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HOUSE BILL NO. 108

Offered January 8, 2014

Prefiled December 16, 2013

A *BILL* to amend the Code of Virginia by adding a section numbered 38.2-3407.15:1, relating to health insurance; carrier business practices; contracts with participating pharmacy providers.

Patron—Ware

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 38.2-3407.15:1 as follows:

§ 38.2-3407.15:1. Carrier contracts with pharmacy providers; required provisions; limit on termination or nonrenewal.

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

"Audit" includes any audit conducted or authorized by a carrier or its intermediary to determine whether the participating pharmacy provider has complied with the terms and conditions for reimbursement under the provider contract.

"Carrier" has the same meaning ascribed thereto in subsection A of § 38.2-3407.15.

"Clerical error" means any clerical or recordkeeping error or omission, such as typographical errors, scrivener's errors, or computer errors, in the keeping, recording, handling, or transcribing of pharmacy records that does not result in actual overpayment by a carrier or its intermediary or the dispensing of a prescription in breach of applicable law or regulation.

"Fraud" means a knowingly and willfully false misrepresentation evidenced by a review of claims data, evaluation of provider statements, physical review of pharmacy records, or use of similar investigative methods by the carrier or its intermediary.

"Pharmacy record" means a patient record, signature or delivery log, or prescription, including written, phoned-in, faxed, or electronic prescriptions, whether original or substitute, that complies with applicable law and regulation.

"Provider contract" has the same meaning ascribed thereto in subsection A of § 38.2-3407.15.

B. Any contract between a carrier and its intermediary, pursuant to which the intermediary has the right or obligation to conduct audits of participating pharmacy providers, and any provider contract between a carrier and a participating pharmacy provider or its contracting agent, pursuant to which the carrier has the right or obligation to conduct audits of participating pharmacy providers, shall contain specific provisions that prohibit the carrier or intermediary, in the absence of fraud by the participating pharmacy provider, from recouping amounts calculated from or arising out of any of the following:

1. Probability sampling, extrapolation, or other mathematical or statistical methods that allegedly project an error;

2. Clerical errors by the participating pharmacy provider;

3. An act or omission of the participating pharmacy provider that was not specifically prohibited or required by the provider contract when the claim was adjudicated unless the act or omission was a violation of applicable law or regulation;

4. The refusal of a carrier or its intermediary to consider during an audit or audit appeal a pharmacy record in electronic form to validate a claim;

5. Dispensing fees or interest on the claim, except in the event of actual overpayment, if the prescription was dispensed in accordance with applicable law or regulation;

6. Any claim adjudicated more than 24 months prior to the date of the audit unless the claim is adjusted at the direction of the Commission;

7. An alleged breach of auditing requirements if they are not the same as the requirements that the carrier or intermediary applies to other participating pharmacy providers in the same setting;

8. The refusal of the carrier or its intermediary to consider during an audit or audit appeal a pharmacy record, a prescriber or patient verification, or a prescriber record to validate a claim; or

9. The alleged failure of the participating pharmacy provider to supply during an audit or audit appeal a pharmacy record not specifically identified in the provider contract.

C. Any contract between a carrier and its intermediary, pursuant to which the intermediary has the right or obligation to conduct audits of participating pharmacy providers, and any provider contract between a carrier and a participating pharmacy provider or its contracting agent, pursuant to which the carrier has the right or obligation to conduct audits of participating pharmacy providers, shall contain specific provisions that prohibit the carrier or intermediary, in the absence of fraud by the provider,

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59 *from terminating or failing to renew the contractual relationship with a participating pharmacy provider*
60 *for invoking its rights under any contractual provision required to be contained in the contract pursuant*
61 *to subsection B.*

62 *D. The Commission shall have no jurisdiction to adjudicate individual controversies arising out of*
63 *this section.*

64 *E. This section shall apply with respect to contracts described in subsection B or C entered into,*
65 *amended, extended, or renewed on or after January 1, 2015.*