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SENATE BILL NO. 252

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 through 38.2-3467, relating to pharmacy benefit managers; licensure and regulation.*

Patron—Edwards

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 through 38.2-3467, as follows:

*Article 9.**Pharmacy Benefit 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 benefit 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 benefit manager" means a person that provides a pharmacy benefit management service. "Pharmacy benefit manager" includes (i) a person acting for a pharmacy benefit manager in a contractual or employment relationship in the performance of a pharmacy benefit management service and (ii) any carrier that provides pharmacy benefit management internally or the affiliate or subsidiary of a carrier that provides pharmacy benefit 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) that is 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.

"Spread pricing" means the model of prescription drug pricing in which the pharmacy benefit manager charges a carrier a certain price for prescription drugs or pharmacy services, and such price for the drugs or services differs from the amount the pharmacy benefits manager directly or indirectly pays the pharmacy for the drugs or services.

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

A. Beginning January 1, 2021, no person shall provide pharmacy benefit management services or otherwise act as a pharmacy benefit 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 benefit 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

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59 *Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in*
60 *subsection B of § 38.2-400.*

61 *C. Except where prohibited by state or federal law, by submitting an application for a license, the*
62 *applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of*
63 *process on the applicant in any action or proceeding arising in the Commonwealth out of or in*
64 *connection with the exercise of the license. Such appointment of the clerk of the Commission as agent*
65 *for service of process shall be irrevocable during the period within which a cause of action against the*
66 *applicant may arise out of transactions with respect to subjects of pharmacy benefit management in the*
67 *Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of*
68 *Chapter 8 (§ 38.2-800 et seq.).*

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

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

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

79 **§ 38.2-3467. Pharmacy benefit manager; spread pricing prohibited; funds distributed to carrier.**

80 *A. No pharmacy benefit manager shall participate in or conduct spread pricing.*

81 *B. Except for any agreed-upon administrative fee, all funds, including any rebates received by the*
82 *pharmacy benefit manager in relation to providing pharmacy benefit management services for a carrier,*
83 *shall be distributed to the carrier.*