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SENATE BILL NO. 642

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Commerce and Labor
 on January 26, 2026)

(Patron Prior to Substitute—Senator Pillion)

A *BILL to amend and reenact §§ 38.2-3407.7, 38.2-4209.1, and 38.2-4312.1 of the Code of Virginia, relating to health insurance; pharmacies; freedom of choice; delivery of prescription drugs.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3407.7, 38.2-4209.1, and 38.2-4312.1 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-3407.7. Pharmacies; freedom of choice.

A. Notwithstanding any provision of § 38.2-3407 to the contrary, no insurer or its pharmacy benefits manager, as defined in § 38.2-3465, proposing to issue either preferred provider policies or contracts or exclusive provider policies or contracts shall prohibit any person receiving pharmacy benefits, including specialty pharmacy benefits, furnished thereunder from selecting, without limitation, the pharmacy, *as defined in § 54.1-3300 and including any physician practice, hospital outpatient infusion center, or other clinical setting that dispenses or administers drugs, medicines, or medicinal chemicals*, of his choice to furnish such benefits. This right of selection extends to and includes any pharmacy that is a nonpreferred or nonparticipating provider and that has previously notified the insurer on its own behalf or through an intermediary, by facsimile or otherwise, of its agreement to accept reimbursement for its services at rates applicable to pharmacies that are preferred or participating providers, including any copayment consistently imposed by the insurer, as payment in full. Each insurer or its pharmacy benefits manager shall permit prompt electronic or telephonic transmittal of the reimbursement agreement by the pharmacy and ensure prompt verification to the pharmacy of the terms of reimbursement. In no event shall any person receiving a covered pharmacy benefit from a nonpreferred or nonparticipating provider that has submitted a reimbursement agreement be responsible for amounts that may be charged by the nonpreferred or nonparticipating provider in excess of the copayment and the insurer's reimbursement applicable to all of its preferred or participating pharmacy providers. If a pharmacy has provided notice pursuant to this subsection through an intermediary, the insurer or its intermediary may elect to respond directly to the pharmacy instead of the intermediary. Nothing in this subsection shall (i) require an insurer or its intermediary to contract with or to disclose confidential information to a pharmacy's intermediary or (ii) prohibit an insurer or its intermediary from contracting with or disclosing confidential information to a pharmacy's intermediary.

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

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

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

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

4. *Any policy or practice requiring or incentivizing a prescription drug or device prescribed for the treatment of cancer or diseases of the blood to be sent (i) directly to a health care provider for administration to a patient, (ii) to a specific pharmacy selected by such insurer or pharmacy benefits manager, or (iii) to the residence of such person. No insurer, health maintenance organization, or pharmacy benefits manager shall penalize, terminate, or otherwise retaliate against a pharmacy or dispensing practitioner for exercising rights or providing services consistent with this section. As used in this subdivision, the term "prescribed for the treatment of cancer or diseases of the blood" includes (a) any prescription drug or device prescribed for the treatment of any patient with cancer or diseases of the blood, regardless of whether such prescription drug or device directly treats cancer or diseases of the blood, and (b) any supportive therapies to address or lessen adverse effects attendant to the administration of prescribed drugs, including to anti-emetics, antibiotics, and pain medications. Any payment to the pharmacy or dispensing practitioner consistent with this section shall be at the rate set forth in the health insurance issuer's agreement with the pharmacy or dispensing practitioner applicable to such drugs, or if no such rate is included in the agreement, then at the wholesale acquisition cost. The provisions of this subdivision shall apply only to agreements entered into on and after July 1, 2026.*

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

60 preferred or participating providers.

61 D. Any pharmacy that wishes to be covered by this section shall, if requested to do so in writing by an
 62 insurer or its pharmacy benefits manager, within 30 days of the pharmacy's receipt of the request, execute and
 63 deliver to the insurer or its pharmacy benefits manager the direct service agreement or preferred or
 64 participating provider agreement that the insurer requires all of its preferred or participating providers of
 65 pharmacy benefits to execute. Any pharmacy that fails to timely execute and deliver such agreement shall not
 66 be covered by this section with respect to that insurer or its pharmacy benefits manager unless and until the
 67 pharmacy executes and delivers the agreement. No pharmacy shall be precluded from obtaining a direct
 68 service agreement or participating provider agreement for retail and specialty pharmacy if the pharmacy
 69 meets the terms and conditions of participation. Any request by a pharmacy for a direct service agreement or
 70 a participating provider agreement shall be acted upon by an insurer or its pharmacy benefits manager within
 71 60 days of receipt of the pharmacy's request or any subsequent submission of supplemental information if
 72 requested by the insurer or its pharmacy benefits manager.

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

74 F. Nothing in this section shall limit the authority of an insurer proposing to issue preferred provider
 75 policies or contracts or exclusive provider policies or contracts to select a single mail order pharmacy
 76 provider as the exclusive provider of pharmacy services that are delivered to the covered person's address by
 77 mail, common carrier, or delivery service. The provisions of this section shall not apply to such contracts. As
 78 used in this subsection, "mail order pharmacy provider" means a pharmacy permitted to conduct business in
 79 the Commonwealth whose primary business is to dispense a prescription drug or device under a prescriptive
 80 drug order and to deliver the drug or device to a patient primarily by mail, common carrier, or delivery
 81 service. *Nothing in this section shall be construed to prohibit a self-insured or self-funded employee welfare*
 82 *benefit plan subject to the Employee Retirement Income Security Act of 1974, P.L. 93-406, 88 Stat. 829, as*
 83 *amended, or any employer sponsoring such plan, from directing, encouraging, or incentivizing enrollees to*
 84 *utilize an onsite pharmacy benefit arrangement or mail-delivered pharmacies, and including through benefit*
 85 *design, cost-sharing differentials, or limited network structure.*

86 **§ 38.2-4209.1. Pharmacies; freedom of choice.**

87 A. Notwithstanding any provision of § 38.2-4209, no corporation providing preferred provider
 88 subscription contracts or its pharmacy benefits manager, as defined in § 38.2-3465, shall prohibit any person
 89 receiving pharmaceutical benefits, including specialty pharmacy benefits, thereunder from selecting, without
 90 limitation, the pharmacy, *as defined in § 54.1-3300 and including any physician practice, hospital outpatient*
 91 *infusion center, or other clinical setting that dispenses or administers drugs, medicines, or medicinal*
 92 *chemicals*, of his choice to furnish such benefits. This right of selection extends to and includes pharmacies
 93 that are nonpreferred providers and that have previously notified the corporation or its pharmacy benefits
 94 manager, by facsimile or otherwise, of their agreement to accept reimbursement for their services at rates
 95 applicable to pharmacies that are preferred providers, including any copayment consistently imposed by the
 96 corporation, as payment in full. Each corporation or its pharmacy benefits manager shall permit prompt
 97 electronic or telephonic transmittal of the reimbursement agreement by the pharmacy and ensure payment
 98 verification to the pharmacy of the terms of reimbursement. In no event shall any person receiving a covered
 99 pharmacy benefit from a nonpreferred provider that has submitted a reimbursement agreement be responsible
 100 for amounts that may be charged by the nonpreferred provider in excess of the copayment and the
 101 corporation's reimbursement applicable to all of its preferred pharmacy providers.

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

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

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

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

110 4. *Any policy or practice requiring or incentivizing a prescription drug or device prescribed for the*
 111 *treatment of cancer or diseases of the blood to be sent (i) directly to a health care provider for administration*
 112 *to a patient, (ii) to a specific pharmacy selected by such insurer or pharmacy benefits manager, or (iii) to the*
 113 *residence of such person. No insurer, health maintenance organization, or pharmacy benefits manager shall*
 114 *penalize, terminate, or otherwise retaliate against a pharmacy or dispensing practitioner for exercising*
 115 *rights or providing services consistent with this section. As used in this subdivision, the term "prescribed for*
 116 *the treatment of cancer or diseases of the blood" includes (a) any prescription drug or device prescribed for*
 117 *the treatment of any patient with cancer or diseases of the blood, regardless of whether such prescription*
 118 *drug or device directly treats cancer or diseases of the blood, and (b) any supportive therapies to address or*
 119 *lessen adverse effects attendant to the administration of prescribed drugs, including to anti-emetics,*
 120 *antibiotics, and pain medications. Any payment to the pharmacy or dispensing practitioner consistent with*
 121 *this section shall be at the rate set forth in the health insurance issuer's agreement with the pharmacy or*

122 *dispensing practitioner applicable to such drugs, or if no such rate is included in the agreement, then at the*
 123 *wholesale acquisition cost. The provisions of this subdivision shall apply only to agreements entered into on*
 124 *and after July 1, 2026.*

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

130 D. Any pharmacy that wishes to be covered by this section shall, if requested to do so in writing by a
 131 corporation or its pharmacy benefits manager, within 30 days of the pharmacy's receipt of the request,
 132 execute and deliver to the corporation or its pharmacy benefits manager the direct service agreement or
 133 preferred provider agreement that the corporation requires all of its preferred providers of pharmacy benefits
 134 to execute. Any pharmacy that fails to timely execute and deliver such agreement shall not be covered by this
 135 section with respect to that corporation or its pharmacy benefits manager unless and until the pharmacy
 136 executes and delivers the agreement. No pharmacy shall be precluded from obtaining a direct service
 137 agreement or participating provider agreement for any retail and specialty pharmacy if the pharmacy meets
 138 the terms and conditions of participation. Any request by a pharmacy for a direct service agreement or a
 139 participating provider agreement shall be acted upon by a corporation or its pharmacy benefits manager
 140 within 60 days of receipt of the pharmacy's request or any subsequent submission of supplemental
 141 information if requested by the corporation or its pharmacy benefits manager.

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

143 F. Nothing in this section shall limit the authority of a corporation issuing preferred provider policies or
 144 contracts to select a single mail order pharmacy provider as the exclusive provider of pharmacy services that
 145 are delivered to the covered person's address by mail, common carrier, or delivery service. *Nothing in this*
 146 *section shall be construed to prohibit a self-insured or self-funded employee welfare benefit plan subject to*
 147 *the Employee Retirement Income Security Act of 1974, P.L. 93-406, 88 Stat. 829, as amended, or any*
 148 *employer sponsoring such plan, from directing, encouraging, or incentivizing enrollees to utilize an onsite*
 149 *pharmacy benefit arrangement or mail-delivered pharmacies, and including through benefit design, cost-*
 150 *sharing differentials, or limited network structure.* The provisions of this section shall not apply to such
 151 contracts. As used in this subsection, "mail order pharmacy provider" means a pharmacy permitted to conduct
 152 business in the Commonwealth whose primary business is to dispense a prescription drug or device under a
 153 prescriptive drug order and to deliver the drug or device to a patient primarily by mail, common carrier, or
 154 delivery service.

155 **§ 38.2-4312.1. Pharmacies; freedom of choice.**

156 A. Notwithstanding any other provision in this chapter, no health maintenance organization providing
 157 health care plans, or its pharmacy benefits manager, as defined in § 38.2-3465, shall prohibit any person
 158 receiving pharmaceutical benefits, including specialty pharmacy benefits, thereunder from selecting, without
 159 limitation, the pharmacy, *as defined in § 54.1-3300 and including any physician practice, hospital outpatient*
 160 *infusion center, or other clinical setting that dispenses or administers drugs, medicines, or medicinal*
 161 *chemicals*, of his choice to furnish such benefits. This right of selection extends to and includes any pharmacy
 162 that is not a participating provider under any such health care plan and that has previously notified the health
 163 maintenance organization or its pharmacy benefits manager on its own behalf or through an intermediary, by
 164 facsimile or otherwise, of its agreement to accept reimbursement for its services at rates applicable to
 165 pharmacies that are participating providers, including any copayment consistently imposed by the plan, as
 166 payment in full. Each health maintenance organization or its pharmacy benefits manager shall permit prompt
 167 electronic or telephonic transmittal of the reimbursement agreement by the pharmacy and ensure prompt
 168 verification to the pharmacy of the terms of reimbursement. In no event shall any person receiving a covered
 169 pharmacy benefit from a nonparticipating provider that has submitted a reimbursement agreement be
 170 responsible for amounts that may be charged by the nonparticipating provider in excess of the copayment and
 171 the health maintenance organization's reimbursement applicable to all of its participating pharmacy providers.
 172 If a pharmacy has provided notice pursuant to this subsection through an intermediary, the health
 173 maintenance organization or its intermediary may elect to respond directly to the pharmacy instead of the
 174 intermediary. Nothing in this subsection shall (i) require a health maintenance organization or its
 175 intermediary to contract with or to disclose confidential information to a pharmacy's intermediary or (ii)
 176 prohibit a health maintenance organization or its intermediary from contracting with or disclosing
 177 confidential information to a pharmacy's intermediary.

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

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

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

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

186 4. Any policy or practice requiring or incentivizing a prescription drug or device prescribed for the
187 treatment of cancer or diseases of the blood to be sent (i) directly to a health care provider for administration
188 to a patient, (ii) to a specific pharmacy selected by such insurer or pharmacy benefits manager, or (iii) to the
189 residence of such person. No insurer, health maintenance organization, or pharmacy benefits manager shall
190 penalize, terminate, or otherwise retaliate against a pharmacy or dispensing practitioner for exercising
191 rights or providing services consistent with this section. As used in this subdivision, the term "prescribed for
192 the treatment of cancer or diseases of the blood" includes (a) any prescription drug or device prescribed for
193 the treatment of any patient with cancer or diseases of the blood, regardless of whether such prescription
194 drug or device directly treats cancer or diseases of the blood, and (b) any supportive therapies to address or
195 lessen adverse effects attendant to the administration of prescribed drugs, including to anti-emetics,
196 antibiotics, and pain medications. Any payment to the pharmacy or dispensing practitioner consistent with
197 this section shall be at the rate set forth in the health insurance issuer's agreement with the pharmacy or
198 dispensing practitioner applicable to such drugs, or if no such rate is included in the agreement, then at the
199 wholesale acquisition cost. The provisions of this subdivision shall apply only to agreements entered into on
200 and after July 1, 2026.

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

206 D. The provisions of this section are not applicable to any pharmaceutical benefit covered by a health care
207 plan when those benefits are obtained from a pharmacy wholly owned and operated by, or exclusively
208 operated for, the health maintenance organization providing the health care plan.

209 E. Any pharmacy that wishes to be covered by this section shall, if requested to do so in writing by a
210 health maintenance organization or its pharmacy benefits manager, within 30 days of the pharmacy's receipt
211 of the request, execute and deliver to the health maintenance organization or its pharmacy benefits manager,
212 the direct service agreement or participating provider agreement that the health maintenance organization or
213 its pharmacy benefits manager requires all of its participating providers of pharmacy benefits to execute. Any
214 pharmacy that fails to timely execute and deliver such agreement shall not be covered by this section with
215 respect to that health maintenance organization or its pharmacy benefits manager unless and until the
216 pharmacy executes and delivers the agreement. No pharmacy shall be precluded from obtaining a direct
217 service agreement or participating provider agreement for retail and specialty pharmacy if the pharmacy
218 meets the terms and conditions of participation. Any request by a pharmacy for a direct service agreement or
219 a participating provider agreement shall be acted upon by a health maintenance organization or its pharmacy
220 benefits manager within 60 days of receipt of the pharmacy's request or any subsequent submission of
221 supplemental information if requested by the health maintenance organization or its pharmacy benefits
222 manager.

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

224 G. Nothing in this section shall limit the authority of a health maintenance organization providing health
225 care plans to select a single mail order pharmacy provider as the exclusive provider of pharmacy services that
226 are delivered to the covered person's address by mail, common carrier, or delivery service. *Nothing in this*
227 *section shall be construed to prohibit a self-insured or self-funded employee welfare benefit plan subject to*
228 *the Employee Retirement Income Security Act of 1974, P.L. 93-406, 88 Stat. 829, as amended, or any*
229 *employer sponsoring such plan, from directing, encouraging, or incentivizing enrollees to utilize an onsite*
230 *pharmacy benefit arrangement or mail-delivered pharmacies, and including through benefit design, cost-*
231 *sharing differentials, or limited network structure.* The provisions of this section shall not apply to such
232 contracts. As used in this subsection, "mail order pharmacy provider" means a pharmacy permitted to conduct
233 business in the Commonwealth whose primary business is to dispense a prescription drug or device under a
234 prescriptive drug order and to deliver the drug or device to a patient primarily by mail, common carrier, or
235 delivery service.