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HOUSE BILL NO. 830

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on _____)

(Patron Prior to Substitute—Delegate Callsen)

A BILL to amend and reenact §§ 38.2-3467 and 38.2-3470 of the Code of Virginia, relating to pharmacy benefits managers; requirements; application of law; report.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3467 and 38.2-3470 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-3467. Prohibited conduct by carriers and pharmacy benefits managers.

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

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

2. Charge a pharmacist or pharmacy a fee (i) related to the adjudication of a claim other than a reasonable fee for an initial claim submission or (ii) to process a claim electronically;

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

4. Penalize or retaliate against a pharmacist or pharmacy for exercising rights provided pursuant to the provisions of this article, including penalizing or retaliating by (i) terminating or refusing to renew a contract with the pharmacist or pharmacy, (ii) subjecting the pharmacist or pharmacy to increased audits without cause, or (iii) failing to promptly pay the pharmacist or pharmacy money owed to such pharmacist or pharmacy;

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

6. Reverse and resubmit the claim of a pharmacist or pharmacy (i) without prior written notification to the pharmacist or pharmacy, (ii) without just cause or attempt to first reconcile the claim with the pharmacist or pharmacy, or (iii) more than one year after the claim was first affirmatively adjudicated;

7. Reduce any payment, directly or indirectly through a reconciliation process, to a pharmacist or pharmacy for pharmacist services to an effective rate of reimbursement, including generic effective rates, brand effective rates, direct and indirect remuneration fees, or any other reduction or aggregate reduction of payment, unless agreed to by the pharmacist or pharmacy in the provider agreement;

8. Retroactively deny or reduce a claim or aggregate of claims unless (i) the original claim was submitted fraudulently, (ii) the pharmacist or pharmacy has already been paid for the pharmacist services, or (iii) the pharmacist services were not properly rendered by the pharmacist or pharmacy; or

9. Interfere with a covered individual's right to choose a pharmacy or provider, based on the pharmacy or provider's status as a covered entity or contract pharmacy.

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

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

D. 1. No carrier, on its own or through its contracted pharmacy benefits manager or representative of a pharmacy benefits manager, shall conduct spread pricing in the Commonwealth.

2. Each carrier, on its own or through its contracted pharmacy benefits manager or representative of a pharmacy benefits manager shall (i) use the pass-through pricing model and (ii) if requested by a plan sponsor, offer at least one contractual arrangement that limits income from pharmacy benefits management services to income derived from pharmacy benefits management fees for services provided. The amount of any pharmacy benefits management fees under such a contractual arrangement shall be set forth in the agreement between the pharmacy benefits manager and the carrier or health benefit plan.

3. Each carrier, on its own or through its contracted pharmacy benefits manager or a representative of a

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pharmacy benefits manager, if the contractual arrangement between the pharmacy benefits manager and carrier or health benefit plan delegates the negotiation of rebates to the pharmacy benefits manager or an affiliated entity, the pharmacy benefits manager shall direct 100 percent of all prescription drug manufacturer rebates received to (i) the carrier or health benefit plan for offsetting defined cost sharing, deductibles, and coinsurance contributions and reducing premiums of covered individuals or (ii) the covered individual at the point of sale to reduce such individual's applicable deductible, copayment, coinsurance, or other cost-sharing amount.

4. The provisions of this subsection shall not prohibit a carrier or health benefit plan from paying performance bonuses to a pharmacy benefits manager or network pharmacy based on savings to the payer that decrease premiums paid by the covered individual or that result in covered individuals paying the lowest level of cost sharing, deductibles, and coinsurance for a drug, as long as the performance bonus is not based or contingent on (i) the acquisition or ingredient cost of a drug; (ii) the amount of savings, rebates, or other fees charged, realized, or collected by, or generated based on the activity of, the pharmacy benefits manager or its pharmacy benefits manager affiliates that is retained by the pharmacy benefits manager; or (iii) the amount of premiums, deductibles, or other cost sharing or fees charged, realized, or collected by the pharmacy benefits manager or its pharmacy benefits manager affiliates from patients or other persons on behalf of a patient, except for performance bonuses that are based or contingent on a decrease in premiums, deductibles, or other cost sharing.

5. Compensation arrangements governed by this subsection shall be open for inspection by the Commission.

E. The termination of a provider contract with a pharmacy that is not a pharmacy benefits manager affiliate shall not release a carrier or pharmacy benefits manager from the obligation to make any payment due to the pharmacy for an affirmatively adjudicated claim unless any such payment is withheld in relation to an investigation related to insurance fraud.

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

§ 38.2-3470. Scope of article.

This article shall not apply with respect to claims under (i) an employee welfare benefit plan as defined in section 3 (1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1), that is self-insured or self-funded; (ii) coverages issued pursuant to Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid); or (iii) prescription drug coverages issued pursuant to Part D of Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare Part D). *This article shall apply with respect to claims under the state employee health plan established pursuant to § 2.2-2818.*

2. That the State Corporation Commission (the Commission) shall examine the practice of carriers or pharmacy benefits managers, as those terms are defined in § 38.2-3465 of the Code of Virginia, as amended by this act, requiring or inducing covered individuals to utilize pharmacy services at a pharmacy benefits manager affiliate, as defined in § 38.2-3465 of the Code of Virginia, as amended by this act. The Commission shall report its findings and recommendations to the General Assembly by December 1, 2027.

3. That the provisions of the first enactment of this act shall become effective on July 1, 2027.