

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 602

An Act to amend the Code of Virginia by adding a section numbered 38.2-3407.15:4, relating to carrier business practices; contracts with pharmacies and pharmacists; amounts charged to an enrollee for covered prescription drugs; disclosure of less expensive alternatives to using enrollee's health plan.

[S 933]

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

- 1. That the Code of Virginia is amended by adding a section numbered 38.2-3407.15:4 as follows: § 38.2-3407.15:4. *Limit on copayment for prescription drugs; permitted disclosures.***

A. As used in this section:

"Carrier" has the same meaning ascribed thereto in subsection A of § 38.2-3407.15.

"Copayment" means an amount an enrollee is required to pay at the point of sale in order to receive a covered prescription drug.

"Enrollee" means a policyholder, subscriber, participant, or other individual covered by a health benefit plan.

"Health plan" means any health benefit plan, as defined in § 38.2-3438, that provides coverage for prescription drugs.

"Pharmacy benefits management" means the administration or management of prescription drug benefits provided by a carrier for the benefit of enrollees.

"Pharmacy benefits manager" means an entity that performs pharmacy benefits management. The term includes a person or entity acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a carrier.

"Provider contract" has the same meaning ascribed thereto in subsection A of § 38.2-3407.15.

B. No provider contract between a health carrier or its pharmacy benefits manager and a pharmacy or its contracting agent shall contain a provision (i) authorizing the carrier or its pharmacy benefits manager to charge, (ii) requiring the pharmacy or pharmacist to collect, or (iii) requiring an enrollee to make, a copayment for a covered prescription drug in an amount that exceeds the least of:

1. The applicable copayment for the prescription drug that would be payable in the absence of this section; or

2. The cash price the enrollee would pay for the prescription drug if the enrollee purchased the prescription drug without using the enrollee's health plan.

C. Provider contracts between a health carrier or its pharmacy benefits manager and a pharmacy or its contracting agent shall contain specific provisions that allow a pharmacy to:

1. Disclose to an enrollee information relating to (i) the provisions of this section and (ii) the availability of a more affordable therapeutically equivalent prescription drug;

2. Sell a more affordable therapeutically equivalent prescription drug to an enrollee if one is available in accordance with § 54.1-3408.03; and

3. Offer and provide direct and limited delivery services to an enrollee as an ancillary service of the pharmacy in accordance with § 54.1-3420.2.

D. A pharmacy shall not be penalized by a pharmacy benefits manager or a carrier for discussing information or for selling a more affordable alternative as described in subsection C.

E. Provider contracts between a health carrier or its pharmacy benefits manager and a pharmacy or its contracting agent shall contain specific provisions that prohibit the carrier or the pharmacy benefit manager from charging a fee to a pharmacy or otherwise holding a pharmacy responsible for a fee relating to the adjudication of a claim unless the fee is reported on the remittance advice of the adjudicated claim or is set out in contract between the pharmacy benefits manager and the pharmacy or its contracting agent.

F. This section shall not apply with respect to claims under an employee benefit plan under the Employee Retirement Income Security Act of 1974, Medicaid, or Medicare Part D.

G. This section shall apply with respect to provider contracts entered into, amended, extended, or renewed on or after January 1, 2019.

H. Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and regulations as it may deem necessary to implement this section.

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