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HOUSE BILL NO. 1390
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on _____)
(Patron Prior to Substitute—Delegate Ward)

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; penalties.

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.

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

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

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

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

41 4. *Any policy or practice requiring or incentivizing a prescription drug or device to be sent (i) directly to*
42 *a health care provider for administration to a patient, (ii) to a specific pharmacy selected by such insurer or*
43 *pharmacy benefits manager, or (iii) to the residence of such person.*

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

49 D. Any pharmacy that wishes to be covered by this section shall, if requested to do so in writing by an
50 insurer or its pharmacy benefits manager, within 30 days of the pharmacy's receipt of the request, execute and
51 deliver to the insurer or its pharmacy benefits manager the direct service agreement or preferred or
52 participating provider agreement that the insurer requires all of its preferred or participating providers of
53 pharmacy benefits to execute. Any pharmacy that fails to timely execute and deliver such agreement shall not
54 be covered by this section with respect to that insurer or its pharmacy benefits manager unless and until the
55 pharmacy executes and delivers the agreement. No pharmacy shall be precluded from obtaining a direct
56 service agreement or participating provider agreement for retail and specialty pharmacy if the pharmacy
57 meets the terms and conditions of participation. Any request by a pharmacy for a direct service agreement or
58 a participating provider agreement shall be acted upon by an insurer or its pharmacy benefits manager within
59 60 days of receipt of the pharmacy's request or any subsequent submission of supplemental information if
60 requested by the insurer or its pharmacy benefits manager.

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

62 F. Nothing in this section shall limit the authority of an insurer proposing to issue preferred provider
63 policies or contracts or exclusive provider policies or contracts to select a single mail order pharmacy
64 provider as the exclusive provider of pharmacy services that are delivered to the covered person's address by
65 mail, common carrier, or delivery service. The provisions of this section shall not apply to such contracts. As
66 used in this subsection, "mail order pharmacy provider" means a pharmacy permitted to conduct business in
67 the Commonwealth whose primary business is to dispense a prescription drug or device under a prescriptive
68 drug order and to deliver the drug or device to a patient primarily by mail, common carrier, or delivery
69 service.

70 G. *No insurer or its pharmacy benefits manager shall penalize, terminate, or otherwise retaliate against a*
71 *pharmacy or dispensing practitioner for exercising rights or providing services consistent with this section.*

72 **§ 38.2-4209.1. Pharmacies; freedom of choice.**

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

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

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

92 nonpreferred providers;

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

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

96 4. Any policy or practice requiring or incentivizing a prescription drug or device to be sent (i) directly to
97 a health care provider for administration to a patient, (ii) to a specific pharmacy selected by such insurer or
98 pharmacy benefits manager, or (iii) to the residence of such person.

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

104 D. Any pharmacy that wishes to be covered by this section shall, if requested to do so in writing by a
105 corporation or its pharmacy benefits manager, within 30 days of the pharmacy's receipt of the request,
106 execute and deliver to the corporation or its pharmacy benefits manager the direct service agreement or
107 preferred provider agreement that the corporation requires all of its preferred providers of pharmacy benefits
108 to execute. Any pharmacy that fails to timely execute and deliver such agreement shall not be covered by this
109 section with respect to that corporation or its pharmacy benefits manager unless and until the pharmacy
110 executes and delivers the agreement. No pharmacy shall be precluded from obtaining a direct service
111 agreement or participating provider agreement for any retail and specialty pharmacy if the pharmacy meets
112 the terms and conditions of participation. Any request by a pharmacy for a direct service agreement or a
113 participating provider agreement shall be acted upon by a corporation or its pharmacy benefits manager
114 within 60 days of receipt of the pharmacy's request or any subsequent submission of supplemental
115 information if requested by the corporation or its pharmacy benefits manager.

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

117 F. Nothing in this section shall limit the authority of a corporation issuing preferred provider policies or
118 contracts to select a single mail order pharmacy provider as the exclusive provider of pharmacy services that
119 are delivered to the covered person's address by mail, common carrier, or delivery service. The provisions of
120 this section shall not apply to such contracts. As used in this subsection, "mail order pharmacy provider"

121 means a pharmacy permitted to conduct business in the Commonwealth whose primary business is to
122 dispense a prescription drug or device under a prescriptive drug order and to deliver the drug or device to a
123 patient primarily by mail, common carrier, or delivery service.

124 *G. No corporation or its pharmacy benefits manager shall penalize, terminate, or otherwise retaliate*
125 *against a pharmacy or dispensing practitioner for exercising rights or providing services consistent with this*
126 *section.*

127 **§ 38.2-4312.1. Pharmacies; freedom of choice.**

128 A. Notwithstanding any other provision in this chapter, no health maintenance organization providing
129 health care plans, or its pharmacy benefits manager, as defined in § 38.2-3465, shall prohibit any person
130 receiving pharmaceutical benefits, including specialty pharmacy benefits, thereunder from selecting, without
131 limitation, the pharmacy, *as defined in § 54.1-3300 and including any physician practice, hospital outpatient*
132 *infusion center, or other clinical setting that dispenses or administers drugs, medicines, or medicinal*
133 *chemicals*, of his choice to furnish such benefits. This right of selection extends to and includes any pharmacy
134 that is not a participating provider under any such health care plan and that has previously notified the health
135 maintenance organization or its pharmacy benefits manager on its own behalf or through an intermediary, by
136 facsimile or otherwise, of its agreement to accept reimbursement for its services at rates applicable to
137 pharmacies that are participating providers, including any copayment consistently imposed by the plan, as
138 payment in full. Each health maintenance organization or its pharmacy benefits manager shall permit prompt
139 electronic or telephonic transmittal of the reimbursement agreement by the pharmacy and ensure prompt
140 verification to the pharmacy of the terms of reimbursement. In no event shall any person receiving a covered
141 pharmacy benefit from a nonparticipating provider that has submitted a reimbursement agreement be
142 responsible for amounts that may be charged by the nonparticipating provider in excess of the copayment and
143 the health maintenance organization's reimbursement applicable to all of its participating pharmacy providers.
144 If a pharmacy has provided notice pursuant to this subsection through an intermediary, the health
145 maintenance organization or its intermediary may elect to respond directly to the pharmacy instead of the
146 intermediary. Nothing in this subsection shall (i) require a health maintenance organization or its
147 intermediary to contract with or to disclose confidential information to a pharmacy's intermediary or (ii)
148 prohibit a health maintenance organization or its intermediary from contracting with or disclosing
149 confidential information to a pharmacy's intermediary.

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

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

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

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

158 4. *Any policy or practice requiring or incentivizing a prescription drug or device to be sent (i) directly to*
159 *a health care provider for administration to a patient, (ii) to a specific pharmacy selected by such insurer or*
160 *pharmacy benefits manager, or (iii) to the residence of such person.*

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

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

169 E. Any pharmacy that wishes to be covered by this section shall, if requested to do so in writing by a
170 health maintenance organization or its pharmacy benefits manager, within 30 days of the pharmacy's receipt
171 of the request, execute and deliver to the health maintenance organization or its pharmacy benefits manager,
172 the direct service agreement or participating provider agreement that the health maintenance organization or
173 its pharmacy benefits manager requires all of its participating providers of pharmacy benefits to execute. Any
174 pharmacy that fails to timely execute and deliver such agreement shall not be covered by this section with
175 respect to that health maintenance organization or its pharmacy benefits manager unless and until the
176 pharmacy executes and delivers the agreement. No pharmacy shall be precluded from obtaining a direct
177 service agreement or participating provider agreement for retail and specialty pharmacy if the pharmacy
178 meets the terms and conditions of participation. Any request by a pharmacy for a direct service agreement or
179 a participating provider agreement shall be acted upon by a health maintenance organization or its pharmacy
180 benefits manager within 60 days of receipt of the pharmacy's request or any subsequent submission of

181 supplemental information if requested by the health maintenance organization or its pharmacy benefits
182 manager.

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

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

191 *H. No health maintenance organization or its pharmacy benefits manager shall penalize, terminate, or*
192 *otherwise retaliate against a pharmacy or dispensing practitioner for exercising rights or providing services*
193 *consistent with this section.*