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HOUSE BILL NO. 1416

Offered January 23, 2004

A BILL to amend and reenact § 38.2-3407.7 of the Code of Virginia, relating to health insurance; pharmacy of choice.

Patron—Nutter

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 38.2-3407.7 of the Code of Virginia is 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 proposing to issue preferred provider policies or contracts shall prohibit any person receiving pharmacy benefits furnished thereunder from selecting, without limitation, the pharmacy of his choice to furnish such benefits. This right of selection extends to and includes pharmacies that are nonpreferred providers and that have previously notified the insurer, by facsimile or otherwise, of their agreement to accept reimbursement for their services at rates applicable to pharmacies that are preferred providers, including any copayment consistently imposed by the insurer, as payment in full. Each insurer 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 provider which has submitted a reimbursement agreement be responsible for amounts that may be charged by the nonpreferred provider in excess of the copayment and the insurer's reimbursement applicable to all of its preferred pharmacy providers.

B. No such insurer 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 providers;

2. Any monetary penalty, condition, or communication that would affect or influence any such person's choice of pharmacy, including without limitation, actions designed or intended to divert such person to a mail order pharmacy owned by the insurer or an affiliate of such insurer or by such insurer's or affiliate's pharmacy benefit manager, under the circumstances described in subdivision D4; or

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

C. No such insurer, or a pharmacy benefit manager of such insurer, shall impose upon or require of a pharmacy providing or proposing to provide pharmaceutical benefits in Virginia to any person entitled to receive such benefits under any such policy or contract:

1. Any term or condition that is not equally required of all pharmacies in Virginia, whether or not such benefits are furnished by pharmacists who are nonpreferred providers; or

2. Any payment, compensation, or reimbursement structure that results in, or would tend to result in direct or indirect discrimination by the insurer, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly.

D. For purposes of this section, a prohibited action, condition, or penalty shall also include, without limitation:

(i) denying immediate access to electronic claims filing to a pharmacy which that is a nonpreferred provider and which that has complied with subsection D E below; 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 preferred providers;

3. paying directly or indirectly or the acceptance of incentives between or among the insurer, the insurer's pharmacy benefit manager, or a pharmacy, in a manner that would be a violation of state or federal law; or

4. requiring or inducing a person receiving pharmacy benefits to use a mail order pharmacy for maintenance medications, where such medications or refills are for more than a one-month supply or the amount customarily approved by such insurer for purchase from a retail pharmacy, unless the pharmacy selected by such person has not agreed to accept reimbursement for such services at the same rates, terms, and conditions, including any copayment consistently imposed by the insurer as payment in full, that are applicable to mail order pharmacies that have one or more contracts with the insurer or

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HB1416

59 *the insurer's pharmacy benefit manager. Nothing in this subdivision shall prohibit an insurer or such*
60 *insurer's pharmacy benefit manager from establishing a different reimbursement structure for such*
61 *maintenance medications, provided such reimbursement structure otherwise does not violate this section*
62 *or other state or federal law.*

63 ~~DE.~~ Any pharmacy ~~which that~~ wishes to ~~be covered by~~ provide pharmaceutical benefits pursuant to
64 this section shall, if requested to do so in writing by an insurer, within ~~thirty~~ 30 days of the pharmacy's
65 receipt of the request, execute and deliver to the insurer the direct service agreement or preferred
66 provider agreement ~~which that~~ the insurer requires all of its preferred providers of pharmacy benefits to
67 execute. Any pharmacy ~~which that~~ fails to timely execute and deliver such agreement shall not be
68 ~~covered by~~ entitled to provide pharmaceutical benefits pursuant to this section with respect to that
69 insurer unless and until the pharmacy executes and delivers the agreement.

70 ~~EF.~~ The Commission shall have no jurisdiction to adjudicate controversies arising out of this section.