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## HOUSE BILL NO. 2435

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

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

(Patron Prior to Substitute—Delegate Hodges)

House Amendments in [ ] - February 6, 2023

A BILL to amend and reenact §§ 32.1-137.05, as it shall become effective, and 59.1-200 of the Code of Virginia, relating to hospital price transparency; enforcement; plans of correction.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-137.05, as it shall become effective, and 59.1-200 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-137.05. (Effective July 1, 2023) Information regarding standard charges; advance estimate of patient payment amount for elective procedure, test, or service.

A. Every hospital shall make available to the public on its website a machine-readable file containing a list of all standard charges for all items and services provided by the hospital in accordance with 45 C.F.R. § 180.50, as amended. As used in this subsection, "hospital," "items and services," "machine-readable," and "standard charge" have the same meaning as set forth in 45 C.F.R. § 180.20.

B. Every hospital shall, upon request of a patient scheduled to receive an elective procedure, test, or service to be performed by the hospital, or upon request of such patient's legally authorized representative, made no less than three days in advance of the date on which such elective procedure, test, or service is scheduled to be performed, furnish the patient with an estimate of the payment amount for which the participant will be responsible for such elective procedure, test, or service. Every hospital shall provide written information about the patient's ability to request an estimate of the payment amount pursuant to this section. Such written information shall be posted conspicuously in public areas of the hospital, including admissions or registration areas, and included on any website maintained by the hospital.

C. If the Department determines that a hospital is noncompliant with the provisions of subsection A, the Department may require the hospital to submit or comply with an acceptable plan of correction. If a noncompliant hospital fails to submit or comply with an acceptable plan of correction, the Commissioner may impose a directed plan of correction on the noncompliant hospital. The Department shall report any such noncompliance to the Centers for Medicare and Medicaid Services (CMS). A noncompliant hospital and its collectors shall not be permitted to initiate or pursue debt collection action against any patient [ ~~who received services at a time when the hospital was noncompliant~~; whose record is the subject of a finding of non-compliance, as set forth herein. ]

D. Any violation of the provisions of subsection A shall constitute a prohibited practice under the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

E. Any hospital that violates the provisions of subsection A may be reported to the Consumer Protection Division of the Office of the Attorney General. The Attorney General shall have the authority to enforce the provisions of this section and shall have the authority to refer hospitals with a pattern of noncompliance to the Department to establish an acceptable plan of correction pursuant to subsection C.

§ 59.1-200. Prohibited practices.

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfections, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfections or "not first class";
8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

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In any action brought under this subdivision, the refusal by any person, or any employee, agent, or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed;

11. Misrepresenting by the use of any written or documentary material that appears to be an invoice or bill for merchandise or services previously ordered;

12. Notwithstanding any other provision of law, using in any manner the words "wholesale," "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the goods or services advertised or offered for sale;

13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages, or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or under federal statutes or regulations;

13a. Failing to provide to a consumer, or failing to use or include in any written document or material provided to or executed by a consumer, in connection with a consumer transaction any statement, disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection with the consumer transaction;

14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction;

15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515, 3.2-6516, or 3.2-6519 is a violation of this chapter;

16. Failing to disclose all conditions, charges, or fees relating to:

a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the agreement;

16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of receiving overpayments. If the credit balance information is incorporated into statements of account furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;

18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);

19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et seq.);

- 122 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et  
123 seq.);
- 124 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4  
125 (§ 59.1-207.17 et seq.);
- 126 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);
- 127 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32  
128 (§ 59.1-424 et seq.);
- 129 24. Violating any provision of § 54.1-1505;
- 130 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter  
131 17.6 (§ 59.1-207.34 et seq.);
- 132 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 133 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
- 134 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
- 135 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et  
136 seq.);
- 137 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et  
138 seq.);
- 139 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 140 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 141 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 142 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 143 35. Using the consumer's social security number as the consumer's account number with the supplier,  
144 if the consumer has requested in writing that the supplier use an alternate number not associated with  
145 the consumer's social security number;
- 146 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 147 37. Violating any provision of § 8.01-40.2;
- 148 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 149 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 150 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 151 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46  
152 (§ 59.1-525 et seq.);
- 153 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 154 43. Violating any provision of § 59.1-443.2;
- 155 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 156 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 157 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 158 47. Violating any provision of § 18.2-239;
- 159 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 160 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has  
161 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable  
162 presumption that a supplier has reason to know a children's product was recalled if notice of the recall  
163 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale  
164 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to  
165 children's products that are used, secondhand or "seconds";
- 166 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
- 167 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
- 168 52. Violating any provision of § 8.2-317.1;
- 169 53. Violating subsection A of § 9.1-149.1;
- 170 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential  
171 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective  
172 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in  
173 which defective drywall has been permanently installed or affixed;
- 174 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while  
175 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in  
176 § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of  
177 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant  
178 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;
- 179 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
- 180 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;
- 181 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);
- 182 59. Violating any provision of subsection E of § 32.1-126;

183 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed  
184 under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;  
185 61. Violating any provision of § 2.2-2001.5;  
186 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;  
187 63. Violating any provision of § 6.2-312;  
188 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;  
189 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2;  
190 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.);  
191 67. Knowingly violating any provision of § 8.01-27.5;  
192 68. Failing to make available a conspicuous online option to cancel a recurring purchase of a good  
193 or service as required by § 59.1-207.46;  
194 69. Selling or offering for sale to a person younger than 21 years of age any substance intended for  
195 human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall  
196 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and  
197 scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct  
198 permitted under Article 4.2 of Chapter 34 of Title 54.1 of the Code of Virginia;  
199 70. Selling or offering for sale any substance intended for human consumption, orally or by  
200 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant  
201 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less  
202 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to  
203 persons younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of  
204 such substance that constitutes a single serving, and (d) the total percentage and milligrams of  
205 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol  
206 that are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an  
207 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International  
208 Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol  
209 concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the  
210 substance originates. This subdivision shall not (i) apply to products that are approved for marketing by  
211 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or  
212 (ii) be construed to prohibit any conduct permitted under Article 4.2 of Chapter 34 of Title 54.1 of the  
213 Code of Virginia;  
214 71. Manufacturing, offering for sale at retail, or selling at retail an industrial hemp extract, as defined  
215 in § 3.2-5145.1, a food containing an industrial hemp extract, or a substance containing  
216 tetrahydrocannabinol that depicts or is in the shape of a human, animal, vehicle, or fruit; ~~and~~  
217 72. Selling or offering for sale any substance intended for human consumption, orally or by  
218 inhalation, that contains tetrahydrocannabinol and, without authorization, bears, is packaged in a  
219 container or wrapper that bears, or is otherwise labeled to bear the trademark, trade name, famous mark  
220 as defined in 15 U.S.C. § 1125, or other identifying mark, imprint, or device, or any likeness thereof, of  
221 a manufacturer, processor, packer, or distributor of a product intended for human consumption other  
222 than the manufacturer, processor, packer, or distributor that did in fact so manufacture, process, pack, or  
223 distribute such substance; *and*  
224 73. *Violating any provision of subsection A of § 32.1-137.05.*  
225 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or  
226 lease solely by reason of the failure of such contract or lease to comply with any other law of the  
227 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation  
228 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable  
229 such contract or lease.