**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38‑71‑2270 SO AS TO ENSURE FAIRNESS IN COST SHARING BY PHARMACY BENEFITS MANAGERS; AND TO AMEND SECTION 38‑71‑2200, RELATING TO PHARMACY BENEFITS MANAGERS DEFINITIONS, SO AS TO DEFINE APPLICABLE TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 21, Chapter 71, Title 38 of the 1976 Code is amended by adding:

“Section 38‑71‑2270. (A) An enrollee’s defined cost sharing for each prescription drug must be calculated at the point of sale based on a price that is reduced by an amount equal to at least eighty percent of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug.

(B) Subsection (A) does not preclude a pharmacy benefits manager from decreasing an enrollee’s defined cost sharing by an amount greater than that required pursuant to subsection (A).

(C) In implementing the requirements of this section, the State only shall regulate a pharmacy benefits manager to the extent permissible under applicable law.

(D) In complying with the provisions of this section, a pharmacy benefits manager may not publish or otherwise reveal information regarding the actual amount of rebates an insurer receives on a product or therapeutic class of products, manufacturer, or pharmacy‑specific basis. Such information is proprietary and confidential and considered a trade secret under the South Carolina Freedom of Information Act, and may not be disclosed directly or indirectly, or in a manner that would allow for the identification of an individual product, therapeutic class of products, or manufacturer, or in a manner that would have the potential to compromise the financial, competitive, or proprietary nature of the information. A pharmacy benefits manager shall impose the confidentiality protections of this section on any vendor or downstream third party that performs health care or administrative services on behalf of the pharmacy benefits manager that may receive or have access to rebate information.

(E) The provisions of this section do not apply to the:

(1) State Medicaid Program;

(2) Medicaid managed care organizations under contract with the South Carolina Department of Health and Human Services or the South Carolina Public Employee Benefit Authority; or

(3) South Carolina Public Employee Benefit Authority.”

SECTION 2. Section 38‑71‑2200 of the 1976 Code, as added by Act 48 of 2019, is amended to read:

“Section 38‑71‑2200. As used in this article:

(1) ‘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.

(2) ‘Claims processing services’ means the administrative services performed in connection with the processing and adjudicating of claims relating to pharmacist services that include:

(a) receiving payments for pharmacist services;

(b) making payments to pharmacists or pharmacies for pharmacist services; or

(c) both receiving and making payments.

(3) ‘Defined cost sharing’ means a deductible payment or coinsurance amount imposed on an enrollee for a covered prescription drug under the enrollee’s health benefit plan.

(4) ‘Health benefit plan’ means any individual, blanket, or group plan, policy, or contract for health care services issued or delivered by a health care insurer in this State as defined in Section 38‑71‑670(6) and 38‑71‑840(14), including the state health plan as defined in Section 1‑11‑710. Notwithstanding this section, the state health plan is not subject to the provisions of this title unless specifically referenced.

~~(4)~~(5) ‘Health care insurer’ means an entity that provides health insurance coverage in this State as defined in Section 38‑71‑670(7) and Section 38‑71‑840(16).

~~(5)~~(6) ‘Maximum Allowable Cost List’ means a listing of generic drugs used by a pharmacy benefits manager to set the maximum allowable cost at which reimbursement to a pharmacy or pharmacist may be made.

~~(6)~~(7) ‘Other prescription drug or device services’ means services other than claims processing services, provided directly or indirectly by a pharmacy benefits manager, whether in connection with or separate from claims processing services, including without limitation:

(a) negotiating rebates, discounts, or other financial incentives and arrangements with drug companies;

(b) disbursing or distributing rebates;

(c) managing or participating in incentive programs or arrangements for pharmacist services;

(d) negotiating or entering into contractual arrangements with pharmacists or pharmacies, or both;

(e) developing formularies;

(f) designing prescription benefit programs; or

(g) advertising or promoting services.

~~(7)~~(8 ) ‘Pharmacist’ has the same meaning as provided in Section 40‑43‑30(65).

~~(8)~~(9) ‘Pharmacist services’ means products, goods, and services, or any combination of products, goods, and services, provided as a part of the practice of pharmacy.

~~(9)~~(10) ‘Pharmacy’ has the same meaning as provided in Section 40‑43‑30(67).

~~(10)~~(11) ‘Pharmacy benefits manager’ means ~~an~~ any person, business, or other entity that contracts with pharmacists or pharmacies on behalf of an insurer, third party administrator, or the South Carolina Public Employee Benefit Authority to either directly or indirectly through an intermediary:

(a) process claims for prescription drugs or medical supplies or provide retail network management for pharmacies or pharmacists;

(b) pay pharmacies or pharmacists for prescription drugs or medical supplies; ~~or~~

(c) negotiate rebates with manufacturers for drugs paid for or procured as described in this article;

(d) manage the adjudication of appeals or grievances related to the prescription drug benefit;

(e) manage the processing of drug prior authorization requests;

(f) control the cost of covered prescription drugs; or

(g) manage the performance of drug utilization review.

~~(11)~~(12) ‘Pharmacy benefits manager affiliate’ means a 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 or control with a pharmacy benefits manager.

(13) ‘Price protection rebate’ means a negotiated price concession that accrues directly or indirectly to the pharmacy benefits manager in the event of an increase in the wholesale acquisition cost of a drug above a specified threshold.

(14) ‘Rebate’ means:

(a) negotiated price concessions including, but not limited to, 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 the pharmacy benefits manager during the coverage year from a manufacturer, dispensing pharmacy, or other party in connection with the dispensing or administering of a prescription drug; and

(b) reasonable estimates of any negotiated price concessions, fees, and other administrative costs that are passed through, or are reasonably anticipated to be passed through, to the pharmacy benefits manager and serve to reduce the pharmacy benefits manager’s liabilities for a prescription drug.”

SECTION 3. This act takes effect on January 1, 2022.

‑‑‑‑XX‑‑‑‑