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SENATE BILL NO. 1394

Offered January 22, 2015

A BILL to amend and reenact §§ 38.2-4319 and 38.2-4509 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3407.14:1, relating to accident and sickness insurance; prescription drugs; specialty tier coverage.

Patron—Dance

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-4319 and 38.2-4509 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-3407.14:1 as follows:

§ 38.2-3407.14:1. Specialty tier prescription coverage.

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

"Class of drugs" means a group of medications having similar actions designed to treat a particular disease process.

"Coinsurance" means a cost-sharing amount set as a percentage of the total cost of the drug.

"Complex or chronic medical condition" means a physical, behavioral, or developmental condition that may have no known cure, is progressive, or can be debilitating or fatal if left untreated or undertreated, such as multiple sclerosis, hepatitis C, or rheumatoid arthritis.

"Copayment" means a cost-sharing amount set as a dollar value.

"Deductible" means an amount an enrollee is required to pay out of pocket in any year before the health benefit plan begins to pay the costs associated with health care services.

"Health benefit plan" has the same meaning ascribed to the term in § 38.2-3556.

"Health carrier" has the same meaning ascribed to the term in § 38.2-3556.

"Nonpreferred drug" means a specialty drug formulary classification for certain specialty drugs deemed nonpreferred and therefore subject to limits on eligibility for coverage or to higher cost-sharing amounts than preferred specialty drugs.

"Preferred drug" means a specialty drug formulary classification for certain specialty drugs deemed preferred and therefore not subject to limits on eligibility for coverage or not subject to higher cost-sharing amounts than nonpreferred specialty drugs.

"Rare medical condition" means any disease or condition that affects not more than one of every 1,500 individuals in the United States, such as cystic fibrosis, hemophilia, and multiple myeloma.

"Specialty drug" means a prescription drug that:

1. Is prescribed for an individual person with (i) a complex or chronic medical condition or (ii) a rare medical condition;

2. Has a total monthly cost of not less than \$600;

3. Is not stocked at a majority of retail pharmacies; and

4. Has one or more of the following characteristics:

a. Is an oral, injectable, or infusible drug product;

b. Has unique storage or shipment requirements, such as refrigeration; or

c. Requires patients who are prescribed the drug to receive education and support beyond traditional dispensing activities.

"Specialty drug formulary" means a specialty drug benefit design that distinguishes, for purposes of eligibility for coverage or for cost-sharing, between preferred drugs and nonpreferred drugs.

"Specialty drug tier" means a tier of cost-sharing designed for specialty drugs that imposes a cost-sharing obligation for specialty drugs that (i) is based on a coinsurance and (ii) exceeds the amount for nonspecialty drugs.

B. Any health carrier whose health benefit plan includes coverage for prescription drugs and whose prescription drug benefit utilizes a specialty drug tier shall ensure that any required copayment or coinsurance applicable to specialty drugs on a specialty tier does not exceed \$100 per month for each specialty drug up to a 30-day supply of any single drug. The monthly limit on any required copayment or coinsurance applicable to specialty drugs on a specialty tier established pursuant to this subdivision shall apply without regard to whether any deductible for the applicable year has been satisfied.

C. Any health carrier whose health benefit plan includes coverage for prescription drugs shall implement an exceptions process that allows enrollees to request an exception to the formulary. Under such an exception, a nonformulary drug could be deemed covered under the formulary if the prescribing physician determines that the formulary drug for treatment of the same condition either would not be as

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59 *effective for the individual or would have adverse effects for the individual, or both. In the event an*
 60 *enrollee is denied an exception, such denial shall be considered an adverse event and will be subject to*
 61 *the health carrier's internal appeals process established pursuant to § 38.2-3558 and to external review*
 62 *pursuant to § 38.2-3561.*

63 *D. A health benefit plan that provides coverage for prescription drugs shall not place all drugs in a*
 64 *given class of drugs on the highest cost tier.*

65 *E. Nothing in this section shall be construed to require a health benefit plan to:*

66 *1. Provide coverage for any additional drugs not otherwise required by law;*

67 *2. Implement specific utilization management techniques, such as prior authorization or step therapy;*
 68 *or*

69 *3. Cease utilization of tiered cost-sharing structures, including strategies used to incent use of*
 70 *preventive services, disease management, and low-cost treatment options.*

71 *F. Nothing in this section shall be construed to require a pharmacist to substitute a drug without the*
 72 *consent of the prescribing physician.*

73 *G. This section shall not apply to any health benefit plan sold or offered for sale by a health carrier*
 74 *upon a determination by the Commission that the requirements of this section would result in the*
 75 *assumption by the state of additional costs pursuant to § 1311(d)(3)(B) of the federal Patient Protection*
 76 *and Affordable Care Act (P.L. 111-148), as amended, relative to benefits required by state law to be*
 77 *offered by qualified plans in a health benefit exchange serving residents of the Commonwealth that*
 78 *exceed the benefits required by federal law.*

79 *H. The requirements of this section shall apply to all insurance policies, contracts, and plans*
 80 *delivered, issued for delivery, reissued, or extended in the Commonwealth on and after July 1, 2015, or*
 81 *at any time thereafter when any term of the policy, contract, or plan is changed or any premium*
 82 *adjustment is made.*

83 **§ 38.2-4319. Statutory construction and relationship to other laws.**

84 *A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this*
 85 *chapter, §§ 38.2-100, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218*
 86 *through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-316.1, 38.2-322, 38.2-326, 38.2-400,*
 87 *38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9*
 88 *(§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1, Article 2 (§ 38.2-1306.2*
 89 *et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et*
 90 *seq.), and 5.1 (§ 38.2-1334.3 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412*
 91 *et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3406.1,*
 92 *38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.18, 38.2-3411, 38.2-3411.2,*
 93 *38.2-3411.3, 38.2-3411.4, 38.2-3412.1:01, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.17, 38.2-3419.1,*
 94 *38.2-3430.1 through 38.2-3454, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504,*
 95 *§§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2,*
 96 *38.2-3541.2, 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 35.1*
 97 *(§ 38.2-3556 et seq.), Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter*
 98 *58 (§ 38.2-5800 et seq.) shall be applicable to any health maintenance organization granted a license*
 99 *under this chapter. This chapter shall not apply to an insurer or health services plan licensed and*
 100 *regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with*
 101 *respect to the activities of its health maintenance organization.*

102 *B. For plans administered by the Department of Medical Assistance Services that provide benefits*
 103 *pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title*
 104 *except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136,*
 105 *38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229,*
 106 *38.2-232, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through*
 107 *38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1,*
 108 *Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et*
 109 *seq.), 5 (§ 38.2-1322 et seq.), and 5.1 (§ 38.2-1334.3 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et*
 110 *seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-3401, 38.2-3405, 38.2-3407.2 through*
 111 *38.2-3407.5, 38.2-3407.6, 38.2-3407.6:1, 38.2-3407.9, 38.2-3407.9:01, and 38.2-3407.9:02, subdivisions*
 112 *F 1, F 2, and F 3 of § 38.2-3407.10, §§ 38.2-3407.11, 38.2-3407.11:3, 38.2-3407.13, 38.2-3407.13:1,*
 113 *38.2-3407.14, 38.2-3407.14:1, 38.2-3411.2, 38.2-3418.1, 38.2-3418.2, 38.2-3419.1, 38.2-3430.1 through*
 114 *38.2-3437, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1,*
 115 *38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.2,*
 116 *38.2-3542, 38.2-3543.2, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter*
 117 *58 (§ 38.2-5800 et seq.) shall be applicable to any health maintenance organization granted a license*
 118 *under this chapter. This chapter shall not apply to an insurer or health services plan licensed and*
 119 *regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with*
 120 *respect to the activities of its health maintenance organization.*

121 C. Solicitation of enrollees by a licensed health maintenance organization or by its representatives
122 shall not be construed to violate any provisions of law relating to solicitation or advertising by health
123 professionals.

124 D. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful
125 practice of medicine. All health care providers associated with a health maintenance organization shall
126 be subject to all provisions of law.

127 E. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health
128 maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to
129 offer coverage to or accept applications from an employee who does not reside within the health
130 maintenance organization's service area.

131 F. For purposes of applying this section, "insurer" when used in a section cited in subsections A and
132 B shall be construed to mean and include "health maintenance organizations" unless the section cited
133 clearly applies to health maintenance organizations without such construction.

134 **§ 38.2-4509. Application of certain laws.**

135 A. No provision of this title except this chapter and, insofar as they are not inconsistent with this
136 chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229,
137 38.2-316, 38.2-326, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through
138 38.2-620, 38.2-900 through 38.2-904, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300
139 et seq.) and 2 (§ 38.2-1306.2 et seq.) of Chapter 13, §§ 38.2-1312, 38.2-1314, 38.2-1315.1, Articles 4
140 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et seq.), and 6 (§ 38.2-1335 et seq.) of Chapter 13, §§ 38.2-1400
141 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3407.1,
142 38.2-3407.4, 38.2-3407.10, 38.2-3407.13, 38.2-3407.14, 38.2-3407.14:1, 38.2-3407.15, 38.2-3407.17,
143 38.2-3415, 38.2-3541, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, §§ 38.2-3600 through 38.2-3603,
144 Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall apply to the operation of a
145 plan.

146 B. The provisions of subsection A of § 38.2-322 shall apply to an optometric services plan. The
147 provisions of subsection C of § 38.2-322 shall apply to a dental services plan.

148 C. The provisions of Article 1.2 (§ 32.1-137.7 et seq.) of Chapter 5 of Title 32.1 shall not apply to
149 either an optometric or dental services plan.

150 D. The provisions of § 38.2-3407.1 shall apply to claim payments made on or after January 1, 2014.
151 No optometric or dental services plan shall be required to pay interest computed under § 38.2-3407.1 if
152 the total interest is less than \$5.