

HOUSE BILL NO. 1782

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Energy

on _____)

(Patron Prior to Substitute--Delegate O'Quinn)

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.

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.

25 "Health benefit plan" has the same meaning as provided in § 38.2-3438. "Health benefit plan" does
26 not include a state or local government employer plan, including the state employee health insurance plan
27 under § 2.2-2818.

28 "Health plan" means any individual or group health care plan, subscription contract, evidence of
29 coverage, certificate, health services plan, medical or hospital services plan, accident or sickness insurance
30 policy or certificate, managed care health insurance plan, or other similar certificate, policy, contract, or
31 arrangement, and any endorsement or rider thereto, to cover all or a portion of the cost of persons receiving
32 covered health care services, that is subject to state regulation and that is required to be offered, arranged,
33 or issued in the Commonwealth by a carrier licensed under this title. ~~"Health plan" includes a state or local~~
34 ~~government employer plan.~~ "Health plan" does not mean (i) a state or local government employer plan,
35 including the state employee health plan under § 2.2-2818; (ii) coverages issued pursuant to Title XVIII
36 of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare), Title XIX of the Social Security Act, 42
37 U.S.C. § 1396 et seq. (Medicaid), Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq. (CHIP),
38 5 U.S.C. § 8901 et seq. (federal employees), the Employee Retirement Income Security Act of 1974, 29
39 U.S.C. § 1001 et seq. (ERISA) in the case of self-insured large group health plans, or 10 U.S.C. § 1071 et
40 seq. (TRICARE); ~~or~~ ~~(ii)~~ (iii) accident only, credit or disability insurance, long-term care insurance,
41 TRICARE supplement, Medicare Supplement, or workers' compensation coverages.

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

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

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

52 to be passed through, to the carrier, ~~health plan, or pharmacy benefits manager~~ and serve to reduce the
53 liability of ~~a the carrier, health plan, or pharmacy benefits manager~~ for a prescription drug.

54 B. ~~When contracting with a carrier or health plan to administer pharmacy benefits, a pharmacy~~
55 ~~benefits manager shall offer the carrier or health plan the option of extending point of sale rebates to~~
56 ~~enrollees of the plan. An enrollee's defined cost-sharing for each prescription drug shall be calculated at~~
57 the point of sale based on a price that is reduced by an amount equal to at least 80 percent of all rebates
58 received or expected to be received based on information known to the carrier at the time of the transaction
59 in connection with the dispensing or administration of the prescription drug.

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

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

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

78 ~~pharmacy benefits manager receives on a product specific, manufacturer specific, or pharmacy specific~~
79 ~~basis.~~

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

82 **§ 38.2-3465. Definitions.**

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

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

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

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

94 "Contract pharmacy" means a pharmacy operating under contract with a 340B-covered entity to
95 provide dispensing services to the 340B-covered entity, as described in 75 Fed. Reg. 10272 (March 5,
96 2010) or any superseding guidance published thereafter.

97 "Covered entity" means an entity described in § 340B(a)(4) of the federal Public Health Service
98 Act, 42 U.S.C. § 256B(a)(4). "Covered entity" does not include a hospital as defined in § 32.1-123 or
99 37.2-100.

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

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

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

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

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

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

114 "Pharmacy benefits management services" means ~~the administration or management of~~
115 prescription drug benefits provided by a carrier for the benefit of covered individuals (i) negotiating the
116 price of prescription drugs, including negotiating and contracting for direct or indirect rebates, discounts,
117 or other price concessions; (ii) managing any aspect of a prescription drug benefit, including the
118 processing and payment of claims for prescription drugs, the performance of drug utilization reviews, the
119 processing of drug prior authorization requests for prescription drugs, the adjudication of appeals or
120 grievances related to the prescription drug benefit, contracting with network pharmacies, controlling the
121 cost of covered prescription drugs, or the provision of services related thereto; (iii) performing of any
122 administrative, managerial, clinical, pricing, financial, reimbursement, or billing service; and (iv)
123 providing such other services as the Commissioner may define by regulation. "Pharmacy benefits
124 management services" does not include any service provided by a nonprofit health maintenance
125 organization that operates as a group model, provided that the service ~~is~~ furnished through the internal
126 pharmacy operation exclusively serves the members or patients of the nonprofit health maintenance
127 organization.

128 "Pharmacy benefits manager" or "PBM" means an entity that ~~performs,~~ pursuant to a written
129 agreement with a carrier or health benefit plan, either directly or indirectly provides one or more pharmacy
130 benefits management services on behalf of the carrier or health benefit plan and any agent, contractor,
131 intermediary, affiliate, subsidiary, or related entity that facilitates, provides, directs, or oversees the

132 provision of pharmacy benefits management services. "Pharmacy benefits manager" includes an entity
133 acting for a PBM in a contractual relationship in the performance of pharmacy benefits management
134 services for a carrier, nonprofit hospital, or third-party payor under a health program administered by the
135 Commonwealth.

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

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

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

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

157 "Spread pricing" means the model of prescription drug pricing in which the pharmacy benefits
158 manager charges a health benefit plan a contracted price for prescription drugs, and the contracted price

159 for the prescription drugs differs from the amount the pharmacy benefits manager directly or indirectly
160 pays the pharmacist or pharmacy for pharmacist services.

161 **§ 38.2-3467.1. Ensuring fairness in cost-sharing.**

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

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

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

179 **2. That the provisions of this act shall become effective on January 1, 2024.**

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