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HOUSE BILL NO. 108

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 14, 2014)

(Patron Prior to Substitute—Delegate Ware)

A *BILL to amend the Code of Virginia by adding a section numbered 38.2-3407.15:1, relating to health insurance; carrier business practices; contracts with participating pharmacy providers.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 38.2-3407.15:1 as follows:

§ 38.2-3407.15:1. Carrier contracts with pharmacy providers; required provisions; limit on termination or nonrenewal.

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

"Audit" includes any audit conducted or authorized by a carrier or its intermediary to determine whether the participating pharmacy provider has complied with the terms and conditions for reimbursement under the provider contract.

"Carrier" has the same meaning ascribed thereto in subsection A of § 38.2-3407.15.

"Clerical error" means any clerical or recordkeeping error or omission, such as typographical errors, scrivener's errors, or computer errors, in the keeping, recording, handling, or transcribing of pharmacy records. "Clerical error" does not include any clerical or recordkeeping error or omission that results in an overpayment by a carrier or its intermediary or the dispensing of a prescription in breach of applicable law or regulation.

"Fraud" means a knowingly or willfully false act of misrepresentation or an act in deliberate ignorance of the truth or falsity of the information as evidenced by a review of claims data, evaluation of provider statements, physical review of pharmacy records, or use of similar investigative methods by the carrier or its intermediary.

"Overpayment" means a payment by the carrier or its intermediary to the pharmacy provider that is greater than the rate or amount the provider is entitled to under the provider contract or applicable fee schedule.

"Pharmacy record" means a patient record, signature or delivery log, or prescription, including written, phoned-in, faxed, or electronic prescriptions, whether original or substitute, that complies with applicable law and regulation.

"Provider contract" has the same meaning ascribed thereto in subsection A of § 38.2-3407.15.

B. Any contract between a carrier and its intermediary, pursuant to which the intermediary has the right or obligation to conduct audits of participating pharmacy providers, and any provider contract between a carrier and a participating pharmacy provider or its contracting agent, pursuant to which the carrier has the right or obligation to conduct audits of participating pharmacy providers, shall contain specific provisions that prohibit the carrier or intermediary, in the absence of fraud, from recouping amounts calculated from or arising out of any of the following:

1. Probability sampling, extrapolation, or other mathematical or statistical methods that allegedly project an error;

2. Clerical errors by the participating pharmacy provider;

3. An act or omission of the participating pharmacy provider that was not specifically prohibited or required by the provider contract when the claim was adjudicated unless the act or omission was a violation of applicable law or regulation;

4. The refusal of a carrier or its intermediary to consider during an audit or audit appeal a pharmacy record in electronic form to validate a claim;

5. Dispensing fees or interest on the claim, except in the event of an overpayment, if the prescription was dispensed in accordance with applicable law or regulation;

6. Any claim authorized and dispensed more than 24 months prior to the date of the audit unless the claim is adjusted at the direction of the Commission, except that this time period shall be tolled while the denial of the claim is being appealed;

7. An alleged breach of auditing requirements if they are not the same as the requirements that the carrier or intermediary applies to other participating pharmacy providers in the same setting;

8. The refusal of the carrier or its intermediary to consider during an audit or audit appeal a pharmacy record, a prescriber or patient verification, or a prescriber record to validate a claim; or

9. The alleged failure of the participating pharmacy provider to supply during an audit or audit appeal a pharmacy record not specifically identified in the provider contract.

C. Any contract between a carrier and its intermediary, pursuant to which the intermediary has the right or obligation to conduct audits of participating pharmacy providers, and any provider contract

HOUSE SUBSTITUTE

HB108H1

60 *between a carrier and a participating pharmacy provider or its contracting agent, pursuant to which the*
61 *carrier has the right or obligation to conduct audits of participating pharmacy providers, shall contain*
62 *specific provisions that prohibit the carrier or intermediary, in the absence of fraud by the participating*
63 *pharmacy provider, from terminating or failing to renew the contractual relationship with a*
64 *participating pharmacy provider for invoking its rights under any contractual provision required to be*
65 *contained in the contract pursuant to subsection B.*

66 *D. The Commission shall have no jurisdiction to adjudicate individual controversies arising out of*
67 *this section.*

68 *E. This section shall apply with respect to contracts described in subsection B or C entered into,*
69 *amended, extended, or renewed on or after January 1, 2015.*