21103917D

HOUSE BILL NO. 2007

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions)

(Patron Prior to Substitute—Delegate Sickles)

House Amendments in [ ] — February 2, 2021

A BILL to amend and reenact § 2.2-3705.6 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 1 of Title 32.1 a section numbered 32.1-23.3, by adding a section numbered 38.2-3407.15:6, by adding in Article 1 of Chapter 34 of Title 38.2 a section numbered 38.2-3407.22, by adding in Article 3 of Chapter 34 of Title 54.1 a section numbered 54.1-3436.1, and by adding in Article 4 of Chapter 34 of Title 54.1 a section numbered 54.1-3442.02, relating to prescription drug price transparency.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3705.6 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 3 of Chapter 1 of Title 32.1 a section numbered 32.1-23.3, by adding a section numbered 38.2-3407.15:6, by adding in Article 1 of Chapter 34 of Title 38.2 a section numbered 38.2-3407.22, by adding in Article 3 of Chapter 34 of Title 54.1 a section numbered 54.1-3436.1, and by adding in Article 4 of Chapter 34 of Title 54.1 a section numbered 54.1-3442.02 as follows:

§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1.

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

3. Proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.

4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

7. Proprietary information related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or proprietary information by any person in connection with a procurement transaction or by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

11. a. Memoranda, staff evaluations, or other information prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such information was made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected and (ii) the basis for the determination required in clause (i) is documented in writing by the responsible public entity; and

b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity; (ii) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if such information was made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

(1) Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The responsible public entity shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial information of the private entity. To protect other information submitted by the private entity from disclosure, the responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a written determination is made by the responsible public entity, the information afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction.

Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

12. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected.

13. Trade secrets or confidential proprietary information that is not generally available to the public through regulatory disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the information relates to the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies, or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such information were made public, the competitive advantage or

financial interests of the franchisee would be adversely affected.

In order for trade secrets or confidential proprietary information to be excluded from the provisions of this chapter, the bidder, applicant, or franchisee shall (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state the reason why protection is necessary.

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

14. Information of a proprietary or confidential nature furnished by a supplier or manufacturer of charitable gaming supplies to the Department of Agriculture and Consumer Services (i) pursuant to subsection E of § 18.2-340.34 and (ii) pursuant to regulations promulgated by the Charitable Gaming Board related to approval of electronic and mechanical equipment.

15. Information related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § 3.2-1215.

16. Trade secrets submitted by CMRS providers as defined in § 56-484.12 to the former Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to former § 56-484.15, relating to the provision of wireless E-911 service.

17. Information relating to a grant or loan application, or accompanying a grant or loan application, to the Commonwealth Health Research Board pursuant to Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

18. Confidential proprietary information and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2 if disclosure of such information would be harmful to the competitive position of the locality.

In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the information for which protection is sought, and (c) state the reasons why protection is necessary. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

19. Confidential proprietary information and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that information required to be maintained in accordance with § 15.2-2160 shall be released.

20. Trade secrets or financial information of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Small Business and Supplier Diversity as part of an application for certification as a small, women-owned, or minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for such trade secrets or financial information to be excluded from the provisions of this chapter, the business shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary.

21. Information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

22. Trade secrets, including, but not limited to, financial information, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

In order for the information specified in this subdivision to be excluded from the provisions of this chapter, the private or nongovernmental entity shall make a written request to the State Inspector General:

a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

b. Identifying with specificity the data or other materials for which protection is sought; and

c. Stating the reasons why protection is necessary.

The State Inspector General shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial information of the private entity. The State Inspector General shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

23. Information relating to a grant application, or accompanying a grant application, submitted to the Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets, (b) financial information of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (c) research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission pursuant to § 3.2-3103.

In order for the information specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Commission:

a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

b. Identifying with specificity the data, information or other materials for which protection is sought; and

c. Stating the reasons why protection is necessary.

The Commission shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets, financial information, or research-related information of the applicant. The Commission shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

24. a. Information held by the Commercial Space Flight Authority relating to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority if disclosure of such information would adversely affect the financial interest or bargaining position of the Authority or a private entity providing the information to the Authority; or

b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of such information would (i) reveal (a) trade secrets of the private entity; (b) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely affect the financial interest or bargaining position of the Authority or private entity.

In order for the information specified in clauses (a), (b), and (c) of subdivision 24 b to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:

(1) Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The Authority shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial information of the private entity. To protect other information submitted by the private entity from disclosure, the Authority shall determine whether public disclosure would adversely affect the financial interest or bargaining position of the Authority or private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

25. Information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services, or any political subdivision, agency, or board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part of a state or federal regulatory enforcement action.

26. Trade secrets provided to the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii) identify the data or materials for which protection is sought, and (iii) state the reasons why protection is necessary.

27. Information of a proprietary nature furnished by a licensed public-use airport to the Department of Aviation for funding from programs administered by the Department of Aviation or the Virginia Aviation Board, where if such information was made public, the financial interest of the public-use

airport would be adversely affected.

In order for the information specified in this subdivision to be excluded from the provisions of this chapter, the public-use airport shall make a written request to the Department of Aviation:

a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

b. Identifying with specificity the data or other materials for which protection is sought; and

c. Stating the reasons why protection is necessary.

28. Information relating to a grant, loan, or investment application, or accompanying a grant, loan, or investment application, submitted to the Commonwealth of Virginia Innovation Partnership Authority (the Authority) established pursuant to Article 11 (§ 2.2-2351 et seq.) of Chapter 22, an advisory committee of the Authority, or any other entity designated by the Authority to review such applications, to the extent that such records would (i) reveal (a) trade secrets; (b) financial information of a party to a grant, loan, or investment application that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) research-related information produced or collected by a party to the application in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of a party to a grant, loan, or investment application; and memoranda, staff evaluations, or other information prepared by the Authority or its staff, or a reviewing entity designated by the Authority, exclusively for the evaluation of grant, loan, or investment applications, including any scoring or prioritization documents prepared for and forwarded to the Authority.

29. Proprietary information, voluntarily provided by a private business pursuant to a promise of confidentiality from a public body, used by the public body for a solar services agreement, where disclosure of such information would (i) reveal (a) trade secrets of the private business; (b) financial information of the private business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private business and (ii) adversely affect the financial interest or bargaining position of the public body or private business.

In order for the information specified in clauses (i) (a), (b), and (c) to be excluded from the provisions of this chapter, the private business shall make a written request to the public body:

a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

b. Identifying with specificity the data or other materials for which protection is sought; and

c. Stating the reasons why protection is necessary.

30. Information contained in engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit if disclosure of such information would identify specific trade secrets or other information that would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

31. Trade secrets, including, but not limited to, financial information, including balance sheets and financial statements that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the Virginia Department of Transportation for the purpose of an audit, special investigation, or any study requested by the Virginia Department of Transportation in accordance with law.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the private or nongovernmental entity shall make a written request to the Department:

a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

b. Identifying with specificity the data or other materials for which protection is sought; and

c. Stating the reasons why protection is necessary.

The Virginia Department of Transportation shall determine whether the requested exclusion from disclosure is necessary to protect trade secrets or financial records of the private entity. The Virginia Department of Transportation shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

32. Information related to a grant application, or accompanying a grant application, submitted to the Department of Housing and Community Development that would (i) reveal (a) trade secrets, (b) financial information of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (c) research-related information produced or collected by the applicant in the conduct of or

as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant. The exclusion provided by this subdivision shall only apply to grants administered by the Department, the Director of the Department, or pursuant to § 36-139, Article 26 (§ 2.2-2484 et seq.) of Chapter 24, or the Virginia Telecommunication Initiative as authorized by the appropriations act.

In order for the information submitted by the applicant and specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Department:

a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

b. Identifying with specificity the data, information, or other materials for which protection is sought; and

c. Stating the reasons why protection is necessary.

The Department shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or confidential proprietary information of the applicant. The Department shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

33. Financial and proprietary records submitted with a loan application to a locality for the preservation or construction of affordable housing that is related to a competitive application to be submitted to either the U.S. Department of Housing and Urban Development (HUD) or the Virginia Housing Development Authority (VHDA), when the release of such records would adversely affect the bargaining or competitive position of the applicant. Such records shall not be withheld after they have been made public by HUD or VHDA.

34. Information of a proprietary or confidential nature disclosed by a health carrier or pharmacy benefits manager pursuant to § 38.2-3407.15:6, a wholesale distributor pursuant to § 54.1-3436.1, or a manufacturer pursuant to § 54.1-3442.02.

§ 32.1-23.3. Prescription drug price transparency; civil penalty.

A. As used in this section, "nonprofit data services organization" means the nonprofit organization with which the Commissioner has negotiated and entered into a contract or agreement for the compilation, storage, analysis, and evaluation of data submitted by health care providers pursuant to § 32.1-276.4.

B. The Department shall negotiate and enter into a contract or agreement with a nonprofit data services organization to annually collect, compile, and make available on its website publicly available information about prescription drug prices submitted by health carriers and pharmacy benefits managers pursuant to § 38.2-3407.15:6, wholesale distributors pursuant to § 54.1-3436.1, and manufacturers pursuant to § 54.1-3442.02. Such data and information shall be made available in aggregate in a form and manner that does not disclose or tend to disclose proprietary or confidential information of any health carrier, pharmacy benefits manager, wholesale distributor, or manufacturer.

C. A health carrier, pharmacy benefits manager, wholesale distributor, or manufacturer that fails to report information required to be reported pursuant to this section or § 38.2-3407.15:6, 54.1-3436.1, or 54.1-3442.02, respectively, shall be subject to a civil penalty not to exceed $2,500 per day from the date on which such reporting is required, to be collected by the Commissioner and deposited into the Literary Fund. However, the Commissioner may reduce or waive a civil penalty imposed pursuant to this section if he determines that the violation was reasonable or resulting from good cause.

D. The Department shall adopt regulations to implement the provisions of this section, which shall include (i) provisions related to the specification of prescription drugs for the purpose of data collection and procedures for auditing information provided by health carriers, pharmacy benefits managers, wholesale distributors, and manufacturers and (ii) a schedule of civil penalties for failure to report information required pursuant to this section or § 38.2-3407.15:6, 54.1-3436.1, or 54.1-3442.02, which shall be based on the level of severity of the violation.

E. All information submitted by a health carrier or pharmacy benefits manager pursuant to § 38.2-3407.15:6, a wholesale distributor pursuant to § 54.1-3436.1, or a manufacturer pursuant to § 54.1-3442.02 shall be confidential and exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except to the extent that such information is included in an aggregated form in the report required pursuant to this section.

§ 38.2-3407.15:6. Prescription drug price transparency.

A. As used in this section:

"Carrier" has the same meaning as set forth in § 38.2-3407.10.

"Health benefit plan" has the same meaning as set forth in § 38.2-3438.

"Manufacturer" has the same meaning as set forth in § 54.1-3401.

"Nonprofit data services organization" has the same meaning as set forth in § 32.1-23.3.

"Pharmacy benefits management" has the same meaning as set forth in § 38.2-3407.15:4.

"Pharmacy benefits manager" has the same meaning as set forth in § 38.2-3407.15:4.

B. Every carrier offering a health benefit plan shall report annually by April 1 to the nonprofit data services organization with which the Department of Health has entered into a contract or agreement pursuant to § 32.1-23.3 the following information on spending on prescription drugs in total, before enrollee cost sharing, for each health benefit plan offered by the carrier in the Commonwealth:

1. For covered outpatient prescription drugs that were prescribed to enrollees during the calendar year, the names of (i) the 25 most frequently prescribed outpatient prescription drugs, (ii) the names of the 25 outpatient prescription drugs covered at the greatest cost, calculated using the total annual spending by such health benefit plan for each outpatient prescription drug covered by the health benefit plan; and (iii) the 25 outpatient prescription drugs that experienced the greatest year-over-year increase in cost, calculated using the total annual spending by such health benefit plan for each outpatient prescription drug covered by the health benefit plan;

2. The percent increase in annual net spending for prescription drugs after accounting for aggregated rebates, discounts, or other reductions in price;

3. The percent increase in premiums that were attributable to each health care service, including prescription drugs;

4. The percentage of specialty drugs with utilization management requirements; and

5. The premium reductions that were attributable to specialty drug utilization management.

C. A report submitted by a carrier pursuant to this section shall not disclose the identity of a specific health benefit plan or the price charged for a specific prescription drug or class of prescription drugs.

D. Every carrier offering a health benefit plan shall require each pharmacy benefits manager with which it enters into a contract for pharmacy benefits management to report annually by April 1 to the nonprofit data services organization with which the Department has entered into a contract or agreement pursuant to § 32.1-23.2 the following information for each drug specified by the Department of Health:

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

2. The aggregate amount of rebates distributed to the relevant health benefit plan; and

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

E. A report submitted by a pharmacy benefits manager pursuant to subsection D shall not disclose the identity of a specific health benefit plan or covered person, the price charged for a specific prescription drug or class of prescription drugs, or the amount of any rebate or fee provided for a specific prescription drug or class of prescription drugs.

§ 38.2-3407.22. Option for rebates to enrollees; protected information.

A. As used in this section:

"Carrier" has the same meaning as set forth in § 38.2-3407.10; however, "carrier" also includes any person required to be licensed pursuant to this title that offers or operates a managed care health insurance plan subject to the requirements of Chapter 58 (§ 38.2-5800 et seq.) or that provides or arranges for the provision of health care services, health plans, networks, or provider panels that are subject to regulation as the business of insurance. "Carrier" also includes any health insurance issuer that offers health insurance coverage, as defined in § 38.2-3431.

"Enrollee" means any person entitled to health care services from a carrier.

"Health care services" means items or services furnished to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

"Health plan" means any individual or group health care plan, subscription contract, evidence of coverage, certificate, health services plan, medical or hospital services plan, accident or sickness insurance policy or certificate, managed care health insurance plan, or other similar certificate, policy, contract, or arrangement, and any endorsement or rider thereto, to cover all or a portion of the cost of persons receiving covered health care services, that is subject to state regulation and that is required to be offered, arranged, or issued in the Commonwealth by a carrier licensed under this title. "Health plan" includes a state or local government employer plan. "Health plan" does not mean (i) coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare), Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid), Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq. (CHIP), 5 U.S.C. § 8901 et seq. (federal employees), or 10 U.S.C. § 1071 et seq. (TRICARE); or (ii) accident only, credit or disability insurance ,long-term care insurance, TRICARE supplement, Medicare Supplement, or workers' compensation coverages.

"Pharmacy benefits manager" has the same meaning as set forth in § 38.2-3407.15:4.

[~~"Price protection rebate" means a negotiated price concession that accrues directly or indirectly to the carrier, health plan, or pharmacy benefits manager in the event of an increase in the wholesale

~~acquisition cost of a drug above a specified threshold.~~]

"Rebate" [~~has the same meaning as set forth in § 38.2-3465.~~ *means (i) negotiated price concessions, including base price concessions and reasonable estimates of any price protection rebates and performance-based price concessions, that may accrue directly or indirectly to a carrier, health plan, or pharmacy benefits manager during the coverage year from a manufacturer, dispensing pharmacy, or other party in connection with the dispensing or administration of a prescription drug and (ii) reasonable estimates of any negotiated price concessions, fees, or other administrative costs that are passed through, or are reasonably anticipated to be passed through, to the carrier, health plan, or pharmacy benefits manager and serve to reduce the liability of a carrier, health plan, or pharmacy benefits manager for a prescription drug.*]

B. When contracting with a carrier or health plan to administer pharmacy benefits, a pharmacy benefits manager shall offer the carrier or health plan the option of extending point-of-sale rebates to enrollees of the plan.

C. The provisions of this section shall only apply to a carrier, health plan, or pharmacy benefits manager to the extent permissible under applicable law.

D. In complying with the provisions of this section, a carrier, health plan, pharmacy benefits manager, or its respective agents shall not publish or otherwise reveal information regarding the actual amount of rebates a carrier, health plan, or pharmacy benefits manager receives on a product-specific, manufacturer-specific, or pharmacy-specific basis. Such information shall be protected as a trade secret and shall not be public record or disclosed, directly or indirectly. A carrier, health plan, or pharmacy benefits manager shall require any vendor or third party with which the carrier, health plan, or pharmacy benefits manager contracts for health care or administrative services on behalf of the carrier, health plan, or pharmacy benefits manager that may receive or have access to rebate information to comply with the provisions of this subsection related to protection of information regarding the amount of rebates a carrier, health plan, or pharmacy benefits manager receives on a product-specific, manufacturer-specific, or pharmacy-specific basis.

E. The Commission may, pursuant to the provisions of § 38.2-223, adopt such rules and regulations as may be necessary to implement and enforce the provisions of this section.

§ 54.1-3436.1. Prescription drug price transparency.

A. As used in this section:

"Brand-name drug" means a prescription drug approved under 21 U.S.C. § 355(b) or 42 U.S.C. § 262.

"Generic drug" means a prescription drug approved under 21 U.S.C. § 355(j).

"Nonprofit data services organization" has the same meaning as set forth in § 32.1-23.3.

"Pharmacy benefits manager" has the same meaning as set forth in § 38.2-3407.15:4.

"Wholesale acquisition cost" has the same meaning as set forth in 42 U.S.C. § 1395w-3a(c)(6)(B).

B. To ensure data that is useful, relevant, and not duplicative, the Department of Health may request wholesale distributors to report to the nonprofit organization with which the Department of Health has entered into a contract or agreement pursuant to § 32.1-23.3 the following information on the 25 costliest drugs in the Commonwealth upon a determination by the Department of Health that data received from health carriers, pharmacy benefits managers, and manufacturers is insufficient:

1. The wholesale acquisition cost that the wholesale distributor has negotiated directly with the manufacturer in the last calendar year, related to the 25 costliest drugs dispensed in the Commonwealth;

2. The wholesale acquisition cost that the wholesale distributor has negotiated directly with the manufacturer in the current calendar year for the 25 costliest drugs dispensed in the Commonwealth;

3. Aggregate total rebates, discounts, and price concessions negotiated directly with the manufacturer for the 25 costliest drugs dispensed in the Commonwealth in the last calendar year, for business in the Commonwealth, in total; and

4. Aggregate total discounts, dispensing fees, and other fees negotiated in the last calendar year with pharmacies, for the 25 costliest drugs dispensed in the Commonwealth, in total.

C. A report submitted by a wholesale distributor pursuant to subsection B shall not disclose the identity of a specific wholesale distributor, the price charged for a specific prescription drug or class of prescription drugs, or the amount of any price concession, rebate, or fee provided for a specific prescription drug or class of prescription drugs.

§ 54.1-3442.02. Prescription drug price transparency.

A. As used in this section:

"Biosimilar" means a drug that is produced or distributed pursuant to a biologics license application approved under 42 U.S.C. § 262(k)(3).

"Brand-name drug" means a prescription drug approved under 21 U.S.C. § 355(b) or 42 U.S.C. § 262.

"Generic drug" means a prescription drug approved under 21 U.S.C. § 355(j) or 42 U.S.C. 262(k).

"New prescription drug" means a drug or biological product receiving initial approval under an original new drug application pursuant to 21 U.S.C. § 355(b) or under a biologics license application under 42 U.S.C. § 262.

"Nonprofit data services organization" has the same meaning as set forth in § 32.1-23.3.

"Pharmacy benefits manager" has the same meaning as set forth in § 38.2-3407.15:4.

"Wholesale acquisition cost" has the same meaning as set forth in 42 U.S.C. § 1395w-3a(c)(6)(B).

B. Every manufacturer shall report annually by April 1 to the nonprofit organization with which the Department of Health has entered into a contract or agreement pursuant to § 32.1-23.3, for each (i) brand-name drug and biologic other than a biosimilar with [~~*an initial*~~ *a*] *wholesale acquisition cost of $100 or more for a* [~~*one-year*~~ *30-day*] *supply or a single course of treatment* [~~*or*~~ *and*] *any increase of 15 percent or more in the wholesale acquisition cost of such brand-name drug or biologic over the preceding calendar year; (ii) biosimilar with an initial wholesale acquisition cost that is not at least 15 percent less than the wholesale acquisition cost of the referenced brand biologic at the time the biosimilar is launched; and (iii) generic drug with a price increase that results in an increase in the wholesale acquisition cost of such generic drug that is equal to 200 percent or more during the preceding 12-month period, when the wholesale acquisition cost of such generic drug is equal to or greater than $100, annually adjusted by the Consumer Price Index for All Urban Consumers, for a 30-day supply, with such increase defined as the difference between the wholesale acquisition cost of the generic drug after such increase and the average wholesale acquisition cost of such generic drug during the previous 12 months, the following information:*

1. The name of the prescription drug;

2. Whether the drug is a brand name or generic;

3. The effective date of the change in wholesale acquisition cost;

4. Aggregate, company-level research and development costs for the most recent year for which final audit data is available;

5. The name of each of the manufacturer's new prescription drugs approved by the U.S. Food and Drug Administration within the previous three calendar years;

6. The name of each of the manufacturer's prescription drugs that, within the previous three calendar years, became subject to generic competition and for which there is a therapeutically equivalent generic version; and

7. A concise statement regarding the factor or factors that caused the increase in wholesale acquisition cost.

C. A manufacturer's obligations pursuant to this section shall be fully satisfied by the submission to the nonprofit data services organization with which the Department of Health has entered into a contract pursuant to § 32.1-23.3 of information and data that a manufacturer includes in the manufacturer's annual consolidation report on Securities and Exchange Commission Form 10-K or any other public disclosure.

2. That the provisions of the first enactment of this act shall become effective on January 1, 2022.

3. That the Department of Health and the Bureau of Insurance of the State Corporation Commission shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.