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HOUSE BILL NO. 2031

Offered January 14, 2015

Prefiled January 14, 2015

A BILL to amend the Code of Virginia by adding a section numbered 38.2-3407.15:2, relating to pharmacy benefits administration; contracts; disclosure of maximum allowable cost for prescription drugs.

Patron—Yost

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 38.2-3407.15:2 as follows:****§ 38.2-3407.15:2. Pharmacy benefits administration; disclosure and updating of maximum allowable cost pricing lists.**

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

"Health carrier" has the same meaning as is ascribed to that term in § 38.2-3438.

"Maximum allowable cost" means (i) a maximum reimbursement amount for a group of therapeutically and pharmaceutically equivalent multiple-source drugs that are listed in the most recent edition of the Approved Drug Products with Therapeutic Equivalence Evaluations published by the U.S. Food and Drug Administration or (ii) any similar reimbursement amount that is used by a pharmacy benefits administrator to reimburse pharmacists for multiple-source drugs.

"Pharmacy benefits administration" means the administration or management of prescription drug benefits provided by a health carrier for the benefit of covered persons, which may include providing any one or more of the following services concerning the administration of pharmacy benefits:

1. The procurement of prescription drugs at a negotiated rate for dispensation within the Commonwealth to covered persons;

2. Claims processing and payment of claims to pharmacies for prescription drugs dispensed to a covered person;

3. Clinical formulary development and management services;

4. Retail pharmacy network management;

5. Rebate contracting and administration; or

6. Ownership or operation of a mail service pharmacy.

"Pharmacy benefits administrator" means an entity that performs pharmacy benefits administration.

"Pharmacy benefits contract" means a contract between a health carrier and a pharmacy benefits administrator that includes provisions regarding payments to pharmacists for pharmacy benefits provided to covered persons pursuant to a health benefit plan.

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

B. Any pharmacy benefits contract or provider contract that provides for the use of maximum allowable cost as the basis for the amount of any reimbursement or payment of claims to a pharmacist or other person shall contain specific provisions that require the health carrier and pharmacy benefits administrator to update, not less frequently than once every seven days, any maximum allowable cost pricing list that is required or permitted to be used in connection with the pharmacy benefits contract or provider contract.

C. A copy of each updated maximum allowable cost pricing list prepared pursuant to subsection B shall be provided to applicable pharmacists in advance of its use in connection with any reimbursement or payment of claims.

D. Any person who suffers loss as the result of a violation of this section or a breach of any provider contract provision required by this section shall be entitled to initiate an action to recover actual damages. If the trier of fact finds that the violation or breach resulted from a carrier's gross negligence and willful conduct, it may increase damages to an amount not exceeding three times the actual damages sustained. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person also may be awarded reasonable attorney fees and court costs. Each claim for payment that is paid or processed in violation of this section or with respect to which a violation of this section exists shall constitute a separate violation.

E. No health carrier shall terminate or fail to renew a contractual relationship with a pharmacist, or otherwise penalize any pharmacist, for invoking any of the pharmacist's rights under this section or under the pharmacy benefits contract or provider contract.

F. Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and

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59 *regulations as it may deem necessary to implement this section.*

60 *G. The Commission is authorized to adjudicate individual controversies arising out of this section.*

61 *H. This section shall apply with respect to contracts described in subsection B entered into,*
62 *amended, extended, or renewed on or after January 1, 2016.*