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HOUSE BILL NO. 2435

Offered January 19, 2023

A *BILL to amend and reenact §§ 32.1-137.05, as it is currently effective and as it shall become effective, and 59.1-200 of the Code of Virginia, relating to hospital price transparency; enforcement; plans of correction; civil penalty.*

Patrons—Hodges and Helmer

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-137.05, as it is currently effective and as it shall become effective, and 59.1-200 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-137.05. (Effective until July 1, 2023) Information regarding standard charges; advance estimate of patient payment amount for elective procedure, test, or service; civil penalty.

Every hospital shall, upon request of a patient scheduled to receive an elective procedure, test, or service to be performed by the hospital, or upon request of such patient's legally authorized representative, made no less than three days in advance of the date on which such elective procedure, test, or service is scheduled to be performed, furnish the patient with an estimate of the payment amount for which the participant will be responsible for such elective procedure, test, or service. Every hospital shall provide written information about the patient's ability to request an estimate of the payment amount pursuant to this section. Such written information shall be posted conspicuously in public areas of the hospital, including admissions or registration areas, and included on any website maintained by the hospital.

§ 32.1-137.05. (Effective July 1, 2023) Information regarding standard charges; advance estimate of patient payment amount for elective procedure, test, or service; civil penalty.

A. Every hospital shall make available to the public on its website a machine-readable file containing a list of all standard charges for all items and services provided by the hospital in accordance with 45 C.F.R. § 180.50, as amended. As used in this subsection, "hospital," "items and services," "machine-readable," and "standard charge" have the same meaning as set forth in 45 C.F.R. § 180.20.

B. Every hospital shall, upon request of a patient scheduled to receive an elective procedure, test, or service to be performed by the hospital, or upon request of such patient's legally authorized representative, made no less than three days in advance of the date on which such elective procedure, test, or service is scheduled to be performed, furnish the patient with an estimate of the payment amount for which the participant will be responsible for such elective procedure, test, or service. Every hospital shall provide written information about the patient's ability to request an estimate of the payment amount pursuant to this section. Such written information shall be posted conspicuously in public areas of the hospital, including admissions or registration areas, and included on any website maintained by the hospital.

C. If the Department determines that a hospital is noncompliant with the provisions of this subsection A, the Department may require the hospital to submit or comply with an acceptable plan of correction. If a noncompliant hospital fails to submit or comply with an acceptable plan of correction, the Commissioner may impose a directed plan of correction on the noncompliant hospital.

D. Any hospital that violates the provisions of subsection A shall be liable for a civil penalty. Such penalty shall be assessed and collected by the Commissioner, and the proceeds shall be deposited into the general fund. Each day that a hospital fails to comply with subsection A shall count as a separate violation. The daily amount for a civil penalty for which a hospital may be liable is determined as follows:

1. For a hospital with 30 beds or fewer, the maximum daily civil penalty amount to which it may be subject is \$300, even if the hospital is in violation of multiple discrete requirements of this section.

2. For a hospital with at least 31 beds but not more than 550 beds, the maximum daily civil penalty amount to which it may be subject is the number of beds times \$10, even if the hospital is in violation of multiple discrete requirements of this section.

3. For a hospital with more than 550 beds, the maximum daily civil penalty amount to which it may be subject is \$5,500, even if the hospital is in violation of multiple discrete requirements of this section.

E. Any violation of the provisions of subsection A shall constitute a prohibited practice under the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

F. Any hospital that violates the provisions of subsection A may be reported to the Consumer

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59 *Protection Division of the Office of the Attorney General. The Attorney General shall have the authority*
60 *to enforce the provisions of this section and shall have the authority to refer hospitals with a pattern of*
61 *noncompliance to the Department to establish a plan of correction pursuant to subsection C.*

62 **§ 59.1-200. Prohibited practices.**

63 A. The following fraudulent acts or practices committed by a supplier in connection with a consumer
64 transaction are hereby declared unlawful:

- 65 1. Misrepresenting goods or services as those of another;
- 66 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- 67 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or
68 services, with another;
- 69 4. Misrepresenting geographic origin in connection with goods or services;
- 70 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or
71 benefits;
- 72 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
- 73 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
74 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first
75 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods
76 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"
77 irregulars, imperfects or "not first class";
- 78 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell
79 at the price or upon the terms advertised.

80 In any action brought under this subdivision, the refusal by any person, or any employee, agent, or
81 servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms
82 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph
83 shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such
84 goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or
85 amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement
86 or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

87 9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts
88 of price reductions;

89 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts
90 installed;

91 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice
92 or bill for merchandise or services previously ordered;

93 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"
94 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the
95 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in
96 manufacturing the goods or services advertised or offered for sale;

97 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of
98 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,
99 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth,
100 or under federal statutes or regulations;

101 13a. Failing to provide to a consumer, or failing to use or include in any written document or
102 material provided to or executed by a consumer, in connection with a consumer transaction any
103 statement, disclosure, notice, or other information however characterized when the supplier is required
104 by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other
105 information in connection with the consumer transaction;

106 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection
107 with a consumer transaction;

108 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,
109 3.2-6516, or 3.2-6519 is a violation of this chapter;

110 16. Failing to disclose all conditions, charges, or fees relating to:

111 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
112 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
113 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
114 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
115 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
116 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
117 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
118 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
119 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
120 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise

reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the agreement;

16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of receiving overpayments. If the credit balance information is incorporated into statements of account furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;

18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);

19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et seq.);

20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et seq.);

21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-207.17 et seq.);

22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);

23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-424 et seq.);

24. Violating any provision of § 54.1-1505;

25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6 (§ 59.1-207.34 et seq.);

26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);

28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);

29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et seq.);

30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et seq.);

31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);

32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

35. Using the consumer's social security number as the consumer's account number with the supplier, if the consumer has requested in writing that the supplier use an alternate number not associated with the consumer's social security number;

36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;

37. Violating any provision of § 8.01-40.2;

38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);

40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;

41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.);

42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);

43. Violating any provision of § 59.1-443.2;

44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);

45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;

46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;

47. Violating any provision of § 18.2-239;

48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);

49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable

182 presumption that a supplier has reason to know a children's product was recalled if notice of the recall
183 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale
184 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to
185 children's products that are used, secondhand or "seconds";

186 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);

187 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;

188 52. Violating any provision of § 8.2-317.1;

189 53. Violating subsection A of § 9.1-149.1;

190 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
191 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
192 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
193 which defective drywall has been permanently installed or affixed;

194 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
195 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in
196 § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
197 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
198 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;

199 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);

200 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;

201 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);

202 59. Violating any provision of subsection E of § 32.1-126;

203 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed
204 under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;

205 61. Violating any provision of § 2.2-2001.5;

206 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;

207 63. Violating any provision of § 6.2-312;

208 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;

209 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2;

210 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.);

211 67. Knowingly violating any provision of § 8.01-27.5;

212 68. Failing to make available a conspicuous online option to cancel a recurring purchase of a good
213 or service as required by § 59.1-207.46;

214 69. Selling or offering for sale to a person younger than 21 years of age any substance intended for
215 human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall
216 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
217 scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct
218 permitted under Article 4.2 of Chapter 34 of Title 54.1 of the Code of Virginia;

219 70. Selling or offering for sale any substance intended for human consumption, orally or by
220 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant
221 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less
222 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to
223 persons younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of
224 such substance that constitutes a single serving, and (d) the total percentage and milligrams of
225 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol
226 that are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an
227 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International
228 Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol
229 concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the
230 substance originates. This subdivision shall not (i) apply to products that are approved for marketing by
231 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or
232 (ii) be construed to prohibit any conduct permitted under Article 4.2 of Chapter 34 of Title 54.1 of the
233 Code of Virginia;

234 71. Manufacturing, offering for sale at retail, or selling at retail an industrial hemp extract, as defined
235 in § 3.2-5145.1, a food containing an industrial hemp extract, or a substance containing
236 tetrahydrocannabinol that depicts or is in the shape of a human, animal, vehicle, or fruit; and

237 72. Selling or offering for sale any substance intended for human consumption, orally or by
238 inhalation, that contains tetrahydrocannabinol and, without authorization, bears, is packaged in a
239 container or wrapper that bears, or is otherwise labeled to bear the trademark, trade name, famous mark
240 as defined in 15 U.S.C. § 1125, or other identifying mark, imprint, or device, or any likeness thereof, of
241 a manufacturer, processor, packer, or distributor of a product intended for human consumption other
242 than the manufacturer, processor, packer, or distributor that did in fact so manufacture, process, pack, or
243 distribute such substance; and

244 73. *Violating any provision of subsection A of § 32.1-137.05.*

245 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
246 lease solely by reason of the failure of such contract or lease to comply with any other law of the
247 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
248 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
249 such contract or lease.

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