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HOUSE BILL NO. 116

Offered January 13, 2010

Prefiled January 5, 2010

A BILL to amend and reenact §§ 38.2-3407.7 and 38.2-4312.1 of the Code of Virginia, relating to pharmacy freedom of choice; mail order pharmacy providers.

Patron—Purkey

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3407.7 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 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 providers.

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 which is a nonpreferred provider and which has complied with subsection D 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.

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

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

F. *Nothing in this section shall limit the authority of an insurer proposing to issue preferred provider policies or contracts to select a single mail order pharmacy provider as an exclusive provider of pharmacy services that are delivered by mail, common carrier, or delivery service. As used in this subsection, "mail order pharmacy provider" means a pharmacy permitted to conduct business in the Commonwealth that delivers prescription drug orders by mail, common carrier, or delivery service.*

§ 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.

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59 Each health maintenance organization shall permit prompt electronic or telephonic transmittal of the
60 reimbursement agreement by the pharmacy and ensure prompt verification to the pharmacy of the terms
61 of reimbursement. In no event shall any person receiving a covered pharmacy benefit from a
62 nonparticipating provider which has submitted a reimbursement agreement be responsible for amounts
63 that may be charged by the nonparticipating provider in excess of the copayment and the health
64 maintenance organization's reimbursement applicable to all of its participating pharmacy providers.

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

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

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

71 3. Any reduction in allowable reimbursement for pharmacy services related to utilization of
72 pharmacists who are not participating providers.

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

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

81 E. Any pharmacy which wishes to be covered by this section shall, if requested to do so in writing
82 by a health maintenance organization, within ~~thirty~~ 30 days of the pharmacy's receipt of the request,
83 execute and deliver to the health maintenance organization the direct service agreement or participating
84 provider agreement which the health maintenance organization requires all of its participating providers
85 of pharmacy benefits to execute. Any pharmacy which fails to timely execute and deliver such
86 agreement shall not be covered by this section with respect to that health maintenance organization
87 unless and until the pharmacy executes and delivers the agreement.

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

89 G. *Nothing in this section shall limit the authority of a health maintenance organization providing*
90 *health care plans to select a single mail order pharmacy provider as an exclusive provider of pharmacy*
91 *services that are delivered by mail, common carrier, or delivery service. As used in this subsection,*
92 *"mail order pharmacy provider" means a pharmacy permitted to conduct business in the Commonwealth*
93 *that delivers prescription drug orders by mail, common carrier, or delivery service.*