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SENATE BILL NO. 410  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Commerce and Labor  
on \_\_\_\_\_)  
(Patron Prior to Substitute—Senator Peake)

*A BILL to amend and reenact §§ 32.1-325.5, 38.2-3407.7, 38.2-3465, 38.2-3467, 38.2-3468, 38.2-3470, 38.2-4209.1, and 38.2-4312.1 of the Code of Virginia, relating to pharmacy benefits managers; requirements; choice of pharmacy.*

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

**1. That §§ 32.1-325.5, 38.2-3407.7, 38.2-3465, 38.2-3467, 38.2-3468, 38.2-3470, 38.2-4209.1, and 38.2-4312.1 of the Code of Virginia are amended and reenacted as follows:**

**§ 32.1-325.5. State pharmacy benefits manager.**

A. As used in this section:

"Pharmacy benefits manager" means the same as that term is defined in § 38.2-3465.

"Spread pricing" means the model of prescription drug pricing in which the pharmacy benefits manager charges a managed care 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.

"State pharmacy benefits manager" means the pharmacy benefits manager contracted by the Department pursuant to this section to administer pharmacy benefits for all Medicaid recipients in the Commonwealth.

B. By July 1, 2026, the Department shall select and contract with a single third-party administrator to serve as the state pharmacy benefits manager to administer all pharmacy benefits for Medicaid recipients, including those enrolled in a managed care organization by such date with whom the Department contracts for the delivery of Medicaid services. Each managed care contract entered into or renewed by the Department for the delivery of Medicaid services by a managed care organization shall require the managed care organization to contract with and utilize the state pharmacy benefits manager for the purpose of administering all pharmacy benefits for Medicaid recipients enrolled with the managed care organization. Notwithstanding the provisions of § 38.2-3470, the state pharmacy benefits manager shall adhere to subdivision A 5 11 of § 38.2-3467 unless otherwise prohibited by federal law.

C. The Department's contract with the state pharmacy benefits manager shall:

1. Establish the state pharmacy benefits manager's fiduciary duty owed to the Department;

32 2. Require the use of pass-through pricing;

33 3. Require the state pharmacy benefits manager to use the common formulary, reimbursement  
34 methodologies, and dispensing fees negotiated by the Department;

35 4. Require transparency in drug costs, rebates collected and paid, dispensing fees paid, administrative  
36 fees, and all other charges, fees, costs, and holdbacks; and

37 5. Prohibit the use of spread pricing.

38 **§ 38.2-3407.7. Pharmacies; freedom of choice.**

39 A. Notwithstanding any provision of § 38.2-3407 to the contrary, no insurer or its pharmacy benefits  
40 manager, as defined in § 38.2-3465, proposing to issue either preferred provider policies or contracts or  
41 exclusive provider policies or contracts shall prohibit any person receiving pharmacy benefits, including  
42 specialty pharmacy benefits, furnished thereunder from selecting, without limitation, the pharmacy of his  
43 choice to furnish such benefits. This right of selection extends to and includes any pharmacy that is a  
44 nonpreferred or nonparticipating provider and that has previously notified the insurer on its own behalf or  
45 through an intermediary, by facsimile or otherwise, of its agreement to accept reimbursement for its services  
46 at rates applicable to pharmacies that are preferred or participating providers, including any copayment  
47 consistently imposed by the insurer, as payment in full. Each insurer or its pharmacy benefits manager shall  
48 permit prompt electronic or telephonic transmittal of the reimbursement agreement by the pharmacy and  
49 ensure prompt verification to the pharmacy of the terms of reimbursement. In no event shall any person  
50 receiving a covered pharmacy benefit from a nonpreferred or nonparticipating provider that has submitted a  
51 reimbursement agreement be responsible for amounts that may be charged by the nonpreferred or  
52 nonparticipating provider in excess of the copayment and the insurer's reimbursement applicable to all of its  
53 preferred or participating pharmacy providers. If a pharmacy has provided notice pursuant to this subsection  
54 through an intermediary, the insurer or its intermediary may elect to respond directly to the pharmacy instead  
55 of the intermediary. Nothing in this subsection shall (i) require an insurer or its intermediary to contract with  
56 or to disclose confidential information to a pharmacy's intermediary or (ii) prohibit an insurer or its  
57 intermediary from contracting with or disclosing confidential information to a pharmacy's intermediary.

58 B. No such insurer or its pharmacy benefits manager shall impose upon any person receiving  
59 pharmaceutical benefits furnished under any such policy or contract:

60 1. Any copayment, fee or condition that is not equally imposed upon all individuals in the same benefit  
61 category, class or copayment level, whether or not such benefits are furnished by pharmacists who are

62 nonpreferred or nonparticipating providers;

63 2. Any monetary penalty that would affect or influence any such person's choice of pharmacy; ~~or~~

64 3. Any reduction in allowable reimbursement for pharmacy services related to utilization of pharmacists  
65 who are nonpreferred or nonparticipating providers; *or*

66 4. *Any copayment, amount of reimbursement, number of days of a drug supply for which reimbursement*  
67 *will be allowed, or any other payment or condition relating to the purchase of pharmaceutical benefits from*  
68 *any pharmacy that is more costly or more restrictive than that which would be imposed upon such person if*  
69 *the same pharmaceutical services were purchased from a mail order pharmacy provider.*

70 C. For purposes of this section, a prohibited condition or penalty shall include, without limitation: (i)  
71 denying immediate access to electronic claims filing to a pharmacy that is a nonpreferred or nonparticipating  
72 provider and that has complied with subsection D or (ii) requiring a person receiving pharmacy benefits to  
73 make payment at point of service, except to the extent such conditions and penalties are similarly imposed on  
74 preferred or participating providers.

75 D. Any pharmacy that wishes to be covered by this section shall, if requested to do so in writing by an  
76 insurer or its pharmacy benefits manager, within 30 days of the pharmacy's receipt of the request, execute and  
77 deliver to the insurer or its pharmacy benefits manager the direct service agreement or preferred or  
78 participating provider agreement that the insurer requires all of its preferred or participating providers of  
79 pharmacy benefits to execute. Any pharmacy that fails to timely execute and deliver such agreement shall not  
80 be covered by this section with respect to that insurer or its pharmacy benefits manager unless and until the  
81 pharmacy executes and delivers the agreement. No pharmacy shall be precluded from obtaining a direct  
82 service agreement or participating provider agreement for retail and specialty pharmacy if the pharmacy  
83 meets the terms and conditions of participation. Any request by a pharmacy for a direct service agreement or  
84 a participating provider agreement shall be acted upon by an insurer or its pharmacy benefits manager within  
85 60 days of receipt of the pharmacy's request or any subsequent submission of supplemental information if  
86 requested by the insurer or its pharmacy benefits manager.

87 E. The Commission shall have no jurisdiction to adjudicate controversies arising out of this section.

88 F. Nothing in this section shall limit the authority of an insurer proposing to issue preferred provider  
89 policies or contracts or exclusive provider policies or contracts to select a single mail order pharmacy  
90 provider as the exclusive provider of pharmacy services that are delivered to the covered person's address by  
91 mail, common carrier, or delivery service. The provisions of this section shall not apply to such contracts. As

92 used in this ~~subsection~~ *section*, "mail order pharmacy provider" means a pharmacy permitted to conduct  
93 business in the Commonwealth whose primary business is to dispense a prescription drug or device under a  
94 prescriptive drug order and to deliver the drug or device to a patient primarily by mail, common carrier, or  
95 delivery service.

96 **§ 38.2-3465. Definitions.**

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

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

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

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

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

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

114 "Covered entity" means an entity described in § 340B(a)(4) of the federal Public Health Service Act, 42  
115 U.S.C. § 256B(a)(4).

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

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

119 "Mail order pharmacy" means a pharmacy whose primary business is to receive prescriptions by mail or  
120 through electronic submissions and to dispense medication to covered individuals through the use of the  
121 United States mail or other common or contract carrier services and that provides any consultation with

122 covered individuals electronically rather than face-to-face.

123 *"National average drug acquisition cost" means the publicly available, most current pharmacy*  
124 *acquisition cost benchmark published by the Centers for Medicare and Medicaid Services, which reflects the*  
125 *average price that retail community pharmacies pay to acquire prescription drugs from wholesalers,*  
126 *excluding rebates and discounts.*

127 "Pharmacy benefits management" means the administration or management of prescription drug benefits  
128 provided by a carrier for the benefit of covered individuals. "Pharmacy benefits management" does not  
129 include any service provided by a nonprofit health maintenance organization that operates as a group model  
130 provided that the service is furnished through the internal pharmacy operation exclusively serves the  
131 members or patients of the nonprofit health maintenance organization.

132 "Pharmacy benefits manager" or "PBM" means an entity that performs pharmacy benefits management.  
133 "Pharmacy benefits manager" includes an entity acting for a PBM in a contractual relationship in the  
134 performance of pharmacy benefits management for a carrier, nonprofit hospital, or third-party payor under a  
135 health program administered by the 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 ~~"Rebate" means a discount or other price concession, including without limitation incentives,~~  
140 ~~disbursements, and reasonable estimates of a volume-based discount, or a payment that is (i) based on~~  
141 ~~utilization of a prescription drug and (ii) paid by a manufacturer or third party, directly or indirectly, to a~~  
142 ~~pharmacy benefits manager, pharmacy services administrative organization, or pharmacy after a claim has~~  
143 ~~been processed and paid at a pharmacy payment or concession that accrues directly or indirectly to a~~  
144 ~~pharmacy benefits manager or plan sponsor client of such pharmacy benefits manager, including through an~~  
145 ~~off-shore entity or group purchasing organization, from a pharmaceutical manufacturer or its affiliate,~~  
146 ~~subsidiary, intermediary, or a third party, including payments, discounts, administration fees, credits,~~  
147 ~~incentives, or penalties associated with claims administered by such pharmacy benefits manager on behalf of~~  
148 ~~a health benefit plan.~~

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

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

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

156 "Spread pricing" means the model of prescription drug pricing in which the pharmacy benefits manager  
157 charges a health benefit plan a contracted price for prescription drugs, and the contracted price for the  
158 prescription drugs differs from the amount the pharmacy benefits manager directly or indirectly pays the  
159 pharmacist or pharmacy for pharmacist services.

160 **§ 38.2-3467. Prohibited conduct by carriers and pharmacy benefits managers.**

161 A. No carrier on its own or through its contracted pharmacy benefits manager or representative of a  
162 pharmacy benefits manager shall:

163 1. Cause or knowingly permit the use of any advertisement, promotion, solicitation, representation,  
164 proposal, or offer that is untrue;

165 2. Charge a pharmacist or pharmacy a fee related to the adjudication of a claim other than a reasonable fee  
166 for an initial claim submission;

167 3. Reimburse a pharmacy or pharmacist an amount less than the *(i)* amount that the pharmacy benefits  
168 manager reimburses a pharmacy benefits manager affiliate for providing the same pharmacist services,  
169 calculated on a per-unit basis using the same generic product identifier or generic code number and reflecting  
170 all drug manufacturer's rebates, direct and indirect administrative fees, and costs and any remuneration *or (ii)*  
171 *national average drug acquisition cost for the prescription drug or pharmacy service at the time the drug is*  
172 *administered or dispensed, plus a professional dispensing fee equal to the professional dispensing fee*  
173 *required to be paid by the state in which the pharmacy is located pursuant to Title XIX of the Social Security*  
174 *Act (42 U.S.C. § 1396 et seq.) for dispensing such drug;*

175 4. *Base pharmacy reimbursement for prescription drugs on patient outcomes, scores, or metrics;*

176 5. *Impose a point-of-sale or retroactive fee on a pharmacy, pharmacist, or covered individual;*

177 6. *Receive deductibles or copayments;*

178 7. *Directly or indirectly divert, transfer, or otherwise redirect any prescription drug claims submitted by a*  
179 *pharmacist or pharmacy to any third-party discount card program, cash discount program, or any other non-*  
180 *insurance adjudication platform;*

181 8. *Use pharmacy benefits manager policy documents that are incorporated into a pharmacy agreement,*

182 *including provider manuals, administrative guidelines, operational policies, ancillary documents, claims*  
183 *processing rules, or audit and compliance procedures, to materially change, alter, or modify the pharmacy*  
184 *agreement, to modify, limit, or negate reimbursement rates, payment terms, or other financial obligations, or*  
185 *introduce material changes to the definitions of brand and generic drugs, claims adjudication, audit process,*  
186 *or contractual rights of the pharmacy or pharmacist;*

187 9. *Prohibit a pharmacist or pharmacy that dispenses a pharmaceutical product from informing an*  
188 *individual about the cost of the pharmaceutical product, the amount in reimbursement that the pharmacy or*  
189 *pharmacist receives for dispensing the pharmaceutical product, the cost and clinical efficacy of a less*  
190 *expensive alternative to the pharmaceutical product, or any difference between the cost to the individual*  
191 *under the covered individual's health benefit plan and the cost to the individual if the individual purchases*  
192 *the pharmaceutical product without making a claim for benefits under the individual's health benefit plan;*

193 10. *Penalize or retaliate against a pharmacist or pharmacy for exercising rights provided pursuant to the*  
194 *provisions of this article;*

195 ~~5-~~ 11. *Impose requirements, exclusions, reimbursement terms, or other conditions on a covered entity or*  
196 *contract pharmacy that differ from those applied to entities or pharmacies that are not covered entities or*  
197 *contract pharmacies on the basis that the entity or pharmacy is a covered entity or contract pharmacy or that*  
198 *the entity or pharmacy dispenses 340B-covered drugs. Nothing in this subdivision shall (i) apply to drugs*  
199 *with an annual estimated per-patient cost exceeding \$250,000 or (ii) prohibit the identification of a 340B*  
200 *reimbursement request; or*

201 ~~6-~~ 12. *Interfere with a covered individual's right to choose a pharmacy or provider, based on the pharmacy*  
202 *or provider's status as a covered entity or contract pharmacy.*

203 B. *No carrier, on its own or through its contracted pharmacy benefits manager or representative of a*  
204 *pharmacy benefits manager, shall (i) charge a pharmacy a fee related to participation in a pharmacy*  
205 *network, (ii) restrict participation of a pharmacy in a pharmacy network for provider accreditation standards*  
206 *or certification requirements if a pharmacist meets such accreditation standards or certification standards, or*  
207 *(iii) require multiple specialty pharmacy accreditations as a prerequisite for participation in a pharmacy*  
208 *network that dispenses specialty drugs or exclude a specialty pharmacy from the right to participate in the*  
209 *pharmacy network.*

210 C. *No carrier, on its own or through its contracted pharmacy benefits manager or representative of a*  
211 *pharmacy benefits manager, shall include any mail order pharmacy or pharmacy benefits manager affiliate in*  
212 *calculating or determining network adequacy under any law or contract in the Commonwealth.*

213 D. No carrier, on its own or through its contracted pharmacy benefits manager or representative of a  
214 pharmacy benefits manager, shall conduct spread pricing *or derive any revenue from a pharmacist,*  
215 *pharmacy, or covered individual in connection with performing pharmacy benefits management services in*  
216 *the Commonwealth.*

217 E. Each carrier on its own or through its contracted pharmacy benefits manager or representative of a  
218 pharmacy benefits manager shall comply with the provisions of this section in addition to complying with the  
219 provisions of § 38.2-3407.15:1.

220 *F. Each carrier on its own or through its contracted pharmacy benefits manager or representative of a*  
221 *pharmacy benefits manager shall calculate a covered individual's out-of-pocket cost for a covered*  
222 *prescription drug based on the net price of the prescription drug after taking into account all retained*  
223 *rebates associated with the prescription drug.*

224 **§ 38.2-3468. Examination of books and records; reports; access to records.**

225 A. Each carrier, on its own or through its contract for pharmacy benefits, shall ensure that the  
226 Commissioner may examine or audit the books and records of a pharmacy benefits manager providing claims  
227 processing services or other prescription drug or device services for a carrier that are relevant to determining  
228 if the pharmacy benefits manager is in compliance with this article. The carrier shall be responsible for the  
229 charges incurred in the examination, including the expenses of the Commissioner or his designee and the  
230 expenses and compensation of his examiners and assistants.

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

233 1. *The aggregate wholesale acquisition costs to the pharmacy benefits manager from manufacturers or*  
234 *wholesale distributors for each therapeutic category of drugs covered, net of all rebates, direct or indirect,*  
235 *from all sources.*

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

237 ~~2-~~ 3. The aggregate amount of rebates distributed to the appropriate health benefit plan;

238 ~~3-~~ 4. The aggregate amount of rebates passed on to the enrollees of each health benefit plan at the point of  
239 sale that reduced the enrollees' applicable deductible, copayment, coinsurance, or other cost-sharing amount;

240 ~~4-~~ 5. The aggregate amount of the pharmacy benefits manager's retained rebates;

241 ~~5-~~ 6. The pharmacy benefits manager's aggregate retained rebate percentage;

242 ~~6-~~ 7. The aggregate amount of administrative fees received by the pharmacy benefits manager;

243 ~~7-~~ ~~Upon the request of the Commission, the~~ 8. The individual and aggregate amount paid by the health

244 benefit plan to the pharmacy benefits manager for services itemized by pharmacy, by product, and by goods  
245 and services; and

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

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

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

262 *D. The Commissioner shall annually prepare a report based on the information submitted pursuant to*  
263 *subsection B. Such report shall only contain aggregated data and shall not contain information that would*  
264 *cause financial, competitive, or proprietary harm to any individual carrier or pharmacy benefits manager.*  
265 *The Commissioner shall submit such report to the Governor and the General Assembly by September 30 of*  
266 *each year. The Commissioner shall not be considered in violation of subsection C for preparing or submitting*  
267 *such report and the provisions of subsection C requiring confidentiality shall not apply to such report.*

268 **§ 38.2-3470. Scope of article.**

269 This article shall not apply with respect to claims under (i) an employee welfare benefit plan as defined in  
270 section 3 (1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1), that is  
271 self-insured or self-funded; ~~or (ii) coverages issued pursuant to Title XIX of the Social Security Act, 42~~  
272 ~~U.S.C. § 1396 et seq. (Medicaid); or (iii) prescription drug coverages issued pursuant to Part D of Title XVIII~~  
273 ~~of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare Part D).~~

274 § 38.2-4209.1. Pharmacies; freedom of choice.

275 A. Notwithstanding any provision of § 38.2-4209, no corporation providing preferred provider  
276 subscription contracts or its pharmacy benefits manager, as defined in § 38.2-3465, shall prohibit any person  
277 receiving pharmaceutical benefits, including specialty pharmacy benefits, thereunder from selecting, without  
278 limitation, the pharmacy of his choice to furnish such benefits. This right of selection extends to and includes  
279 pharmacies that are nonpreferred providers and that have previously notified the corporation or its pharmacy  
280 benefits manager, by facsimile or otherwise, of their agreement to accept reimbursement for their services at  
281 rates applicable to pharmacies that are preferred providers, including any copayment consistently imposed by  
282 the corporation, as payment in full. Each corporation or its pharmacy benefits manager shall permit prompt  
283 electronic or telephonic transmittal of the reimbursement agreement by the pharmacy and ensure payment  
284 verification to the pharmacy of the terms of reimbursement. In no event shall any person receiving a covered  
285 pharmacy benefit from a nonpreferred provider that has submitted a reimbursement agreement be responsible  
286 for amounts that may be charged by the nonpreferred provider in excess of the copayment and the  
287 corporation's reimbursement applicable to all of its preferred pharmacy providers.

288 B. No such corporation or its pharmacy benefits manager shall impose upon any person receiving  
289 pharmaceutical benefits furnished under any such contract:

290 1. Any copayment, fee or condition that is not equally imposed upon all individuals in the same benefit  
291 category, class or copayment level, whether or not such benefits are furnished by pharmacists who are  
292 nonpreferred providers;

293 2. Any monetary penalty that would affect or influence any such person's choice of pharmacy; ~~or~~

294 3. Any reduction in allowable reimbursement for pharmacy services related to utilization of pharmacists  
295 who are nonpreferred providers; *or*

296 4. *Any copayment, amount of reimbursement, number of days of a drug supply for which reimbursement*  
297 *will be allowed, or any other payment or condition relating to the purchase of pharmaceutical benefits from*  
298 *any pharmacy that is more costly or more restrictive than that which would be imposed upon such person if*  
299 *the same pharmaceutical services were purchased from a mail order pharmacy provider.*

300 C. For purposes of this section, a prohibited condition or penalty shall include, without limitation: (i)  
301 denying immediate access to electronic claims filing to a pharmacy that is a nonpreferred provider and that  
302 has complied with subsection D or (ii) requiring a person receiving pharmacy benefits to make payment at  
303 point of service, except to the extent such conditions and penalties are similarly imposed on preferred

304 providers.

305 D. Any pharmacy that wishes to be covered by this section shall, if requested to do so in writing by a  
306 corporation or its pharmacy benefits manager, within 30 days of the pharmacy's receipt of the request,  
307 execute and deliver to the corporation or its pharmacy benefits manager the direct service agreement or  
308 preferred provider agreement that the corporation requires all of its preferred providers of pharmacy benefits  
309 to execute. Any pharmacy that fails to timely execute and deliver such agreement shall not be covered by this  
310 section with respect to that corporation or its pharmacy benefits manager unless and until the pharmacy  
311 executes and delivers the agreement. No pharmacy shall be precluded from obtaining a direct service  
312 agreement or participating provider agreement for any retail and specialty pharmacy if the pharmacy meets  
313 the terms and conditions of participation. Any request by a pharmacy for a direct service agreement or a  
314 participating provider agreement shall be acted upon by a corporation or its pharmacy benefits manager  
315 within 60 days of receipt of the pharmacy's request or any subsequent submission of supplemental  
316 information if requested by the corporation or its pharmacy benefits manager.

317 E. The Commission shall have no jurisdiction to adjudicate controversies arising out of this section.

318 F. Nothing in this section shall limit the authority of a corporation issuing preferred provider policies or  
319 contracts to select a single mail order pharmacy provider as the exclusive provider of pharmacy services that  
320 are delivered to the covered person's address by mail, common carrier, or delivery service. The provisions of  
321 this section shall not apply to such contracts. As used in this ~~subsection~~ *section*, "mail order pharmacy  
322 provider" means a pharmacy permitted to conduct business in the Commonwealth whose primary business is  
323 to dispense a prescription drug or device under a prescriptive drug order and to deliver the drug or device to a  
324 patient primarily by mail, common carrier, or delivery service.

325 **§ 38.2-4312.1. Pharmacies; freedom of choice.**

326 A. Notwithstanding any other provision in this chapter, no health maintenance organization providing  
327 health care plans, or its pharmacy benefits manager, as defined in § 38.2-3465, shall prohibit any person  
328 receiving pharmaceutical benefits, including specialty pharmacy benefits, thereunder from selecting, without  
329 limitation, the pharmacy of his choice to furnish such benefits. This right of selection extends to and includes  
330 any pharmacy that is not a participating provider under any such health care plan and that has previously  
331 notified the health maintenance organization or its pharmacy benefits manager on its own behalf or through  
332 an intermediary, by facsimile or otherwise, of its agreement to accept reimbursement for its services at rates  
333 applicable to pharmacies that are participating providers, including any copayment consistently imposed by

334 the plan, as payment in full. Each health maintenance organization or its pharmacy benefits manager shall  
335 permit prompt electronic or telephonic transmittal of the reimbursement agreement by the pharmacy and  
336 ensure prompt verification to the pharmacy of the terms of reimbursement. In no event shall any person  
337 receiving a covered pharmacy benefit from a nonparticipating provider that has submitted a reimbursement  
338 agreement be responsible for amounts that may be charged by the nonparticipating provider in excess of the  
339 copayment and the health maintenance organization's reimbursement applicable to all of its participating  
340 pharmacy providers. If a pharmacy has provided notice pursuant to this subsection through an intermediary,  
341 the health maintenance organization or its intermediary may elect to respond directly to the pharmacy instead  
342 of the intermediary. Nothing in this subsection shall (i) require a health maintenance organization or its  
343 intermediary to contract with or to disclose confidential information to a pharmacy's intermediary or (ii)  
344 prohibit a health maintenance organization or its intermediary from contracting with or disclosing  
345 confidential information to a pharmacy's intermediary.

346 B. No such health maintenance organization or its pharmacy benefits manager shall impose upon any  
347 person receiving pharmaceutical benefits furnished under any such health care plan:

348 1. Any copayment, fee or condition that is not equally imposed upon all individuals in the same benefit  
349 category, class or copayment level, whether or not such benefits are furnished by pharmacists who are not  
350 participating providers;

351 2. Any monetary penalty that would affect or influence any such person's choice of pharmacy; ~~or~~

352 3. Any reduction in allowable reimbursement for pharmacy services related to utilization of pharmacists  
353 who are not participating providers; *or*

354 4. *Any copayment, amount of reimbursement, number of days of a drug supply for which reimbursement*  
355 *will be allowed, or any other payment or condition relating to the purchase of pharmaceutical benefits from*  
356 *any pharmacy that is more costly or more restrictive than that which would be imposed upon such person if*  
357 *the same pharmaceutical services were purchased from a mail order pharmacy provider.*

358 C. For purposes of this section, a prohibited condition or penalty shall include, without limitation: (i)  
359 denying immediate access to electronic claims filing to a pharmacy that is a nonparticipating provider and  
360 that has complied with subsection E or (ii) requiring a person receiving pharmacy benefits to make payment  
361 at point of service, except to the extent such conditions and penalties are similarly imposed on participating  
362 providers.

363 D. The provisions of this section are not applicable to any pharmaceutical benefit covered by a health care

364 plan when those benefits are obtained from a pharmacy wholly owned and operated by, or exclusively  
365 operated for, the health maintenance organization providing the health care plan.

366 E. Any pharmacy that wishes to be covered by this section shall, if requested to do so in writing by a  
367 health maintenance organization or its pharmacy benefits manager, within 30 days of the pharmacy's receipt  
368 of the request, execute and deliver to the health maintenance organization or its pharmacy benefits manager,  
369 the direct service agreement or participating provider agreement that the health maintenance organization or  
370 its pharmacy benefits manager requires all of its participating providers of pharmacy benefits to execute. Any  
371 pharmacy that fails to timely execute and deliver such agreement shall not be covered by this section with  
372 respect to that health maintenance organization or its pharmacy benefits manager unless and until the  
373 pharmacy executes and delivers the agreement. No pharmacy shall be precluded from obtaining a direct  
374 service agreement or participating provider agreement for retail and specialty pharmacy if the pharmacy  
375 meets the terms and conditions of participation. Any request by a pharmacy for a direct service agreement or  
376 a participating provider agreement shall be acted upon by a health maintenance organization or its pharmacy  
377 benefits manager within 60 days of receipt of the pharmacy's request or any subsequent submission of  
378 supplemental information if requested by the health maintenance organization or its pharmacy benefits  
379 manager.

380 F. The Commission shall have no jurisdiction to adjudicate controversies arising out of this section.

381 G. Nothing in this section shall limit the authority of a health maintenance organization providing health  
382 care plans to select a single mail order pharmacy provider as the exclusive provider of pharmacy services that  
383 are delivered to the covered person's address by mail, common carrier, or delivery service. The provisions of  
384 this section shall not apply to such contracts. As used in this ~~subsection~~ section, "mail order pharmacy  
385 provider" means a pharmacy permitted to conduct business in the Commonwealth whose primary business is  
386 to dispense a prescription drug or device under a prescriptive drug order and to deliver the drug or device to a  
387 patient primarily by mail, common carrier, or delivery service.