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HOUSE BILL NO. 943

Offered January 12, 2022

Prefiled January 12, 2022

A *BILL to amend and reenact § 38.2-3470 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3407.15:7, relating to health insurance; retail community pharmacies; pharmacy benefits managers; employee welfare benefit plans.*

Patron—Hodges

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3470 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-3407.15:7 as follows:

§ 38.2-3407.15:7. Access to retail community pharmacies.

A. As used in this section:

"Carrier" has the same meaning as provided in § 38.2-3407.15.

"Covered individual" has the same meaning as provided in § 38.2-3465.

"Health benefit plan" has the same meaning as provided in § 38.2-3438.

"Mail order pharmacy" has the same meaning as provided in § 38.2-3465.

"Pharmacy benefits management" has the same meaning as provided in § 38.2-3465.

"Pharmacy benefits manager" or "PBM" has the same meaning as provided in § 38.2-3465.

"Retail community pharmacy" has the same meaning as provided in § 38.2-3465.

B. Each carrier shall, as applicable, (i) administer its health benefit plans in a manner consistent with the following requirements and (ii) include such requirements in each provider contract addressing the provision of pharmacy benefits management that the carrier or the carrier's pharmacy benefits manager enters into with a pharmacy or the pharmacy's contracting agent:

1. Each covered individual shall be permitted to fill any mail order-covered prescription, at the covered individual's option, at any mail order pharmacy or network participating retail community pharmacy if the network participating retail community pharmacy agrees to accept reimbursement at a rate that is equivalent to that of the mail order pharmacy;

2. The PBM or carrier shall not impose a differential copayment, additional fee, rebate, bonus, or other condition or benefit on any covered individual who elects to fill his prescription at an in-network retail community pharmacy that is not similarly imposed, charged, or remunerated at all pharmacies under contract with the PBM or carrier in the Commonwealth; and

3. The PBM shall expressly disclose to the carrier in the contract if the PBM retains all or a greater portion of a drug manufacturer's rebate amount or any additional direct or indirect remuneration from any third party for drugs dispensed through the PBM-owned mail order pharmacy than the PBM does for drugs dispensed through a retail community pharmacy.

C. This section shall not apply with respect to claims under 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).

D. This section shall apply with respect to contracts with a PBM entered into, amended, extended, or renewed on or after January 1, 2023.

§ 38.2-3470. Scope of article.

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

INTRODUCED

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