

State Corporation Commission

2020 Fiscal Impact Statement

1. Bill Number: SB862

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Pillion

3. Committee: Commerce and Labor

4. Title: Pharmacy benefits managers.

5. Summary: Requires pharmacy benefits managers to register with the Commissioner of the Bureau of Insurance. The measure prohibits a carrier on its own or through its contracted pharmacy benefits manager or representative of a pharmacy benefits manager from (i) causing or knowingly permitting the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading; (ii) charge a pharmacist or pharmacy a fee related to the adjudication of a claim; (iii) engaging, with the express intent or purpose of driving out competition or financially injuring competitors, in a pattern or practice of reimbursing retail community pharmacies or pharmacists in the Commonwealth consistently less than the amount that the pharmacy benefits manager reimburses a pharmacy benefits manager affiliate for providing the same pharmacist services; (iv) collecting or requiring a pharmacy or pharmacist to collect from an insured a copayment for a prescription drug at the point of sale in an amount that exceeds the lesser of the contracted copayment amount, the amount an individual would pay for a prescription drug if that individual was paying cash, or the contracted amount for the drug; (v) reimbursing a pharmacy or pharmacist an amount less than the amount that the pharmacy benefits manager reimburses a pharmacy benefits manager affiliate for providing the same pharmacist services, calculated on a per-unit basis using the same generic product identifier or generic code number and reflecting all drug manufacturer's rebates, direct and indirect administrative fees, and costs and any remuneration; (vi) penalize or give an inducement to a covered individual for the purpose of having the covered individual use a specific retail community pharmacy, mail order pharmacy, or another network pharmacy provider that is a pharmacy benefits manager affiliate; (vii) prohibiting a pharmacist or pharmacy from offering and providing direct and limited delivery services including incidental mailing services, to an insured as an ancillary service of the pharmacy; (viii) charging a fee related to the adjudication of a claim without providing the cause for each adjustment or fee; (ix) steer a covered individual to a pharmacy in which the pharmacy benefit manager maintains an ownership interest or control without making a written disclosure to and receiving acknowledgment from the covered individual; or (x) penalizing or retaliating against a pharmacist or pharmacy for exercising rights provided by this measure. The measure also prohibits a carrier from (a) imposing provider accreditation standards or certification requirements inconsistent with, more stringent than, or in addition to requirements of the Virginia Board of Pharmacy or other state or federal entity; (b) including any mail order pharmacy or pharmacy benefits manager affiliate in calculating or determining network adequacy; or (c) conducting spread pricing in the Commonwealth. The measure requires each carrier to ensure that, before a particular drug is placed or continues to be placed on a Maximum Allowable Cost List, the drug meets certain standards, is available for purchase in the Commonwealth, and is not obsolete. The measure establishes requirements allowing network pharmacy providers to readily access the

maximum allowable cost specific to that provider and requires Maximum Allowable Cost Lists to be updated every seven days. The measure requires the establishment of reasonable appeal procedures. The measure also imposes recordkeeping and reporting requirements and provides that information or data acquired therefrom is considered proprietary and confidential and is not subject to the Virginia Freedom of Information Act.

- 6. Budget Amendment Necessary:** No
- 7. Fiscal Impact Estimates:** No fiscal impact on the State Corporation Commission
- 8. Fiscal Implications:** None on the State Corporation Commission
- 9. Specific Agency or Political Subdivisions Affected:** State Corporation Commission
Bureau of Insurance
- 10. Technical Amendment Necessary:** The State Corporation Commission Bureau of Insurance offers the following technical comments on Senate Bill 862:
 1. On Lines 174, 177, 178, and 182, the word “Commissioner” should be stricken and the word “Commission” should be inserted.
 2. We also suggested that beginning on Line 192 after “C.” strike all of Lines 192-194 and insert the following:

All working papers, documents, reports, and copies thereof, produced by, obtained by or disclosed to the Commission or any other person in the course of an examination made under this article and any analysis of such information or documents shall be given confidential treatment, are not subject to subpoena, and may not be made public by the Commission or any other person. Access may also be granted to (i) a regulatory official of any state or country; (ii) the NAIC, its affiliate or its subsidiary; or (iii) a law-enforcement authority of any state or country, provided that those officials are required under their law to maintain its confidentiality. Any such disclosure by the Commission shall not constitute a waiver of confidentiality of such papers, documents, reports or copies thereof. Any parties receiving such papers must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section.
 3. In order to make the provisions of Senate Bill 862 applicable to health services plans and health maintenance organizations, the provisions of Article 9 should be added to §§ 38.2-4214 and 38.2-4319.

11. Other Comments: There are several pharmacy benefit manager (PBM) regulation bills, including Senate Bill 251 and Senate Bill 252. House Bill 1290 is another PBM regulation bill, and there are two additional bills which deal with PBMs, House 1291 and House Bill 1292. All three Senate bills are assigned to the Health Subcommittee of Senate Commerce and Labor.

The United States Supreme Court has accepted certiorari in the case of Rutledge v. Pharmaceutical Care Management Association. The case involves the extent of the ERISA (Employee Retirement Security Act of 1974) preemption as it relates to PBMs.

Date: 1/16/2020/V. Tompkins