

State Corporation Commission 2007 Fiscal Impact Statement

1. Bill Number SB1084

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron Puckett

3. Committee Commerce and Labor

4. Title Pharmacy benefits management.

5. Summary/Purpose: Prohibits a covered entity from entering into a contract in Virginia, directly with a pharmacy benefits manager (PBM) or with a provider of pharmacy services who has contracted with, or that controls a PBM for pharmacy benefits management unless the PBM has agreed in writing to the following:

1. That no revenue, rebates or other forms of incentive or compensation from a manufacturer or distributor of group or individual policyowner's claims shall be retained by the PBM, but that the revenue, rebates or other forms of incentive or compensation be passed through and credited to the group or individual policyowner;
2. The PBM is required to disclose at the point of sale its actual acquisition costs as well as any rebates or other forms of incentive or compensation received or receivable from a manufacturer or distributor, both to the group or individual policyowner and to the covered individual;
3. The PBM is prohibited from charging more for retail, mail order or specialty pharmacy drugs, whether brand name or generic than the PBM's actual acquisition costs for obtaining the drug from the manufacturer. This bill permits the contract to include a specified administrative fee by which the PBM may be compensated for its services;
4. The PBM agrees to give the group or individual policyowner the right to audit its records, or any entity with which the PBM has contracted, including a separate mail order entity whether or not controlled by the PBM, to determine compliance with the requirements of this section.

The bill defines the terms "covered entity," "covered individual," "generic drug," "pharmacy benefits management," and "pharmacy benefits manager." Compliance with the requirements of the bill is required in all contracts for pharmacy benefits management entered into in the Commonwealth by a covered entity in the Commonwealth. The legislation applies to contracts executed or renewed on or after July 1, 2007.

6. No Fiscal Impact on the State Corporation Commission

7. Budget amendment necessary: No

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 Bureau of Insurance offered the patron the following technical comments:

1. § 38.2-3407.9:03 B 2 requires the PBM to disclose at point of sale its actual acquisition costs as well as any rebates or other forms of incentive or compensation received or receivable from a manufacturer or distributor, both to the group or individual policyholder and to the covered individual:
 - It is conceivable that at the point of sale, the PBM may not know what rebates or other forms of incentives it may receive from the manufacturer. If this information is not readily available to the PBM, an unintended consequence of this requirement may be that the point of sale to the covered individual is delayed.
 - In certain situations, it may not be practical for the PBM to notify the group policyholder at the point of sale of pharmacy benefits to a covered individual.
 - Additionally, in certain cases, such as with a self-insured employer group, there may not be a group policyholder, if the pharmacy benefits contract is direct between the employer and the PBM.
 - Standards regarding the timing and method of notification are not addressed in the bill. Neither is there any consequence included if notification by the PBM does not occur.
2. § 38.2-3407.9:03 B 4 provides that the group or individual policyholder has the right to audit the records of the PBM, or any entity that the PBM contracts with. No parameters are included as to which records may be audited; conceivably, a policyholder would have the right to audit all of the financial and operational records of the PBM. If all group or individual policyholders availed themselves of the right to audit the PBM, it would most likely result in disruption of the day-to-day operations of the PBM, which may not have been the intention.
3. The bill does not allow a sophisticated covered entity the option of contracting in a different manner with a PBM. The patron may wish to consider permitting an exemption to the requirements of this bill upon positive agreement by the covered entity at the time the contract is entered into between the covered entity and the PBM.

11. Other comments: The proposal is placed in Chapter 34 of Title 38.2 of the Code of Virginia. Chapter 34 is applicable to “insurance policies or contracts of the class described in 38.2-109” (accident and sickness insurance). This bill, however, is not directed at insurance policies or contracts; rather, it is directed at third parties (PBMs), and the contracts they engage into with “covered entities” (defined in the bill as insurers, HMOs, health services plans, the state health plan, and employers, labor unions and organizations that provide health care coverage to covered individuals in the Commonwealth). No regulation of the PBM itself by the Bureau of

Insurance is contemplated by this bill, nor is there any interaction with the Bureau. It may, therefore, be more appropriate to move the provisions of SB 1084 to a more appropriate title of the Code dealing with contracts, commerce or trade.

If, however, the patron did intend some level of regulation for PBMs by the Bureau, the creation of a separate chapter in Title 38.2, with clear references within that chapter to all necessary provisions to permit the Commission to register, examine and regulate PBMs (perhaps in a manner similar to that outlined in Chapter 49 of Title 38.2 dealing with continuing care retirement communities) could be considered.

Date: 01/21/07 / V. Tompkins

cc: Secretary of Commerce and Trade

Secretary of Health and Human Resources