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**HOUSE BILL NO. 2223**

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend and reenact § 54.1-3420.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3407.15:5, relating to pharmacy services; mail order and delivery; pharmacy benefits managers.*

Patrons—O'Quinn, Jones, S.C., Miyares and Pillion

Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:**

1. That § 54.1-3420.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-3407.15:5 as follows:

**§ 38.2-3407.15:5. Access to retail community pharmacies.**

A. As used in this section:

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

"Covered individual" means an individual receiving prescription medication coverage or reimbursement provided by a pharmacy benefit manager or a carrier under a health benefit plan.

"Health benefit plan" has the same meaning ascribed thereto in § 38.2-3438.

"Mail order pharmacy" means a pharmacy whose primary business is to receive prescriptions by mail or through electronic submissions and to dispense medication to covered individuals through the use of the United States mail or other common or contract carrier services and provides any consultation with covered individuals electronically rather than face-to-face.

"Pharmacy benefits manager" or "PBM" means a person that performs pharmacy benefits management. "Pharmacy benefits manager" includes a person acting for a PBM in a contractual or employment relationship in the performance of pharmacy benefits management for a carrier, nonprofit hospital, or third-party payor under a health program administered by the Commonwealth.

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

"Retail community pharmacy" means a pharmacy that is open to the public, serves walk-in customers, and makes available face-to-face consultations between licensed pharmacists and persons to whom medications are dispensed.

B. Every carrier shall, as applicable, (i) administer its health benefit plans in a manner consistent with the following criteria and (ii) include the following provisions in each provider contract addressing the provision of pharmacy benefits management that the carrier or the carrier's pharmacy benefits manager enters into with a pharmacy or the pharmacy's contracting agent:

1. Each covered individual shall be permitted to fill any mail order-covered prescription, at the covered individual's option, at any mail order pharmacy or network participating retail community pharmacy if the network participating retail community pharmacy agrees to accept a price that is comparable to that of the mail order pharmacy;

2. The PBM or carrier shall not impose a differential copayment, additional fee, or other condition on any covered individual who elects to fill his prescription at an in-network retail community pharmacy that is not similarly imposed on covered individuals electing to fill a prescription from a mail order pharmacy;

3. The PBM shall utilize the same benchmark index, including the same average wholesale price, maximum allowable cost, and national prescription drug codes, to reimburse all pharmacies participating in the health benefit plan regardless of whether a pharmacy is a mail order pharmacy or a retail community pharmacy; and

4. The PBM shall expressly disclose to the carrier in the contract if the PBM retains all or a greater portion of a drug manufacturer's rebate amount or any additional direct or indirect remuneration from any third party for drugs dispensed through the PBM-owned mail order pharmacy than the PBM does for drugs dispensed through a retail community pharmacy.

C. 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.

D. This section shall apply with respect to contracts with a PBM entered into, amended, extended, or renewed on or after January 1, 2020.

E. 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.

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59 *F. The Commission shall have no jurisdiction to adjudicate individual controversies arising out of*  
60 *this section.*

61 **§ 54.1-3420.2. Delivery of prescription drug order.**

62 A. Whenever any pharmacy permitted to operate in this Commonwealth or nonresident pharmacy  
63 registered to conduct business in the Commonwealth delivers a prescription drug order by mail, common  
64 carrier, or delivery service, when the drug order is not personally hand delivered directly, to the patient  
65 or his agent at the person's residence or other designated location, the following conditions shall be  
66 required:

67 1. Written notice shall be placed in each shipment alerting the consumer that under certain  
68 circumstances chemical degradation of drugs may occur; ~~and~~

69 2. Written notice shall be placed in each shipment providing a toll-free or local consumer access  
70 telephone number ~~which~~ *that* is designed to respond to consumer questions pertaining to chemical  
71 degradation of drugs; *and*

72 3. *For drugs requiring refrigeration, each shipment shall also include a means for the (i) detection*  
73 *of temperature variations that may cause chemical degradation of the drugs and (ii) notification of the*  
74 *patient of the variation.*

75 B. If a prescription drug order for a Schedule VI controlled substance is not personally hand  
76 delivered directly to the patient or the patient's agent, or if the prescription drug order is not delivered to  
77 the residence of the patient, the delivery location shall hold a current permit, license, or registration with  
78 the Board that authorizes the possession of controlled substances at that location. The Board shall  
79 promulgate regulations related to the security, access, required records, accountability, storage, and  
80 accuracy of delivery of such drug delivery systems. Schedule II through Schedule V controlled  
81 substances shall be delivered to an alternate delivery location only if such delivery is authorized by  
82 federal law and regulations of the Board.

83 C. Prescription drug orders dispensed to a patient and delivered to a community services board or  
84 behavioral health authority facility licensed by the Department of Behavioral Health and Developmental  
85 Services upon the signed written request of the patient or the patient's legally authorized representative  
86 may be stored, retained, and repackaged at the facility on behalf of the patient for subsequent delivery  
87 or administration. The repackaging of a dispensed prescription drug order retained by a community  
88 services board or behavioral health authority facility for the purpose of assisting a client with  
89 self-administration pursuant to this subsection shall only be performed by a pharmacist, pharmacy  
90 technician, nurse, or other person who has successfully completed a Board-approved training program  
91 for repackaging of prescription drug orders as authorized by this subsection. The Board shall promulgate  
92 regulations relating to training, packaging, labeling, and recordkeeping for such repackaging.

93 D. Prescription drug orders dispensed to a patient and delivered to a Virginia Department of Health  
94 or local health department clinic upon the signed written request of a patient, a patient's legally  
95 authorized representative, or a Virginia Department of Health district director or his designee may be  
96 stored and retained at the clinic on behalf of the patient for subsequent delivery or administration.

97 E. Prescription drug orders dispensed to a patient and delivered to a program of all-inclusive care for  
98 the elderly (PACE) site licensed by the Department of Social Services pursuant to § 63.2-1701 and  
99 overseen by the Department of Medical Assistance Services in accordance with § 32.1-330.3 upon the  
100 signed written request of the patient or the patient's legally authorized representative may be stored,  
101 retained, and repackaged at the site on behalf of the patient for subsequent delivery or administration.  
102 The repackaging of a dispensed prescription drug order retained by the PACE site for the purpose of  
103 assisting a client with self-administration pursuant to this subsection shall only be performed by a  
104 pharmacist, pharmacy technician, nurse, or other person who has successfully completed a  
105 Board-approved training program for repackaging of prescription drug orders as authorized by this  
106 subsection. The Board shall promulgate regulations relating to training, packaging, labeling, and  
107 recordkeeping for such repackaging.