~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 8, 2018

**H. 5038**

Introduced by Reps. Atwater, Bradley, Howard, Thayer, Gagnon, Huggins, Hewitt, McGinnis, Hayes, Willis, Spires, Ballentine, G.M. Smith, Sandifer, Norrell, Henderson, Toole, Erickson, Cobb‑Hunter, Ott, Ridgeway, McEachern, Douglas, Rutherford, Bernstein, W. Newton, Clary, Anthony, Wheeler, Anderson, Kirby, Alexander, Tallon and Elliott

S. Printed 3/8/18--H.

Read the first time March 1, 2018.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 5038) to amend Section 38‑71‑2130, Code of Laws of South Carolina, 1976, relating to the duties of a pharmacy benefit manager, so as to establish prohibited, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ SECTION 1. Article 20, Chapter 71, Title 38 of the 1976 Code is amended by adding:

“Section 38‑71‑2150. A pharmacy benefit manager may not:

(1) prohibit a pharmacist or pharmacy from providing an insured information on the amount of the insured’s cost share for a prescription drug. A pharmacist or pharmacy may not be penalized by a pharmacy benefit manager for discussing such information to an insured or for selling a more affordable alternative to the insured if one is available;

(2) prohibit a pharmacist or pharmacy from offering and providing direct and limited delivery services to an insured as an ancillary service of the pharmacy;

(3) charge or collect a copayment from an insured that exceeds the total submitted charges by the network pharmacy;

(4) charge or hold a pharmacist or pharmacy responsible for a fee relating to the adjudication of a claim unless the fee is reported on the remittance advice of the adjudicated claim or is set out in contract between the pharmacy benefits manager and the pharmacy. This section does not apply with respect to claims under an employee benefit plan under the Employee Retirement Income Security Act of 1974 of Medicare Part D; or

(5) penalize or retaliate against a pharmacist or pharmacy for exercising rights provided pursuant to the provisions of this chapter.”

SECTION 2. This act takes effect upon approval of the Governor. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND SECTION 38‑71‑2130, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DUTIES OF A PHARMACY BENEFIT MANAGER, SO AS TO ESTABLISH PROHIBITED ACTS FOR A PHARMACY BENEFIT MANAGER.

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

SECTION 1. Section 38‑71‑2130 of the 1976 Code is amended to read:

“Section 38‑71‑2130. (A) A pharmacy benefit manager must:

(1) make available to each network provider at the beginning of the term of the network provider’s contract, and upon renewal of the contract, the sources utilized to determine the maximum allowable cost pricing;

(2) provide a process for network pharmacy providers to readily access the maximum allowable cost specific to that provider;

(3) review and update maximum allowable cost price information at least once every seven business days to reflect any modification of maximum allowable cost pricing; and

(4) ensure that dispensing fees are not included in the calculation of maximum allowable cost.

(B) A pharmacy benefit manager may not:

(1) prohibit a pharmacist or pharmacy from providing an insured information on the amount of the insured’s cost share for a prescribed drug and the clinical efficacy of an alternative drug, if available. The pharmacist or pharmacy may not be penalized by a pharmacy benefit manager for disclosing such information to an insured or for selling an available alternative drug;

(2) prohibit a pharmacist or pharmacy from offering and providing direct delivery services to an insured as an ancillary service of the pharmacy;

(3) charge or collect a copayment from an insured that exceeds the total submitted charges by the network pharmacy for which the pharmacy is paid;

(4) charge or hold a pharmacist or pharmacy responsible for a fee relating to the adjudication of a claim;

(6) recoup funds from a pharmacy in connection with claims for which the pharmacy has already been paid without first complying with the requirements of Article 18 of this chapter;

(7) penalize or retaliate against a pharmacist or pharmacy for exercising rights provided pursuant to the provisions of this chapter; or

(8) prohibit a pharmacist or pharmacy from communicating with payors or other parties regarding contractual issues.”

SECTION 2. This act takes effect upon approval by the Governor.

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