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HOUSE BILL NO. 1290

Offered January 8, 2020

Prefiled January 8, 2020

A *BILL to amend the Code of Virginia by adding in Chapter 34 of Title 38.2 an article numbered 9, consisting of sections numbered 38.2-3465, 38.2-3466, and 38.2-3467, relating to pharmacy benefits managers; licensure.*

Patrons—Hodges, Head, Samirah, Adams, L.R. and Simonds

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 34 of Title 38.2 an article numbered 9, consisting of sections numbered 38.2-3465, 38.2-3466, and 38.2-3467, as follows:

Article 9.

Pharmacy Benefits Managers.

§ 38.2-3465. Definitions.

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

"Carrier" means:

- 1. Any insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis;*
- 2. Any corporation providing individual or group accident and sickness subscription contracts;*
- 3. Any health maintenance organization providing health care plans for health care services;*
- 4. Any organization providing managed care medical assistance services under the Department of Medical Assistance Services managed care program; or*

5. Any other person or organization that provides health benefit plans subject to state regulation and includes an entity that arranges a provider panel for compensation.

"Health benefit plan" means a policy, contract, certificate, or agreement offered by a carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. "Health benefit plan" includes short-term and catastrophic health insurance policies and plans offered to recipients of medical assistance services through the Department of Medical Assistance Services managed care program.

"Pharmacy benefits management service" means any service provided in connection with the administration or management of prescription drug benefits provided by a carrier under a health benefit plan and includes the purchase, resale, and distribution of any prescription drug.

"Pharmacy benefits manager" means a person that provides a pharmacy benefits management service. "Pharmacy benefits manager" includes (i) a person acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of a pharmacy benefits management service and (ii) any carrier that provides pharmacy benefits management internally or the affiliate or subsidiary of a carrier that provides pharmacy benefits management services for such carrier.

§ 38.2-3466. License required to provide pharmacy benefits management services; requirements for a license, renewal, and revocation or suspension.

A. Beginning January 1, 2021, no person shall provide pharmacy benefits management services or otherwise act as a pharmacy benefits manager in the Commonwealth without first obtaining a license in a manner and in a form prescribed by the Commission.

B. Each applicant for a license as a pharmacy benefits manager shall make application to the Commission, in the form and containing (i) the name, address, and telephone number of the applicant; (ii) the name and address of each person beneficially interested in the applicant; (iii) the name and address of each person with management or control over the applicant; and (iv) any other the information the Commission prescribes. The Commission may require any documents reasonably necessary to verify the information contained in an application. Each applicant shall, at the time of applying for a license, pay a nonrefundable application processing fee in an amount and in a manner prescribed by the Commission. The fee shall be collected by the Commission and paid directly into the state treasury and credited to the "Bureau of Insurance Special Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

C. Except where prohibited by state or federal law, by submitting an application for a license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in the Commonwealth out of or in connection with the exercise of the license. Such appointment of the clerk of the Commission as agent

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59 for service of process shall be irrevocable during the period within which a cause of action against the
60 applicant may arise out of transactions with respect to subjects of pharmacy benefits management in the
61 Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of
62 Chapter 8 (§ 38.2-800 et seq.).

63 D. The Commission shall issue a license to each applicant that has complied with the provisions of
64 this article and Commission regulations and has satisfied the Commission that the applicant possesses
65 the necessary organization, expertise, and financial integrity to supply the services sought to be offered.

66 E. The Commission, in its discretion, may issue a pharmacy benefits license subject to restrictions or
67 limitations, including restrictions and limitations on the type of services that may be supplied or the
68 activities in which the pharmacy benefits manager may engage.

69 F. Each pharmacy benefits manager shall renew its license every three years and shall, at the time
70 of renewal, pay a renewal fee in an amount and in a manner prescribed by the Commission. The fee
71 shall be collected by the Commission and paid directly into the state treasury and credited to the
72 "Bureau of Insurance Special Fund - State Corporation Commission" for the maintenance of the Bureau
73 of Insurance as provided in subsection B of § 38.2-400.

74 G. The Commission may suspend, revoke, or place on probation a pharmacy benefits manager
75 license if (i) the pharmacy benefits manager has engaged in fraudulent activity that constitutes a
76 violation of state or federal law, (ii) the Commission has received consumer complaints that justify such
77 an action to protect the safety or interests of consumers, (iii) the pharmacy benefits manager fails to
78 pay any required licensure or renewal fee, or (iv) the pharmacy benefits manager fails to comply with
79 the provisions of this article, Commission regulations, or other applicable law.

80 **§ 38.2-3467. Examination of books and records; reports; access to records.**

81 A. Each carrier, on its own or through its contract for pharmacy benefits, shall ensure that the
82 Commissioner may examine or audit the books and records of a pharmacy benefits manager providing
83 claims processing services or other prescription drug or device services for a carrier that are relevant
84 to determining if the pharmacy benefits manager is in compliance with this article. The carrier shall be
85 responsible for the charges incurred in the examination, including the expenses of the Commissioner or
86 his designee and the expenses and compensation of his examiners and assistants. The Commissioner or
87 his designee promptly shall institute a civil action to recover the expenses of examination in any case
88 where there is a refusal or failure to pay such expenses and compensation.

89 B. Any carrier, on its own or through its contract for pharmacy benefits, shall report to the
90 Commissioner on a quarterly basis for each health benefit plan the following information:

91 1. The aggregate amount of rebates received by the pharmacy benefits manager;

92 2. The aggregate amount of rebates distributed to the appropriate health benefit plan;

93 3. The aggregate amount of rebates passed on to the enrollees of each health benefit plan at the
94 point of sale that reduced the enrollees' applicable deductible, copayment, coinsurance, or other
95 cost-sharing amount;

96 4. The individual and aggregate amount paid by the health benefit plan to the pharmacy benefits
97 manager for services itemized by pharmacy, by product, and by goods and services; and

98 5. The individual and aggregate amount a pharmacy benefits manager paid for services itemized by
99 pharmacy, by product, and by goods and services.

100 C. The information or data acquired from reports or an examination pursuant to this section is
101 considered proprietary and confidential and is not subject to the Virginia Freedom of Information Act
102 (§ 2.2-3700 et seq.).