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HOUSE BILL NO. 2031

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 5, 2015)

(Patron Prior to Substitute—Delegate Yost)

A BILL to amend the Code of Virginia by adding a section numbered 38.2-3407.15:2, relating to pharmacy benefits administration; contracts; disclosure of maximum allowable cost for prescription drugs.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 38.2-3407.15:2 as follows:

§ 38.2-3407.15:2. *Carrier and intermediary contracts with pharmacy providers; disclosure and updating of maximum allowable cost of drugs; limit on termination or nonrenewal.*

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

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

"Maximum allowable cost" means the maximum dollar amount that a carrier or its intermediary will reimburse a pharmacy provider for a group of drugs rated as "A", "AB", or "NA" in the most recent edition of the Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book, published by the U.S. Food and Drug Administration, or similarly rated by a nationally recognized reference.

"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 establish a maximum allowable cost, 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 establish a maximum allowable cost, shall contain specific provisions that require the intermediary or carrier to:

1. Update, not less frequently than once every seven days, the maximum allowable cost list, unless there has been no change to the maximum allowable cost of any drug on the list since the last update;

2. Verify, not less frequently than once every seven days, that the drugs on the maximum allowable cost list are available to participating pharmacy providers from at least one regional or national pharmacy wholesaler and that the amount for each drug is not obsolete and promptly revise the maximum allowable cost if necessary to comply with this subsection;

3. Provide a process for each participating pharmacy provider to readily access the maximum allowable cost list specific to that provider; and

4. Prohibit the intermediary or carrier from terminating or failing to renew its contractual relationship with a participating pharmacy provider for invoking its rights under any contractual provision required by this section.

C. Any contract between a carrier and its intermediary, pursuant to which the intermediary has the right or obligation to establish a maximum allowable cost, 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 establish a maximum allowable cost, shall contain specific provisions that require the intermediary or carrier to provide a process for an appeal, investigation, and resolution of disputes regarding maximum allowable cost drug pricing that includes:

1. A time period of 14 days from the date of initial claim adjudication for the participating pharmacy provider to file its dispute request;

2. A requirement that the dispute request be investigated and resolved within 14 days of its initiation by the participating pharmacy provider;

3. A telephone number at which the participating pharmacy provider may contact the carrier or its intermediary to speak to a person responsible for processing dispute requests;

4. A requirement that a carrier or its intermediary, if a dispute request is denied, provide (i) a reason for the denial, and (ii) the national drug code of the drug under dispute that the carrier or its intermediary contends may be purchased by the participating pharmacy provider for an amount that is equal to or less than the maximum allowable cost; and

5. A requirement that a carrier or its intermediary, if a dispute is successful, update the maximum allowable cost for the drug under dispute within five days of the determination of the dispute.

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

E. This section shall apply with respect to contracts described in subsections B and C entered into, amended, extended, or renewed on or after January 1, 2016.

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