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## HOUSE BILL NO. 1450

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Commerce and Labor  
on January 17, 2017)

(Patron Prior to Substitute—Delegate Ware)

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; pharmacy's intermediary.

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~~ *any pharmacy* that ~~are~~ *is* a nonpreferred provider and that ~~have~~ *has* previously notified the insurer *on its own behalf or through an intermediary*, by facsimile or otherwise, of ~~their~~ *its* agreement to accept reimbursement for ~~their~~ *its* 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. *If a pharmacy has provided notice pursuant to this subsection through an intermediary, the insurer or its intermediary may elect to respond directly to the pharmacy instead of the intermediary. Nothing in this subsection shall (i) require an insurer or its intermediary to contract with or to disclose confidential information to a pharmacy's intermediary or (ii) prohibit an insurer or its intermediary from contracting with or disclosing confidential information to a pharmacy's intermediary.*

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 that is a nonpreferred provider and that has complied with subsection D 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 that wishes to be covered by this section shall, if requested to do so in writing by an insurer, within 30 days of the pharmacy's receipt of the request, execute and deliver to the insurer the direct service agreement or preferred provider agreement that the insurer requires all of its preferred providers of pharmacy benefits to execute. Any pharmacy that 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 the exclusive provider of pharmacy services that are delivered to the covered person's address by mail, common carrier, or delivery service. The provisions of this section shall not apply to such contracts. As used in this subsection, "mail order pharmacy provider" means a pharmacy permitted to conduct business in the Commonwealth whose primary business is to dispense a prescription drug or device under a prescriptive drug order and to deliver the drug or device to a patient primarily 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

60 health care plans shall prohibit any person receiving pharmaceutical benefits thereunder from selecting,  
61 without limitation, the pharmacy of his choice to furnish such benefits. This right of selection extends to  
62 and includes ~~pharmacies~~ *any pharmacy that is not a participating provider* under any such  
63 health care plan and that ~~have~~ *has* previously notified the health maintenance organization *on its own*  
64 *behalf or through an intermediary*, by facsimile or otherwise, of ~~their~~ *its* agreement to accept  
65 reimbursement for ~~their~~ *its* services at rates applicable to pharmacies that are participating providers,  
66 including any copayment consistently imposed by the plan, as payment in full. Each health maintenance  
67 organization shall permit prompt electronic or telephonic transmittal of the reimbursement agreement by  
68 the pharmacy and ensure prompt verification to the pharmacy of the terms of reimbursement. In no  
69 event shall any person receiving a covered pharmacy benefit from a nonparticipating provider which has  
70 submitted a reimbursement agreement be responsible for amounts that may be charged by the  
71 nonparticipating provider in excess of the copayment and the health maintenance organization's  
72 reimbursement applicable to all of its participating pharmacy providers. *If a pharmacy has provided*  
73 *notice pursuant to this subsection through an intermediary, the health maintenance organization or its*  
74 *intermediary may elect to respond directly to the pharmacy instead of the intermediary. Nothing in this*  
75 *subsection shall (i) require a health maintenance organization or its intermediary to contract with or to*  
76 *disclose confidential information to a pharmacy's intermediary or (ii) prohibit a health maintenance*  
77 *organization or its intermediary from contracting with or disclosing confidential information to a*  
78 *pharmacy's intermediary.*

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

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

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

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

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

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

95 E. Any pharmacy that wishes to be covered by this section shall, if requested to do so in writing by  
96 a health maintenance organization, within 30 days of the pharmacy's receipt of the request, execute and  
97 deliver to the health maintenance organization the direct service agreement or participating provider  
98 agreement that the health maintenance organization requires all of its participating providers of pharmacy  
99 benefits to execute. Any pharmacy that fails to timely execute and deliver such agreement shall not be  
100 covered by this section with respect to that health maintenance organization unless and until the  
101 pharmacy executes and delivers the agreement.

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

103 G. Nothing in this section shall limit the authority of a health maintenance organization providing  
104 health care plans to select a single mail order pharmacy provider as the exclusive provider of pharmacy  
105 services that are delivered to the covered person's address by mail, common carrier, or delivery service.  
106 The provisions of this section shall not apply to such contracts. As used in this subsection, "mail order  
107 pharmacy provider" means a pharmacy permitted to conduct business in the Commonwealth whose  
108 primary business is to dispense a prescription drug or device under a prescriptive drug order and to  
109 deliver the drug or device to a patient primarily by mail, common carrier, or delivery service.