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HOUSE BILL NO. 1782

Offered January 11, 2023
Prefiled January 10, 2023

A BILL to amend and reenact §§ 38.2-3407.22 and 38.2-3465 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3467.1, relating to health insurance; ensuring fairness in cost-sharing.

Patrons—O'Quinn and Williams

Referred to Committee on Commerce and Energy

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3407.22 and 38.2-3465 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-3467.1 as follows:

§ 38.2-3407.22. Ensuring fairness in cost-sharing.

A. As used in this section:

"Carrier" has the same meaning as set forth in § 38.2-3407.10; however, "carrier" also includes any person required to be licensed pursuant to this title that offers or operates a managed care health insurance plan subject to the requirements of Chapter 58 (§ 38.2-5800 et seq.) or that provides or arranges for the provision of health care services, health plans, *health benefit plans,* networks, or provider panels that are subject to regulation as the business of insurance. ~~"Carrier" also includes any health insurance issuer that offers health insurance coverage, as defined in § 38.2-3431.~~

~~"Enrollee" means any person entitled to health care services from a carrier.~~

~~"Health care services" means items or services furnished to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability.~~

"Defined cost-sharing" means a deductible payment or coinsurance amount imposed on an enrollee for a covered prescription drug under the enrollee's health plan.

"Health benefit plan" has the same meaning as provided in § 38.2-3438. "Health benefit plan" does not include a state or local government employer plan, including the state employee health insurance plan under § 2.2-2818.2.

"Health plan" means any individual or group health care plan, subscription contract, evidence of coverage, certificate, health services plan, medical or hospital services plan, accident or sickness insurance policy or certificate, managed care health insurance plan, or other similar certificate, policy, contract, or arrangement, and any endorsement or rider thereto, to cover all or a portion of the cost of persons receiving covered health care services, that is subject to state regulation and that is required to be offered, arranged, or issued in the Commonwealth by a carrier licensed under this title. ~~"Health plan" includes a state or local government employer plan.~~ "Health plan" does not mean (i) *a state or local government employer plan, including the state employee health plan under § 2.2-2818.2; (ii)* coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare), Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid), Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq. (CHIP), 5 U.S.C. § 8901 et seq. (federal employees), or 10 U.S.C. § 1071 et seq. (TRICARE)*;* or ~~(ii)~~ *(iii)* accident only, credit or disability insurance, long-term care insurance, TRICARE supplement, Medicare Supplement, or workers' compensation coverages.

~~"Pharmacy benefits manager" has the same meaning as set forth in § 38.2-3407.15:4.~~

"Price protection rebate" means a negotiated price concession that accrues directly or indirectly to the carrier, or other party on behalf of the carrier, in the event of an increase in the wholesale acquisition cost of a drug above a specified threshold.

"Rebate" means (i) negotiated price concessions, including base price concessions and reasonable estimates of any price protection rebates and performance-based price concessions, *whether described as a rebate or otherwise,* that may accrue directly or indirectly to a carrier~~, health plan, or pharmacy benefits manager~~ during the coverage year from a manufacturer, dispensing pharmacy, or other party in connection with the dispensing or administration of a prescription drug and (ii) reasonable estimates of any negotiated price concessions, fees, or other administrative costs that are passed through, or are reasonably anticipated to be passed through, to the carrier~~, health plan, or pharmacy benefits manager~~ and serve to reduce the liability of ~~a~~ *the* carrier~~, health plan, or pharmacy benefits manager~~ for a prescription drug.

B. ~~When contracting with a carrier or health plan to administer pharmacy benefits, a pharmacy benefits manager shall offer the carrier or health plan the option of extending point-of-sale rebates to enrollees of the plan.~~ *An enrollee's defined cost-sharing for each prescription drug shall be calculated at*

the point of sale based on a price that is reduced by an amount equal to at least 80 percent of all rebates received in connection with the dispensing or administration of the prescription drug.

C. ~~The provisions of this section shall only apply to a carrier, health plan, or pharmacy benefits manager~~ *Nothing in this section shall preclude a carrier from decreasing an enrollee's defined cost-sharing for each prescription drug by an amount greater than that required under subsection B.*

D. In implementing the requirements of this section, the state shall only regulate a carrier to the extent permissible under applicable law.

~~D.~~ *E.* In complying with the provisions of this section, a carrier~~, health plan, pharmacy benefits manager,~~ or its ~~respective~~ agents shall not publish or otherwise reveal information regarding the actual amount of rebates a carrier~~, health plan, or pharmacy benefits manager~~ receives *on a product or therapeutic class of products* on a product-specific, manufacturer-specific, or pharmacy-specific basis. Such information shall be protected as a trade secret ~~and~~, shall not be public record *as defined by the Virginia Public Records Act (§ 42.1-76 et seq.),* or disclosed, directly or indirectly*, in a manner that would allow for the identification of an individual product, therapeutic class of products, or manufacturer, or in a manner that has the potential to compromise the financial, competitive, or proprietary nature of the information*. A carrier~~, health plan, or pharmacy benefits manager~~ shall require any vendor or third party ~~with which the carrier, health plan, or pharmacy benefits manager contracts for~~ *that performs* health care or administrative services on behalf of the carrier~~, health plan, or pharmacy benefits manager that~~ *and* may receive or have access to rebate information to comply with the *confidentiality* provisions of this subsection ~~related to protection of information regarding the amount of rebates a carrier, health plan, or pharmacy benefits manager receives on a product-specific, manufacturer-specific, or pharmacy-specific basis~~.

~~E. The Commission may, pursuant to the provisions of § 38.2-223, adopt such rules and regulations as may be necessary to implement and enforce the provisions of this section.~~

§ 38.2-3465. Definitions.

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

"Carrier" has the same meaning ascribed thereto in subsection A of § 38.2-3407.15. However, "carrier" does not include a nonprofit health maintenance organization that operates as a group model whose internal pharmacy operation exclusively serves the members or patients of the nonprofit health maintenance organization.

"Claim" means a request from a pharmacy or pharmacist to be reimbursed for the cost of administering, filling, or refilling a prescription for a drug or for providing a medical supply or device.

"Claims processing services" means the administrative services performed in connection with the processing and adjudicating of claims relating to pharmacist services that include (i) receiving payments for pharmacist services, (ii) making payments to pharmacists or pharmacies for pharmacist services, or (iii) both receiving and making payments.

"Contract pharmacy" means a pharmacy operating under contract with a 340B-covered entity to provide dispensing services to the 340B-covered entity, as described in 75 Fed. Reg. 10272 (March 5, 2010) or any superseding guidance published thereafter.

"Covered entity" means an entity described in § 340B(a)(4) of the federal Public Health Service Act, 42 U.S.C. § 256B(a)(4). "Covered entity" does not include a hospital as defined in § 32.1-123 or 37.2-100.

"Covered individual" means an individual receiving prescription medication coverage or reimbursement provided by a pharmacy benefits manager or a carrier under a health benefit plan.

"Defined cost-sharing" means a deductible payment or coinsurance amount imposed on an enrollee for a covered prescription drug under the enrollee's health plan.

"Enrollee" means any person entitled to health care services from a carrier.

"Health benefit plan" has the same meaning ascribed thereto in § 38.2-3438. *"Health benefit plan" does not include a state or local government employer plan, including the state employee health insurance plan under § 2.2-2818.2.*

"Health care services" means items or services furnished to any individual for the purpose of preventing, diagnosing, alleviating, curing, or healing human illness, injury, or physical disability.

"Mail order pharmacy" means a pharmacy whose primary business is to receive prescriptions by mail or through electronic submissions and to dispense medication to covered individuals through the use of the United States mail or other common or contract carrier services and that provides any consultation with covered individuals electronically rather than face-to-face.

"Pharmacy benefits management *services*" means ~~the administration or management of prescription drug benefits provided by a carrier for the benefit of covered individuals~~ *(i) negotiating the price of prescription drugs, including negotiating and contracting for direct or indirect rebates, discounts, or other price concessions; (ii) managing any aspect of a prescription drug benefit, including the processing and payment of claims for prescription drugs, the performance of drug utilization reviews, the processing of drug prior authorization requests for prescription drugs, the adjudication of appeals*

or grievances related to the prescription drug benefit, contracting with network pharmacies, controlling the cost of covered prescription drugs, or the provision of services related thereto; (iii) performing of any administrative, managerial, clinical, pricing, financial, reimbursement, or billing service; and (iv) providing such other services as the Commissioner may define by regulation. "Pharmacy benefits management *services*" does not include any service provided by a nonprofit health maintenance organization that operates as a group model, provided that the service ~~is~~ furnished through the internal pharmacy operation exclusively serves the members or patients of the nonprofit health maintenance organization.

"Pharmacy benefits manager" or "PBM" means an entity that ~~performs~~*, pursuant to a written agreement with a carrier or health benefit plan, either directly or indirectly provides one or more* pharmacy benefits management *services on behalf of the carrier or health benefit plan and any agent, contractor, intermediary, affiliate, subsidiary, or related entity that facilitates, provides, directs, or oversees the provision of pharmacy benefits management services*. "Pharmacy benefits manager" includes an entity acting for a PBM in a contractual relationship in the performance of pharmacy benefits management *services* for a carrier, nonprofit hospital, or third-party payor under a health program administered by the Commonwealth.

"Pharmacy benefits manager affiliate" means a business, pharmacy, or pharmacist that directly or indirectly, through one or more intermediaries, owns or controls, is owned or controlled by, or is under common ownership interest or control with a pharmacy benefits manager.

"Price protection rebate" means a negotiated price concession that accrues directly or indirectly to the carrier, or other party on behalf of the carrier, in the event of an increase in the wholesale acquisition cost of a drug above a specified threshold.

"Rebate" means ~~a discount or other price concession, including without limitation incentives, disbursements, and reasonable estimates of a volume-based discount, or a payment that is (i) based on utilization of a prescription drug and (ii) paid by a manufacturer or third party, directly or indirectly, to a pharmacy benefits manager, pharmacy services administrative organization, or pharmacy after a claim has been processed and paid at a pharmacy~~ *(i) negotiated price concessions, including base price concessions, whether described as a rebate or otherwise, and reasonable estimates of any price protection rebates and performance-based price concessions, that may accrue directly or indirectly to a carrier or health benefit plan during the coverage year from a manufacturer, dispensing pharmacy, or other party in connection with the dispensing or administration of a prescription drug and (ii) reasonable estimates of any negotiated price concessions, fees, or other administrative costs that are passed through, or are reasonably anticipated to be passed through, to the carrier or health benefit plan and serve to reduce the liability of the carrier or health benefit plan for a prescription drug.*

"Retail community pharmacy" means a pharmacy that is open to the public, serves walk-in customers, and makes available face-to-face consultations between licensed pharmacists and persons to whom medications are dispensed.

"Spread pricing" means the model of prescription drug pricing in which the pharmacy benefits manager charges a health benefit plan a contracted price for prescription drugs, and the contracted price for the prescription drugs differs from the amount the pharmacy benefits manager directly or indirectly pays the pharmacist or pharmacy for pharmacist services.

§ 38.2-3467.1. Ensuring fairness in cost-sharing.

A. An enrollee's defined cost-sharing for each prescription drug shall be calculated at the point of sale based on a price that is reduced by an amount equal to at least 80 percent of all rebates received or expected to be received in connection with the dispensing or administration of the prescription drug.

B. Nothing in this section shall preclude a PBM from decreasing an enrollee's defined cost-sharing for each prescription drug by an amount greater than that required under subsection A.

C. In complying with the provisions of this section, a PBM or its agents shall not publish or otherwise reveal information regarding the actual amount of rebates a PBM receives on a product or therapeutic class of products on a product-specific, manufacturer-specific, or pharmacy-specific basis. Such information shall be protected as a trade secret, shall not be public record as defined by the Virginia Public Records Act (§ 42.1-76 et seq.), or disclosed, directly or indirectly, in a manner that would allow for the identification of an individual product, therapeutic class of products, or manufacturer, or in a manner that has the potential to compromise the financial, competitive, or proprietary nature of the information. A PBM shall require any vendor or third party that performs health care or administrative services on behalf of the PBM or contracts for health care or administrative services on behalf of the PBM that may receive or have access to rebate information to comply with the confidentiality provisions of this subsection.