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HOUSE BILL NO. 1177

Offered January 10, 2018

Prefiled January 10, 2018

A *BILL to amend the Code of Virginia by adding in Chapter 34 of Title 38.2 an article numbered 8, consisting of sections numbered 38.2-3461 through 38.2-3466, relating to health insurance; covered services provided pharmacies and pharmacists; activities of pharmacy benefits managers.*

Patrons—Pillion, Kilgore, Byron, Hodges, O'Quinn and Ransone

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 34 of Title 38.2 an article numbered 8, consisting of sections numbered 38.2-3461 through 38.2-3466, as follows:

*Article 8.**Consumer Protections for Pharmacy Benefits.***§ 38.2-3461. Definitions.**

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

"Allowable claim amount" means the amount the health carrier or its pharmacy benefits manager has agreed to pay a pharmacist or pharmacy for a prescription drug.

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

"Copayment" means an amount an enrollee is required to pay at the point of sale in order to receive a covered prescription drug.

"Cost share payment" means any copayment, deductible, coinsurance, or similar arrangement imposed by the carrier on the enrollee as a condition to or consequence of the receipt of covered pharmacy benefits.

"Enrollee" means a policyholder, subscriber, participant, or other individual covered by a health benefit plan.

"Health benefit plan" means any health benefit plan, as defined in § 38.2-3438, that provides coverage for prescription drugs.

"Pharmacist" means a person holding a license issued by the Board of Pharmacy to practice pharmacy.

"Pharmacy" means every establishment or institution in which drugs, medicines, or medicinal chemicals are dispensed or offered for sale, or a sign is displayed bearing the word or words "pharmacist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "medicine store," "drug sundries," or "prescriptions filled" or any similar words intended to indicate that the practice of pharmacy is being conducted.

"Pharmacy benefits management" means the administration or management of prescription drug benefits provided by a carrier for the benefit of enrollees.

"Pharmacy benefits manager" means an entity that performs pharmacy benefits management. "Pharmacy benefits manager" includes a person or entity acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a carrier.

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

§ 38.2-3462. Prohibited activities; pharmacy benefits managers.

A. A pharmacy benefits manager shall not:

1. Prohibit a pharmacist or pharmacy from providing to an enrollee information on the amount of the enrollee's cost share for the enrollee's prescription drug and the clinical efficacy of a more affordable alternative drug if one is available. Neither a pharmacy nor a pharmacist shall be penalized by a pharmacy benefits manager for disclosing such information to an enrollee or for selling to an enrollee a more affordable alternative if one is available;

2. Prohibit a pharmacist or pharmacy from offering and providing store direct delivery services to an enrollee as an ancillary service of the pharmacy;

3. Charge or collect from an enrollee a cost sharing payment that exceeds the total submitted charges by the pharmacy for which the pharmacy is paid;

4. Charge or hold a pharmacist or pharmacy responsible for a fee relating to the adjudication of a claim;

5. Recoup funds from a pharmacy in connection with claims for which the pharmacy has already been paid without first complying with the requirements set forth in § 38.2-3407.15:1, unless such

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59 *recoupment is otherwise permitted or required by law; or*

60 *6. Penalize or retaliate against a pharmacist or pharmacy for exercising rights under this article.*

61 *B. To the extent that any provision of this section is inconsistent or conflicts with applicable federal*
62 *law, rule, or regulation, such applicable federal law, rule, or regulation shall apply.*

63 *C. This section shall not apply to:*

64 *1. A state employee health insurance plan under § 2.2-2818; or*

65 *2. Any health maintenance organization with an exclusive medical group contract and that operates*
66 *its own licensed pharmacies.*

67 **§ 38.2-3463. Required and prohibited provisions in provider contract with a pharmacy or**
68 **pharmacist.**

69 *No provider contract between a carrier or its pharmacy benefits manager and a pharmacy or*
70 *pharmacist shall contain a provision (i) authorizing the carrier or its pharmacy benefits manager to*
71 *charge, (ii) requiring the pharmacy or pharmacist to collect, or (iii) requiring an enrollee to make a*
72 *cost share payment for a covered prescription drug in an amount that exceeds the least of:*

73 *1. The applicable cost share payment for the prescription drug that would be payable in the absence*
74 *of this section;*

75 *2. The allowable claim amount for the prescription drug; or*

76 *3. The cash price the enrollee would pay for the prescription drug if the enrollee purchased the*
77 *prescription drug without using the enrollee's health plan.*

78 **§ 38.2-3464. Consumer protections.**

79 *A. A pharmacy or pharmacist shall have the right to provide an enrollee with information regarding:*

80 *1. The amount of the enrollee's cost share payment for a prescription drug;*

81 *2. The allowable claim amount for the prescription drug;*

82 *3. The availability of any therapeutically equivalent alternative drug that is less expensive than the*
83 *cost share payment the enrollee would be required to pay if a claim for the prescription drug was made*
84 *using the enrollee's health plan; or*

85 *4. The availability of any alternative method of purchasing the prescription drug, including paying a*
86 *cash price for the prescription drug, that would cost the enrollee less than the cost share payment that*
87 *the enrollee would be required to pay if a claim for the prescription drug was made using the enrollee's*
88 *health plan.*

89 *B. Neither a pharmacy nor a pharmacist shall be penalized by a pharmacy benefits manager for*
90 *discussing any information described in this section or for selling a therapeutically equivalent*
91 *alternative lower-priced drug to the enrollee if one is available.*

92 *C. A pharmacy benefits manager shall not charge, or attempt to collect from, an enrollee a cost*
93 *share payment that exceeds the total submitted charges by the network pharmacy.*

94 **§ 38.2-3465. Unfair trade practices.**

95 *A violation of this article shall be considered an unfair trade practice under Chapter 5 (§ 38.2-500*
96 *et seq.) and subject to the penalties contained in that chapter.*

97 **§ 38.2-3466. Regulations.**

98 *Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and*
99 *regulations as it may deem necessary to implement this article.*

100 **2. That the provisions of this act shall apply to any provider contract entered into, renewed, or**
101 **amended on or after October 1, 2018.**