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# SENATE BILL NO. 660

Offered January 15, 2024

*A BILL to amend and reenact §§ 38.2-3465, 38.2-3466, and 38.2-3468 of the Code of Virginia, relating to health insurance; pharmacy benefits managers; reporting requirements; civil penalty.*

Patrons—Carroll Foy, Subramanyam and Williams Graves

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 38.2-3465, 38.2-3466, 38.2-3468 of the Code of Virginia are amended and reenacted as follows:**

**§ 38.2-3465. Definitions.**

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

*"Aggregate retained rebate percentage" means the sum total dollar amount of a pharmacy benefits manager's retained rebates relating to all carrier clients of such pharmacy benefits manager divided by the sum total dollar amount of all rebates received by such pharmacy benefits manager relating to all such clients.*

"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.

"Health benefit plan" has the same meaning ascribed thereto in § 38.2-3438.

"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" means the administration or management of prescription drug benefits provided by a carrier for the benefit of covered individuals. "Pharmacy benefits management" 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 pharmacy benefits management. "Pharmacy benefits manager" includes an entity acting for a PBM in a contractual relationship in the performance of pharmacy benefits management 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.

"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.

"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.

*"Retained rebate" means a rebate that is not passed on to a health benefit plan.*

*"Retained rebate percentage" means the sum total dollar amount of a pharmacy benefits manager's retained rebates relating to a health benefit plan divided by the sum total dollar amount of all rebates received by such pharmacy benefits manager relating to such health benefit plan.*

"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.

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

A. Unless otherwise covered by a license as a carrier, 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 the information listed in subsection C and any other 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. An applicant for a license as a pharmacy benefits manager shall provide the Commission the following information:

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

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

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

4. 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, or stockholders, the registrant shall specify its legal structure and the total number of its partners, members, or stockholders who, directly or indirectly, own, control, hold with the power to vote, or hold proxies representing 10 percent or more of the voting securities of any other person.

D. An 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 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 signed statement describing the relevant conviction or violation.

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

F. Each applicant that has complied with the provisions of this article and Commission regulations is entitled to and shall receive a license in the form the Commission prescribes.

G. Each pharmacy benefits manager shall renew its license annually and shall, at the time of renewal, pay a renewal 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.

H. The Commission may refuse to issue or renew a license or may revoke or suspend a license if it finds that the applicant or license holder has not complied with the provisions of this article or Commission regulations.

*I. A person that violates the provisions of this section shall be subject to a civil penalty of $5,000 for each day on which such violation occurs. The Commission may adopt such rules or establish such guidelines as may be necessary to enforce the provisions of this section.*

**§ 38.2-3468. Examination of books and records; reports; access to records.**

A. Each carrier, on its own or through its contract for pharmacy benefits, shall ensure that the 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 to determining if the pharmacy benefits manager is in compliance with this article. The carrier shall be 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.

B. Each carrier, on its own or through its contract for pharmacy benefits, shall report the following information to the Commissioner for each health benefit plan:

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

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

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

4. *The aggregate amount of the pharmacy benefits manager's retained rebates;*

*5. The pharmacy benefits manager's aggregate retained rebate percentage;*

*6. The pharmacy benefits manager's retained rebate percentage for each health benefit plan;*

*7. The aggregate amount of administrative fees received by the pharmacy benefits manager;*

*8.* Upon the request of the Commission, the individual and aggregate amount paid by the health benefit plan to the pharmacy benefits manager for services itemized by pharmacy, by product, and by goods and services; and

~~5.~~ *9.* Upon the request of the Commission, the individual and aggregate amount a pharmacy benefits manager paid for services itemized by pharmacy, by product, and by goods and services.

The report required by this subsection shall be filed on a quarterly basis through March 31, 2023. The final quarterly report shall include information for the period ending December 31, 2022. Thereafter, by March 31 of each year, the report shall be filed on a calendar year basis. The 2023 calendar year report shall be filed by March 31, 2024.

C. All working papers, documents, reports, and copies thereof, produced by, obtained by or disclosed to the Commission or any other person in the course of an examination made under this article and any analysis of such information or documents shall be given confidential treatment, are not subject to subpoena, and may not be made public by the Commission or any other person. Access may also be granted to (i) a regulatory official of any state or country; (ii) the National Association of Insurance Commissioners (NAIC), its affiliate, or its subsidiary; or (iii) a law-enforcement authority of any state or country, provided that those officials are required under their law to maintain its confidentiality. Any such disclosure by the Commission shall not constitute a waiver of confidentiality of such papers, documents, reports or copies thereof. Any parties receiving such papers must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section.