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## SENATE BILL NO. 251

Offered January 8, 2020

Prefiled January 2, 2020

A *BILL to amend the Code of Virginia by adding in Chapter 34 of Title 38.2 an article numbered 9, consisting of sections numbered 38.2-3465, 38.2-3466, and 38.2-3467, relating to pharmacy benefits managers; licensure and regulation.*

Patrons—Edwards, Pillion, Chafin and Dunnivant

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 in Chapter 34 of Title 38.2 an article numbered 9, consisting of sections numbered 38.2-3465, 38.2-3466, and 38.2-3467, as follows:**

*Article 9.*

*Pharmacy Benefits Managers.*

**§ 38.2-3465. Definitions.**

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

*"Carrier" means:*

- 1. Any insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis;*
- 2. Any corporation providing individual or group accident and sickness subscription contracts;*
- 3. Any health maintenance organization providing health care plans for health care services;*
- 4. Any organization providing managed care medical assistance services under the Department of Medical Assistance Services managed care program; or*
- 5. Any other person or organization that provides health benefit plans subject to state regulation and includes an entity that arranges a provider panel for compensation.*

*"Health benefit plan" means a policy, contract, certificate, or agreement offered by a carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. "Health benefit plan" includes short-term and catastrophic health insurance policies and plans offered to recipients of medical assistance services through the Department of Medical Assistance Services managed care program.*

*"Pharmacy benefits management service" means any service provided in connection with the administration or management of prescription drug benefits provided by a carrier under a health benefit plan and includes the purchase, resale, and distribution of any prescription drug.*

*"Pharmacy benefits manager" means a person that provides a pharmacy benefits management service. "Pharmacy benefits manager" includes (i) a person acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of a pharmacy benefits management service and (ii) any carrier that provides pharmacy benefits management internally or the affiliate or subsidiary of a carrier that provides pharmacy benefits management services for such carrier.*

*"Rebate" means a discount, price concession, or a payment that is (i) based on utilization of a prescription drug and (ii) paid by a manufacturer or third party, directly or indirectly, to a pharmacy benefits manager or pharmacy after a claim has been processed and paid at a pharmacy. "Rebate" includes incentives, disbursements, and reasonable estimates of a volume-based discount.*

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

*A. Beginning January 1, 2021, no person shall provide pharmacy benefits management services or otherwise act as a pharmacy benefits manager in the Commonwealth without first obtaining a license in a manner and in a form prescribed by the Commission.*

*B. Each applicant for a license as a pharmacy benefits manager shall make application to the Commission, in the form and containing the information the Commission prescribes. The Commission may require any documents reasonably necessary to verify the information contained in an application. Each applicant shall, at the time of applying for a license, pay a nonrefundable application processing fee in an amount and in a manner prescribed by the Commission. The fee shall be collected by the Commission and paid directly into the state treasury and credited to the "Bureau of Insurance Special Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.*

*C. Except where prohibited by state or federal law, by submitting an application for a license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of*

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59 process on the applicant in any action or proceeding arising in the Commonwealth out of or in  
60 connection with the exercise of the license. Such appointment of the clerk of the Commission as agent  
61 for service of process shall be irrevocable during the period within which a cause of action against the  
62 applicant may arise out of transactions with respect to subjects of pharmacy benefits management in the  
63 Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of  
64 Chapter 8 (§ 38.2-800 et seq.).

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

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

72 F. The Commission may refuse to issue or renew a license or may revoke or suspend a license if it  
73 finds that the applicant or license holder has not complied with the provisions of this article or  
74 Commission regulations.

75 **§ 38.2-3467. Examination of books and records; reports; access to records.**

76 A. Each pharmacy benefits manager shall report to the Commissioner on a quarterly basis for each  
77 health benefit plan for which it provides pharmacy benefits management services the following  
78 information:

79 1. The aggregate amount of rebates received by the pharmacy benefits manager;

80 2. The aggregate amount of rebates distributed to the appropriate health benefit plan;

81 3. The aggregate amount of rebates passed on to the enrollees of each health benefit plan at the  
82 point of sale that reduced the enrollees' applicable deductible, copayment, coinsurance, or other  
83 cost-sharing amount;

84 4. The individual and aggregate amount paid by the health benefit plan to the pharmacy benefits  
85 manager for services itemized by pharmacy, by product, and by goods and services; and

86 5. The individual and aggregate amount a pharmacy benefits manager paid for services itemized by  
87 pharmacy, by product, and by goods and services.

88 B. The information or data acquired from reports or an examination pursuant to this section is  
89 considered proprietary and confidential and is not subject to the Virginia Freedom of Information Act  
90 (§ 2.2-3700 et seq.).