impose requirements, exclusions, reimbursement terms, or other conditions on a covered entity or
236 contract pharmacy that differ from those applied to entities or pharmacies that are not covered entities or
237 contract pharmacies on the basis that the entity or pharmacy is a covered entity or contract pharmacy or that
238 the entity or pharmacy dispenses 340B-covered drugs. Nothing in this subdivision shall (i) apply to drugs
239 with an annual estimated per-patient cost exceeding \$250,000 or (ii) prohibit the identification of a 340B
240 reimbursement request; or

241 6. Interfere with a covered individual's right to choose a pharmacy or provider, based on the pharmacy or

242 provider's status as a covered entity or contract pharmacy.

243 B. No carrier, on its own or through its contracted pharmacy benefits manager or representative of a
 244 pharmacy benefits manager, shall restrict participation of a pharmacy in a pharmacy network for provider
 245 accreditation standards or certification requirements if a pharmacist meets such accreditation standards or
 246 certification standards.

247 C. No carrier, on its own or through its contracted pharmacy benefits manager or representative of a
 248 pharmacy benefits manager, shall include any mail order pharmacy or pharmacy benefits manager affiliate in
 249 calculating or determining network adequacy under any law or contract in the Commonwealth.

250 D. No carrier, on its own or through its contracted pharmacy benefits manager or representative of a
 251 pharmacy benefits manager, shall conduct spread pricing in the Commonwealth.

252 E. Each carrier on its own or through its contracted pharmacy benefits manager or representative of a
 253 pharmacy benefits manager shall comply with the provisions of this section in addition to complying with the
 254 provisions of § 38.2-3407.15:1.

255 *F. No pharmacy benefits manager shall derive income from pharmacy benefits management services
 256 provided to a carrier or health benefit plan in the Commonwealth except for income derived from a
 257 pharmacy benefits management fee. The amount of any pharmacy benefits management fees shall be set forth
 258 in the agreement between the pharmacy benefits manager and the carrier or health benefit plan. The
 259 pharmacy benefits management fee charged by or paid to a pharmacy benefits manager from a carrier or
 260 health benefit plan shall not be directly or indirectly based or contingent upon (i) the acquisition cost or any
 261 other price metric of a drug; (ii) the amount of savings, rebates, or other fees charged, realized, or collected
 262 by or generated based on the activity of the pharmacy benefits manager; or (iii) the amount of premiums,
 263 deductibles, or other cost-sharing or fees charged, realized, or collected by the pharmacy benefits manager
 264 from enrollees or other persons on behalf of an enrollee. Annually by December 31, each pharmacy benefits
 265 manager operating in the Commonwealth shall certify to the Commission that it has fully and completely
 266 complied with the requirements of this section. Such certification shall be signed by the chief executive officer
 267 or chief financial officer of the pharmacy benefits manager. The Commission shall impose a civil penalty not
 268 to exceed \$1,000 per claim for a violation of this subsection.*

269 **§ 38.2-3467.1. Ensuring fairness in cost-sharing; protected information.**

270 A. An enrollee's defined cost-sharing for each prescription drug shall be calculated at the point of sale
 271 based on a price that is reduced by an amount equal to at least 80 percent of all rebates received or expected
 272 to be received based on information known to the pharmacy benefits manager at the time of the transaction in
 273 connection with the dispensing or administration of the prescription drug.

274 B. Nothing in this section shall preclude a pharmacy benefits manager from decreasing an enrollee's
 275 defined cost-sharing for each prescription drug by an amount greater than that required under subsection A.

276 C. In complying with the provisions of this section, a pharmacy benefits manager or its agents shall not
 277 publish or otherwise reveal information regarding the actual amount of rebates a pharmacy benefits
 278 manager receives on a product or therapeutic class of products on a product-specific, manufacturer-specific,
 279 or pharmacy-specific basis. Such information shall be protected as a trade secret and shall not be a public
 280 record as defined by the Virginia Public Records Act (§ 42.1-76 et seq.) or disclosed, directly or indirectly, in
 281 a manner that would allow for the identification of an individual product, therapeutic class of products, or
 282 manufacturer, or in a manner that has the potential to compromise the financial, competitive, or proprietary
 283 nature of the information. A pharmacy benefits manager shall require any vendor or third party that
 284 performs health care or administrative services on behalf of the pharmacy benefits manager or contracts for
 285 health care or administrative services on behalf of the pharmacy benefits manager that may receive or have
 286 access to rebate information to comply with the confidentiality provisions of this subsection.

287 **§ 38.2-3467.2. Pharmacy benefits manager duty; private cause of action.**

288 A. A pharmacy benefits manager shall owe the pharmacy benefits manager duty to any enrollee, health
 289 benefit plan, or provider that receives pharmacy benefits management services from the pharmacy benefits
 290 manager or that furnishes, covers, receives, or is administered a unit of a prescription drug for which the
 291 pharmacy benefits manager has provided pharmacy benefits management services. The Commission shall
 292 adopt regulations defining the scope of the duties, which shall include the obligation of a pharmacy benefits
 293 manager to:

294 1. Provide all pharmacy benefits management services to enrollees related to formulary design, utilization
 295 management, and grievances and appeals in a transparent manner that is consistent with the best interest of
 296 the enrollees;

297 2. Provide transparency to providers and health benefit plans regarding the amounts charged or claimed
 298 by the pharmacy benefits manager, including identifying all instances of spread pricing; and

299 3. Disclose all conflicts of interest to enrollees, health benefit plans, and providers.

300 B. If any conflict of interest exists between the pharmacy benefits manager duties owed to enrollees,
 301 providers, and health benefit plans, the duty to an enrollee shall be primary over the duty owed to any other
 302 party and the duty owed to a provider shall be primary over the duty owed to a health benefit plan.

303 C. Any person who is aggrieved by a breach of the pharmacy benefits manager duty by a pharmacy

304 *benefits manager may bring an action in a court of competent jurisdiction.*

305 *D. For the purposes of this section, "provider" means any person that furnishes, provides, dispenses, or*

306 *administers one or more units of a prescription drug.*