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HOUSE BILL NO. 2223

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 31, 2019)

(Patron Prior to Substitute—Delegate O'Quinn)

A BILL 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.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 38.2-3407.15:5 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, calculated to reflect all drug manufacturer's rebates, direct and indirect administrative fees, costs and any remuneration;

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; and

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.

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.

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

HOUSE SUBSTITUTE

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