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## HOUSE BILL NO. 1455

Offered January 23, 2004

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 pharmacies; freedom of choice.

Patrons—Athey and Morgan

Referred to Committee on Commerce and Labor

**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 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 D 4; 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 the Commonwealth to any person entitled to receive such benefits under any such policy or contract:

1. Any nonprice term or condition that is not equally required of all pharmacies in the Commonwealth, 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:

(a) A violation of § 59.1-9.7;

(b) The artificial depression of prices to be paid, or proposed to be paid, to a pharmacy providing pharmaceutical benefits;

(c) The establishment or unilateral change of reimbursement rates to a pharmacy that are below such pharmacy's costs or prevailing market rates; or

(d) 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, or to injure, destroy, or prevent competition in the practice of pharmacy as defined in § 54.1-3300.

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

(i) denying 1. Denying immediate access to electronic claims filing to a pharmacy which is a nonpreferred provider and which has complied with subsection D below; or

(ii) requiring 2. 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; or

3. Directly or indirectly paying or accepting rebates, discounts, or other forms of disclosed or undisclosed incentives between or among the insurer, the insurer's pharmacy benefit manager, or a

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59 pharmacy, including without limitation any pharmacy that is an affiliate of such insurer or an affiliate  
60 of such insurer's pharmacy benefit manager, in a manner that would be a violation of state or federal  
61 law; or

62 4. Requiring or inducing a person receiving pharmacy benefits to use a mail order pharmacy for  
63 maintenance medications, where such medications or refills are for more than a one-month supply or  
64 the amount customarily approved by such insurer for purchase from a retail pharmacy, unless the  
65 pharmacy selected by such person has not agreed to accept reimbursement for such services at the same  
66 rates, terms, and conditions, including any copayment consistently imposed by the insurer as payment in  
67 full, that are applicable to mail order pharmacies that have one or more contracts with the insurer or  
68 the insurer's pharmacy benefit manager. Nothing in this subdivision shall prohibit an insurer or such  
69 insurer's pharmacy benefit manager from establishing a different reimbursement structure for such  
70 maintenance medications, provided such reimbursement structure otherwise does not violate this section  
71 or other state or federal law.

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

79 E F. The Commission shall have no jurisdiction to adjudicate controversies arising out of this  
80 section. Violations of subsections B or C, or of subdivisions D 3 or 4, shall be deemed to be violations  
81 of § 59.1-9.7.

82 § 38.2-4209.1. Pharmacies; freedom of choice.

83 A. Notwithstanding any provision of § 38.2-4209, no corporation providing preferred provider  
84 subscription contracts shall prohibit any person receiving pharmaceutical benefits thereunder from  
85 selecting, without limitation, the pharmacy of his choice to furnish such benefits. This right of selection  
86 extends to and includes pharmacies that are nonpreferred providers and that have previously notified the  
87 corporation, by facsimile or otherwise, of their agreement to accept reimbursement for their services at  
88 rates applicable to pharmacies that are preferred providers, including any copayment consistently  
89 imposed by the corporation, as payment in full. Each corporation shall permit prompt electronic or  
90 telephonic transmittal of the reimbursement agreement by the pharmacy and ensure payment verification  
91 to the pharmacy of the terms of reimbursement. In no event shall any person receiving a covered  
92 pharmacy benefit from a nonpreferred provider which has submitted a reimbursement agreement be  
93 responsible for amounts that may be charged by the nonpreferred provider in excess of the copayment  
94 and the corporation's reimbursement applicable to all of its preferred pharmacy providers.

95 B. No such corporation shall impose upon any person receiving pharmaceutical benefits furnished  
96 under any such contract:

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

100 2. Any monetary penalty, condition, or communication that would affect or influence any such  
101 person's choice of pharmacy, including without limitation actions designed or intended to divert such  
102 person to a mail order pharmacy owned by the insurer or an affiliate of such insurer, or by such  
103 insurer's or affiliate's pharmacy benefit manager, under the circumstances described in subdivision D 4;  
104 or

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

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

110 1. Any nonprice term or condition that is not equally required of all pharmacies in the  
111 Commonwealth, whether or not such benefits are furnished by pharmacists who are nonpreferred  
112 providers; or

113 2. Any payment, compensation, or reimbursement structure that results in, or would tend to result in:

114 (a) A violation of § 59.1-9.7;

115 (b) The artificial depression of prices to be paid, or proposed to be paid, to a pharmacy providing  
116 pharmaceutical benefits;

117 (c) The establishment or unilateral change of reimbursement rates to a pharmacy that are below  
118 such pharmacy's costs or prevailing market rates; or

119 (d) Direct or indirect discrimination by the insurer, where the effect of such discrimination may be  
120 substantially to lessen competition or tend to create a monopoly, or to injure, destroy, or prevent

competition in the practice of pharmacy as defined in § 54.1-3300.

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

(i) ~~denying~~ 1. Denying immediate access to electronic claims filing to a pharmacy which is a nonpreferred provider and which has complied with subsection D below; or

(ii) ~~requiring~~ 2. 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. Directly or indirectly paying or accepting rebates, discounts, or other forms of disclosed or undisclosed incentives between or among the insurer, the insurer's pharmacy benefit manager, or a pharmacy, including without limitation any pharmacy that is an affiliate of such insurer or an affiliate of such insurer's pharmacy benefit manager, 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 the insurer's pharmacy benefit manager. Nothing in this subdivision shall prohibit an insurer or such insurer's pharmacy benefit manager from establishing a different reimbursement structure for such maintenance medications, provided such reimbursement structure otherwise does not violate this section or other state or federal law.

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

£ F. The Commission shall have no jurisdiction to adjudicate controversies arising out of this section. Violations of subsections B or C, or of subdivisions D 3 or 4, shall be deemed to be violations of § 59.1-9.7.

§ 38.2-4312.1. Pharmacies; freedom of choice.

A. Notwithstanding any other provision in this chapter, no health maintenance organization providing health care plans shall prohibit any person receiving pharmaceutical benefits 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 not participating providers under any such health care plan and that have previously notified the health maintenance organization, by facsimile or otherwise, of their agreement to accept reimbursement for their services at rates applicable to pharmacies that are participating providers, including any copayment consistently imposed by the plan, as payment in full. Each health maintenance organization 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 nonparticipating provider which has submitted a reimbursement agreement be responsible for amounts that may be charged by the nonparticipating provider in excess of the copayment and the health maintenance organization's reimbursement applicable to all of its participating pharmacy providers.

B. No such health maintenance organization shall impose upon any person receiving pharmaceutical benefits furnished under any such health care plan:

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 not participating 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 D 4; or

3. Any reduction in allowable reimbursement for pharmacy services related to utilization of pharmacists who are not participating 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 the Commonwealth to any person entitled to receive such benefits under any such policy or contract:

182 1. Any nonprice term or condition that is not equally required of all pharmacies in the  
183 Commonwealth, whether or not such benefits are furnished by pharmacists who are nonpreferred  
184 providers; or

185 2. Any payment, compensation, or reimbursement structure that results in, or would tend to result in:

186 (a) A violation of § 59.1-9.7;

187 (b) The artificial depression of prices to be paid, or proposed to be paid, to a pharmacy providing  
188 pharmaceutical benefits;

189 (c) The establishment or unilateral change of reimbursement rates to a pharmacy that are below  
190 such pharmacy's costs or prevailing market rates; or

191 (d) Direct or indirect discrimination by the insurer, where the effect of such discrimination may be  
192 substantially to lessen competition or tend to create a monopoly, or to injure, destroy, or prevent  
193 competition in the practice of pharmacy as defined in § 54.1-3300.

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

196 (i) ~~denying~~ 1. Denying immediate access to electronic claims filing to a pharmacy which is a  
197 nonparticipating provider and which has complied with subsection E below; or

198 (ii) ~~requiring~~ 2. Requiring a person receiving pharmacy benefits to make payment at point of service,  
199 except to the extent such conditions and penalties are similarly imposed on participating providers.

200 3. Directly or indirectly paying or accepting rebates, discounts, or other forms of disclosed or  
201 undisclosed incentives between or among the insurer, the insurer's pharmacy benefit manager, or a  
202 pharmacy, including without limitation any pharmacy that is an affiliate of such insurer or an affiliate  
203 of such insurer's pharmacy benefit manager, in a manner that would be a violation of state or federal  
204 law; or

205 4. Requiring or inducing a person receiving pharmacy benefits to use a mail order pharmacy for  
206 maintenance medications, where such medications or refills are for more than a one-month supply or  
207 the amount customarily approved by such insurer for purchase from a retail pharmacy, unless the  
208 pharmacy selected by such person has not agreed to accept reimbursement for such services at the same  
209 rates, terms, and conditions, including any copayment consistently imposed by the insurer as payment in  
210 full, that are applicable to mail order pharmacies that have one or more contracts with the insurer or  
211 the insurer's pharmacy benefit manager. Nothing in this subdivision shall prohibit an insurer or such  
212 insurer's pharmacy benefit manager from establishing a different reimbursement structure for such  
213 maintenance medications, provided such reimbursement structure otherwise does not violate this section  
214 or other state or federal law.

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

218 E. Any pharmacy ~~which~~ that wishes to provide pharmaceutical benefits pursuant to be covered by  
219 this section shall, if requested to do so in writing by a health maintenance organization, within ~~thirty~~ 30  
220 days of the pharmacy's receipt of the request, execute and deliver to the health maintenance organization  
221 the direct service agreement or participating provider agreement which the health maintenance  
222 organization requires all of its participating providers of pharmacy benefits to execute. Any pharmacy  
223 ~~which~~ that fails to timely execute and deliver such agreement shall not be entitled to provide  
224 pharmaceutical benefits pursuant to covered by this section with respect to that health maintenance  
225 organization unless and until the pharmacy executes and delivers the agreement.

226 F. The Commission shall have no jurisdiction to adjudicate controversies arising out of this section.  
227 Violations of subsections B or C, or of subdivisions D 3 or 4, shall be deemed to be violations of  
228 § 59.1-9.7.