2020 SESSION

INTRODUCED

HB1479

HOUSE BILL NO. 1479 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 38.2-3405 through 38.2-3471, relating to regulation of pharmacy benefits managers. Patrons—Samirah, OQuinn, Jenkins and Levine 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 Chapter34 of Title 38.2 an article numbered 9, consisting of sections numbered 38.2-3405 through 38.2-3471, as follows: Article 9. Patrons—Samirah, O'Quinn, Jenkins and Levine 8 8 9		20103462D
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56 whom medications are dispensed.		
si spread pricing means me model of prescription drug pricing in which the pharmacy benefits		
58 manager charges a health benefit plan a contracted price for prescription drugs, and the contracted		

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59 price for the prescription drugs differs from the amount the pharmacy benefits manager directly or 60 indirectly pays the pharmacist or pharmacy for pharmacist services.

61 § 38.2-3466. Registration.

62 A. A person may not establish or operate as a pharmacy benefits manager in the Commonwealth for 63 health benefit plans without registering with the Commissioner.

64 B. The Commissioner shall prescribe the registration process to operate in the Commonwealth as a 65 pharmacy benefits manager and may charge an initial application fee of \$1,000 and an annual renewal 66 fee of \$500. 67

Č. The form for registration of a pharmacy benefits manager shall collect the following information:

1. The name, address, and telephone contact number of the pharmacy benefits manager;

69 2. The name and address of the pharmacy benefits manager's agent for service of process in the 70 Commonwealth:

3. The name and address of each person with management or control over the pharmacy benefits 71 manager; 72

73 4. The name and address of each person with a beneficial ownership interest in the pharmacy 74 benefits manager; and

75 5. If the pharmacy benefits manager registrant (i) is a partnership or other unincorporated association, a limited liability company, or a corporation and (ii) has five or more partners, members, 76 77 or stockholders, the registrant shall specify its legal structure and the total number of its partners, 78 members, or stockholders who, directly or indirectly, own, control, hold with the power to vote, or hold 79 proxies representing 10 percent or more of the voting securities of any other person.

80 D. A pharmacy benefits manager applicant shall provide the Commissioner with a signed statement indicating that, to the best of its knowledge, no officer with management or control of the pharmacy 81 benefits manager has been convicted of a felony or has violated any of the requirements of state law applicable to pharmacy benefits managers, or, if the applicant cannot provide such a statement, a 82 83 84 signed statement describing the relevant conviction or violation. 85

§ 38.2-3467. Prohibited conduct by carriers.

A. No carrier on its own or through its contracted pharmacy benefits manager or representative of a 86 87 pharmacy benefits manager shall:

88 1. Cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, 89 proposal, or offer that is untrue, deceptive, or misleading; 90

2. Charge a pharmacist or pharmacy a fee related to the adjudication of a claim;

91 3. Engage, with the express intent or purpose of driving out competition or financially injuring competitors, in a pattern or practice of reimbursing retail community pharmacies or pharmacists in the 92 Commonwealth consistently less than the amount that the pharmacy benefits manager reimburses a 93 94 pharmacy benefits manager affiliate for providing the same pharmacist services;

95 4. Collect or require a pharmacy or pharmacist to collect from an insured a copayment for a 96 prescription drug at the point of sale in an amount that exceeds the lesser of: 97

a. The contracted copayment amount;

b. The amount an individual would pay for a prescription drug if that individual was paying cash; or

c. The contracted amount for the drug:

100 5. Reimburse a pharmacy or pharmacist an amount less than the amount that the pharmacy benefits 101 manager reimburses a pharmacy benefits manager affiliate for providing the same pharmacist services, 102 calculated on a per-unit basis using the same generic product identifier or generic code number and reflecting all drug manufacturer's rebates, direct and indirect administrative fees, and costs and any 103 104 remuneration;

105 6. Require the use of mail order for filling prescriptions unless the health benefit plan or pharmacy 106 benefit offers no financial incentive to an insured;

107 7. Prohibit a pharmacist or pharmacy from offering and providing direct and limited delivery 108 services, including incidental mailing services, to an insured as an ancillary service of the pharmacy;

109 8. Charge a fee related to the adjudication of a claim without providing the cause for each adjustment or fee; or 110

111 9. Penalize or retaliate against a pharmacist or pharmacy for exercising rights provided pursuant to 112 the provisions of this article.

113 B. No carrier, on its own or through its contracted pharmacy benefits manager or representative of 114 a pharmacy benefits manager, shall impose pharmacy or other provider accreditation standards or 115 certification requirements that are inconsistent with, more stringent than, or in addition to requirements 116 of the Virginia Board of Pharmacy or other state or federal entity.

C. No carrier, on its own or through its contracted pharmacy benefits manager or representative of 117 a pharmacy benefits manager, shall include any mail order pharmacy or pharmacy benefits manager 118 119 affiliate in calculating or determining network adequacy under any law or contract in the 120 Commonwealth.

121 D. No carrier, on its own or through its contracted pharmacy benefits manager or representative of 122 a pharmacy benefits manager, shall conduct spread pricing in the Commonwealth. 123

§ 38.2-3468. Required carrier business practices.

124 A. Each carrier, on its own or through its contracted pharmacy benefits manager or representative 125 of a pharmacy benefits manager, shall:

126 1. Ensure that, before a particular drug is placed or continues to be placed on a Maximum 127 Allowable Cost List, the drug shall:

128 a. Be listed as "A" or "B" rated in the most recent version of the federal Food and Drug 129 Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the

130 Orange Book, or has an "NR" or "NA" rating, or a similar rating, by a nationally recognized reference; 131 b. Be available for purchase in the Commonwealth from national or regional wholesalers operating

132 in the Commonwealth; and

133 c. Not be obsolete;

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134 2. Provide a process for network pharmacy providers to readily access the maximum allowable cost 135 specific to that provider;

3. Update its Maximum Allowable Cost List at least once every seven calendar days;

137 4. Provide a process for each pharmacy subject to the Maximum Allowable Cost List to access any 138 updates to the Maximum Allowable Cost List;

139 5. Ensure that dispensing fees are not included in the calculation of maximum allowable cost; and

140 6. Establish a reasonable administrative appeal procedure by which a contracted pharmacy can 141 appeal the provider's reimbursement for a drug subject to maximum allowable cost pricing if the 142 reimbursement for the drug is less than the net amount that the network provider paid to the suppliers 143 of the drug. The reasonable administrative appeal procedure shall include:

144 a. A dedicated telephone number and email address or website for the purpose of submitting 145 administrative appeals; and

146 b. The ability to submit an administrative appeal directly to the pharmacy benefits manager 147 regarding the pharmacy benefits plan or program or through a pharmacy service administrative 148 organization if the pharmacy service administrative organization has a contract with the pharmacy 149 benefits manager that allows for the submission of such appeals.

150 B. A pharmacy shall be allowed no less than 10 calendar days after the applicable fill date to file an 151 administrative appeal.

152 C. If an appeal is initiated, the carrier either directly or through its pharmacy benefits manager 153 shall within 10 calendar days after receipt of notice of the appeal either:

154 1. If the appeal is upheld: 155

a. Notify the pharmacy or pharmacist or his designee of the decision;

156 b. Make the change in the Maximum Allowable Cost effective as of the date the appeal is resolved; 157

c. Permit the appealing pharmacy or pharmacist to reverse and rebill the claim in question; and

158 d. Make the change effective for each similarly situated pharmacy as defined by the payor subject to 159 the Maximum Allowable Cost List effective as of the date the appeal is resolved; or

160 2. If the appeal is denied, provide the appealing pharmacy or pharmacist the reason for the denial, the National Drug Code number, and the names of the national or regional pharmaceutical wholesalers 161 162 operating in the Commonwealth.

§ 38.2-3469. Examination of books and records; reports; access to records.

164 A. Each carrier, on its own or through its contract for pharmacy benefits, shall ensure that the 165 Commissioner may examine or audit the books and records of a pharmacy benefits manager providing claims processing services or other prescription drug or device services for a carrier that are relevant 166 167 to determining if the pharmacy benefits manager is in compliance with this article. The carrier shall be 168 responsible for the charges incurred in the examination, including the expenses of the Commissioner or his designee and the expenses and compensation of his examiners and assistants. The Commissioner or 169 170 his designee promptly shall institute a civil action to recover the expenses of examination in any case 171 where there is a refusal or failure to pay such expenses and compensation.

172 B. Any carrier, on its own or through its contract for pharmacy benefits, shall report to the 173 *Commissioner on a quarterly basis for each health benefit plan the following information:*

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

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

176 3. The aggregate amount of rebates passed on to the enrollees of each health benefit plan at the 177 point of sale that reduced the enrollees' applicable deductible, copayment, coinsurance, or other 178 *cost-sharing amount;*

179 4. The individual and aggregate amount paid by the health benefit plan to the pharmacy benefits 180 manager for services itemized by pharmacy, by product, and by goods and services; and

181 5. The individual and aggregate amount a pharmacy benefits manager paid for services itemized by 182 pharmacy, by product, and by goods and services.

183 C. The information or data acquired from reports or an examination pursuant to this section is 184 considered proprietary and confidential and is not subject to the Virginia Freedom of Information Act 185 (§ 2.2- 3700 et seq.).

186 § 38.2-3470. Enforcement; regulations.

187 A. The Commission shall enforce this article. However, the Commission shall have no jurisdiction to 188 adjudicate individual controversies arising out of this article.

189 B. Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and 190 regulations as it may deem necessary to implement this article. 191

§ 38.2-3471. Scope of article.

192 This article shall not apply with respect to claims under (i) 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), 193

that is self-insured or self-funded; (ii) coverages issued pursuant to Title XIX of the Social Security Act, 194

42 U.S.C. § 1396 et seq. (Medicaid); or (iii) prescription drug coverages issued pursuant to Part D of Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare Part D). 195 196

197 2. That provisions of the first enactment of this act shall become effective on October 1, 2020,

except that the provisions of the first enactment that apply to contracts between a carrier and a 198

199 pharmacy benefits manager shall apply to all such contracts delivered, renewed, reissued, or

200 extended on or after October 1, 2020, and to all such contracts to which a term is changed on or 201 after such date.

202 3. That the State Corporation Commission shall establish a procedure, to be in effect by August 1,

203 2020, for any pharmacy benefits manager to apply for registration, prior to October 1, 2020, for a

registration to be issued on or after October 1, 2020, pursuant to§ 38.2-3466 of the Code of 204 205 Virginia, as created by the first enactment of this act.