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SENATE BILL NO. 1338

Offered January 11, 2023

Prefiled January 11, 2023

A BILL to amend and reenact §§ 38.2-3465 and 38.2-3470 of the Code of Virginia, relating to health insurance; pharmacy benefits managers; employee welfare benefit plans.

Patron—Edwards

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3465 and 38.2-3470 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-3465. Definitions.

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

"Carrier" has the same meaning ascribed thereto in subsection A of § 38.2-3407.15. However, "carrier" includes an entity providing or administering an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1), that is self-insured or self-funded and does not include a nonprofit health maintenance organization that operates as a group model whose internal pharmacy operation exclusively serves the members or patients of the nonprofit health maintenance organization.

"Claim" means a request from a pharmacy or pharmacist to be reimbursed for the cost of administering, filling, or refilling a prescription for a drug or for providing a medical supply or device.

"Claims processing services" means the administrative services performed in connection with the processing and adjudicating of claims relating to pharmacist services that include (i) receiving payments for pharmacist services, (ii) making payments to pharmacists or pharmacies for pharmacist services, or (iii) both receiving and making payments.

"Contract pharmacy" means a pharmacy operating under contract with a 340B-covered entity to provide dispensing services to the 340B-covered entity, as described in 75 Fed. Reg. 10272 (March 5, 2010) or any superseding guidance published thereafter.

"Covered entity" means an entity described in § 340B(a)(4) of the federal Public Health Service Act, 42 U.S.C. § 256B(a)(4). "Covered entity" does not include a hospital as defined in § 32.1-123 or 37.2-100.

"Covered individual" means an individual receiving prescription medication coverage or reimbursement provided by a pharmacy benefits manager or a carrier under a health benefit plan.

"Health benefit plan" has the same meaning ascribed thereto in § 38.2-3438.

"Mail order pharmacy" means a pharmacy whose primary business is to receive prescriptions by mail or through electronic submissions and to dispense medication to covered individuals through the use of the United States mail or other common or contract carrier services and that provides any consultation with covered individuals electronically rather than face-to-face.

"Pharmacy benefits management" means the administration or management of prescription drug benefits provided by a carrier for the benefit of covered individuals. "Pharmacy benefits management" does not include any service provided by a nonprofit health maintenance organization that operates as a group model provided that the service is furnished through the internal pharmacy operation exclusively serves the members or patients of the nonprofit health maintenance organization.

"Pharmacy benefits manager" or "PBM" means an entity that performs pharmacy benefits management. "Pharmacy benefits manager" includes an entity acting for a PBM in a contractual relationship in the performance of pharmacy benefits management for a carrier, nonprofit hospital, or third-party payor under a health program administered by the Commonwealth.

"Pharmacy benefits manager affiliate" means a business, pharmacy, or pharmacist that directly or indirectly, through one or more intermediaries, owns or controls, is owned or controlled by, or is under common ownership interest or control with a pharmacy benefits manager.

"Rebate" means a discount or other price concession, including without limitation incentives, disbursements, and reasonable estimates of a volume-based discount, 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, pharmacy services administrative organization, or pharmacy after a claim has been processed and paid at a pharmacy.

"Retail community pharmacy" means a pharmacy that is open to the public, serves walk-in customers, and makes available face-to-face consultations between licensed pharmacists and persons to whom medications are dispensed.

INTRODUCED

SB1338

59 "Spread pricing" means the model of prescription drug pricing in which the pharmacy benefits
60 manager charges a health benefit plan a contracted price for prescription drugs, and the contracted price
61 for the prescription drugs differs from the amount the pharmacy benefits manager directly or indirectly
62 pays the pharmacist or pharmacy for pharmacist services.

63 **§ 38.2-3470. Scope of article.**

64 This article shall not apply with respect to claims under (i) ~~an employee welfare benefit plan as~~
65 ~~defined in section 3 (1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1),~~
66 ~~that is self-insured or self-funded;~~ (ii) coverages issued pursuant to Title XIX of the Social Security Act,
67 42 U.S.C. § 1396 et seq. (Medicaid); or ~~(iii)~~ (ii) prescription drug coverages issued pursuant to Part D
68 of Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare Part D).