

11101824D

SENATE BILL NO. 879

Offered January 12, 2011

Prefiled January 10, 2011

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

Patron—Reynolds

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. *As used in this section, unless the context requires a different meaning:*

"Contract provider" means a pharmacy granted the right to provide prescription drugs and pharmacy services according to the terms of the insurer.

"Copayment" means a type of cost sharing whereby insured or covered persons pay a specified predetermined amount per unit of service with their insurer paying the remainder of the charge. The copayment is incurred at the time the service is used. The copayment may be a fixed or variable amount.

"Health benefit plan" means any accident and health insurance policy or certificate, health services plan contract, health maintenance organization subscriber contract, plan provided by a multiple employer welfare association or plan provided by another benefit arrangement. "Health benefit plan" does not mean accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans, pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; Medicaid coverage; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

"Insurer" means any entity that provides or offers a health benefit plan.

B. This section shall:

1. Apply to all:

a. Health benefit plans providing pharmaceutical services benefits, including prescription drugs, to any resident of the Commonwealth; and

b. Insurance companies and health maintenance organizations that provide or administer coverages and benefits for prescription drugs; and

2. Not apply to any:

a. Entity that (i) has its own facility; (ii) employs or contracts with physicians, pharmacists, nurses, and other health care personnel; and (iii) dispenses prescription drugs from its own pharmacy to its employees and to enrollees of its health benefit plan; however, this section shall apply to an entity otherwise excluded by this subdivision that contracts with an outside pharmacy or group of pharmacies to provide prescription drugs and services; or

b. Federal program, clinical trial program, or hospital or other licensed health care facility when dispensing prescription drugs to its patients.

C. Notwithstanding any provision of § 38.2-3407 to the contrary, no insurer proposing to issue preferred provider policies or contracts the terms of a health benefit plan shall prohibit not:

1. Prohibit or limit any person receiving pharmacy benefits furnished thereunder resident of the Commonwealth who is eligible for reimbursement for pharmacy services as a participant or beneficiary of a health benefit plan 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

INTRODUCED

SB879

59 copayment and the insurer's reimbursement applicable to all of its preferred pharmacy providers. when
60 the pharmacy has agreed to participate in the health benefit plan according to the terms offered by the
61 insurer;

62 2. Deny a pharmacy the opportunity to participate as a contract provider under a health benefit plan
63 if the pharmacy agrees to provide pharmacy services that meet the terms and requirements, including
64 terms of reimbursement, of the insurer under a health benefit plan; however, if the pharmacy is offered
65 the opportunity to participate as a contract provider, no provisions of this section shall apply if the
66 pharmacy elects not to participate;

67 B. No such insurer shall impose upon any person receiving pharmaceutical benefits furnished under
68 any such policy or contract:

69 13. ~~Any~~ Impose upon a beneficiary of pharmacy services under a health benefit plan any copayment,
70 fee, or condition that is not equally imposed upon all individuals in the same benefit category, class, or
71 copayment level, whether or not such benefits are furnished by pharmacists who are nonpreferred
72 providers under the health benefit plan when receiving services from a contract provider;

73 24. ~~Any~~ Impose a monetary advantage or penalty under a health benefit plan that would affect or
74 influence any such person's a beneficiary's choice of pharmacy. Monetary advantage or penalty includes
75 higher copayment, a reduction in reimbursement for services, or promotion of one participating
76 pharmacy over another by these methods; ~~or~~

77 35. ~~Any~~ reduction in Reduce allowable reimbursement for pharmacy services related to utilization of
78 pharmacists who are nonpreferred providers to a beneficiary under a health benefit plan because the
79 beneficiary selects a pharmacy of his choice, so long as that pharmacy has enrolled with the health
80 benefit plan under the terms offered to all pharmacies in the plan coverage area; or

81 6. Require a beneficiary, as a condition of payment or reimbursement, to purchase pharmacy
82 services, including prescription drugs, exclusively through a mail-order pharmacy.

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

88 D. ~~Any~~ A pharmacy that wishes to be covered by this section shall, if requested to do so in writing
89 by an insurer, within 30 days of the pharmacy's receipt of the request, execute and deliver to the insurer
90 the direct service agreement or preferred provider agreement that the insurer requires all of its preferred
91 providers of pharmacy benefits to execute. Any pharmacy that fails to timely execute and deliver such
92 agreement shall not be covered by this section with respect to that insurer unless and until the pharmacy
93 executes and delivers the agreement, by or through a pharmacist acting on its behalf as its employee,
94 agent, or owner, may not waive, discount, rebate, or distort a copayment of any insurer, policy, or plan
95 or a beneficiary's coinsurance portion of a prescription drug coverage or reimbursement. If a pharmacy,
96 by or through a pharmacist's acting on its behalf as its employee, agent, or owner, provides a pharmacy
97 service to an enrollee of a health benefit plan that meets the terms and requirements of the insurer
98 under a health benefit plan, the pharmacy shall provide its pharmacy services to all enrollees of that
99 health benefit plan on the same terms and requirements of the insurer. A violation of this subsection
100 shall subject the pharmacist to license revocation or suspension by the Board of Pharmacy pursuant to
101 § 54.1-3316.

102 E. ~~The Commission shall have no jurisdiction to adjudicate controversies arising out of this section~~
103 ~~At least 60 days before the effective date of any health benefit plan providing reimbursement to~~
104 ~~residents of the Commonwealth for prescription drugs, which plan restricts pharmacy participation, the~~
105 ~~entity providing the health benefit plan shall notify, in writing, all pharmacies within the geographical~~
106 ~~coverage area of the health benefit plan and offer the pharmacies the opportunity to participate in the~~
107 ~~health benefit plan. All pharmacies in the geographical coverage area of the plan shall be eligible to~~
108 ~~participate under identical reimbursement terms for providing pharmacy services, including prescription~~
109 ~~drugs. The entity providing the health benefit plan shall, through reasonable means, on a timely basis,~~
110 ~~and on regular intervals in order to effectuate the purposes of this section, inform the beneficiaries of~~
111 ~~the plan of the names and locations of pharmacies that are participating in the plan as providers of~~
112 ~~pharmacy services and prescription drugs. Additionally, participating pharmacies shall be entitled to~~
113 ~~announce their participation to their customers through a means acceptable to the pharmacy and the~~
114 ~~entity providing the health benefit plans. The pharmacy notification provisions of this section shall not~~
115 ~~apply when an individual or group is enrolled, but when the plan enters a particular county of the~~
116 ~~Commonwealth.~~

117 F. If rebates or marketing incentives are allowed to pharmacies or other dispensing entities
118 providing services or benefits under a health benefit plan, these rebates or marketing incentives shall be
119 offered on an equal basis to all pharmacies and other dispensing entities providing services or benefits
120 under a health benefit plan when pharmacy services, including prescription drugs, are purchased in the

121 *same volume and under the same terms of payment.* Nothing in this section shall limit the authority of
122 an insurer proposing to issue preferred provider policies or contracts to select a single mail order
123 pharmacy provider as the exclusive provider of pharmacy services that are delivered to the covered
124 person's address by mail, common carrier, or delivery service. The provisions of this section shall not
125 apply to such contracts. As used in this subsection, "mail order pharmacy provider" means a pharmacy
126 permitted to conduct business in the Commonwealth whose primary business is to dispense a
127 prescription drug or device under a prescriptive drug order and to deliver the drug or device to a patient
128 primarily by mail, common carrier, or delivery service prevent a pharmaceutical manufacturer or
129 wholesale distributor of pharmaceutical products from providing special prices, marketing incentives,
130 rebates, or discounts to different purchasers not prohibited by federal and state antitrust laws.

131 *G. Any entity or insurer providing a health benefit plan that fails to comply with the requirements of*
132 *this section shall be subject to one or more of the following: (i) punishment as provided in § 38.2-218;*
133 *(ii) suspension or revocation of any license issued by the Commonwealth; or (iii) any order that may be*
134 *issued by the Commission pursuant to § 38.2-219.*

135 *H. A violation of this section creates a civil cause of action for damages or injunctive relief in favor*
136 *of any person or pharmacy aggrieved by the violation.*

137 *I. The Commissioner shall not approve any health benefit plan providing pharmaceutical services*
138 *that does not conform to this section.*

139 *J. Any provision in a health benefit plan that is executed, delivered, renewed, or otherwise*
140 *contracted for in the Commonwealth that is contrary to any provision of this section shall, to the extent*
141 *of the conflict, be void.*

142 *K. It shall be a violation of this section for any insurer or any person to provide any health benefit*
143 *plan providing for pharmaceutical services to residents of the Commonwealth that does not conform to*
144 *the provisions of this section.*