

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 38.2-3407.9:01 of the Code of Virginia, relating to prescription drug*
3 *formularies.*

4 [H 1111]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 38.2-3407.9:01 of the Code of Virginia is amended and reenacted as follows:**

8 § 38.2-3407.9:01. Prescription drug formularies.

9 A. Each (i) insurer proposing to issue individual or group accident and sickness insurance policies
10 providing hospital, medical and surgical or major medical coverage on an expense-incurred basis, (ii)
11 corporation providing individual or group accident and sickness subscription contracts, and (iii) health
12 maintenance organization providing a health care plan for health care services, whose policy, contract or
13 plan, including any certificate or evidence of coverage issued in connection with such policy, contract or
14 plan, includes coverage for prescription drugs on an outpatient basis may apply a formulary to the
15 prescription drug benefits provided by the insurer, corporation, or health maintenance organization if the
16 formulary is developed, reviewed at least annually, and updated as necessary in consultation with and
17 with the approval of a pharmacy and therapeutics committee, a majority of whose members are actively
18 practicing licensed pharmacists, physicians and other licensed health care providers.

19 B. If an insurer, corporation, or health maintenance organization maintains one or more closed drug
20 formularies, each insurer, corporation or health maintenance organization shall:

21 1. Make available to participating providers and pharmacists and to any nonpreferred or
22 nonparticipating pharmacists as described in §§ 38.2-3407.7 and 38.2-4312.1, the complete, current drug
23 formulary or formularies, or any updates thereto, maintained by the insurer, corporation, or health
24 maintenance organization, including a list of the prescription drugs on the formulary by major
25 therapeutic category that specifies whether a particular prescription drug is preferred over other drugs;
26 and

27 2. Establish a process to allow an enrollee to obtain, without additional cost-sharing beyond that
28 provided for formulary prescription drugs in the enrollee's covered benefits, a specific, medically
29 necessary nonformulary prescription drug if the formulary drug is determined by the insurer, corporation,
30 or health maintenance organization, after reasonable investigation and consultation with the prescribing
31 physician, to be an inappropriate therapy for the medical condition of the enrollee. The insurer,
32 corporation or health maintenance organization shall act on such requests within one business day of
33 receipt of the request; and

34 3. Establish a process to allow an enrollee to obtain, without additional cost-sharing beyond that
35 provided for formulary prescription drugs in the enrollee's covered benefits, a specific, medically
36 necessary nonformulary prescription drug when the enrollee has been receiving the specific
37 nonformulary prescription drug for at least six months previous to the development or revision of the
38 formulary and the prescribing physician has determined that the formulary drug is an inappropriate
39 therapy for the specific patient or that changing drug therapy presents a significant health risk to the
40 specific patient. After reasonable investigation and consultation with the prescribing physician, the
41 insurer, corporation or health maintenance organization shall act on such requests within one business
42 day of receipt of the request. For purposes of this subsection, substituting the generic equivalent drug,
43 which has been approved by the U.S. Food and Drug Administration, for a branded version of such
44 drug shall not constitute a change in drug therapy.

ENROLLED

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