

Department of Planning and Budget 2019 Fiscal Impact Statement

1. Bill Number: HB2223

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: O'Quinn

3. Committee: Commerce and Labor

4. Title: Pharmacies; delivery of prescription drugs; pharmacy benefits managers.

5. Summary: Provides that whenever any pharmacy delivers a prescription drug order for which refrigeration is required by mail, common carrier, or delivery service, when the drug order is not personally hand-delivered directly to the patient or his agent at the person's residence or other designated location, the shipment shall include a means for the (i) detection of temperature variations that may cause chemical degradation of the drugs and (ii) notification of the patient of the variation. The measure also (a) requires a pharmacy benefits manager (PBM) or carrier to permit each covered individual 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; (b) prohibits the carrier or PBM from imposing a differential co-payment, 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; (c) requires the PBM to utilize the same benchmark index 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 (d) requires the PBM to 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. The measure applies with respect to contracts with a PBM entered into, amended, extended, or renewed on or after January 1, 2020.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Preliminary; fiscal impact is indeterminate. See Item 8.

8. Fiscal Implications: There is no fiscal impact for the State Corporation Commission or the Department of Health Professions. However, according to the Department of Human Resource Management (DHRM), the fiscal impact to the state employee health plan is indeterminate.

Department of Human Resource Management:

The bill provides that a covered individual may fill a mail-order covered prescription at a network participating retail pharmacy if the retail pharmacy accepts a price that is comparable to that of the mail order pharmacy. The bill also requires the pharmacy benefits manager to “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.” It is unknown how these requirements may affect the cost of prescriptions for the state employee health plan. The bill provides that requirements shall apply to contracts with a pharmacy benefits manager entered into, amended, extended, or renewed on or after January 1, 2020.

The bill also provides that differential copayments shall not be imposed on individuals electing to fill a prescription at an in-network retail pharmacy that are not similarly imposed on those electing to fill a prescription from a mail order pharmacy. According to DHRM, members in COVA Care, the largest state employee health insurance option, currently pay a lower copay for a 90 day supply of prescription drugs purchased through mail order than at participating retail pharmacies.

The provisions of the bill also require any drug requiring refrigeration that is delivered by mail, when not personally hand delivered directly to the patient, to include a means to detect the temperature variations during shipment and notify the patient of any variations. According to DHRM, there may also be an incremental cost associated with the inclusion of a measurement device to detect temperature variations in such shipments. However, an estimate of the number of applicable shipments and costs of such devices is not currently available.

The fiscal impact on state health insurance premiums cannot be determined and would depend on the cost of prescriptions negotiated pursuant to the requirements of the bill, prescription copayment levels that are imposed similarly for mail order and retail prescription delivery methods, as required by the bill, and the number of applicable refrigerated drug shipments requiring temperature monitoring devices.

- 9. Specific Agency or Political Subdivisions Affected:** State Corporation Commission Bureau of Insurance, Department of Health Professions, and Department of Human Resource Management.

- 10. Technical Amendment Necessary:** See Item 11.

- 11. Other Comments:** The fiscal impact statement has been revised to include the impact to the state health insurance plan.

The State Corporation Commission Bureau of Insurance advised the patron of House Bill 2223 that federal rules at 45 CFR 156.122 indicate that there may be instances in which certain prescriptions will not be available at a retail pharmacy: (i) The drug is subject to

restricted distribution by the U.S. Food and Drug Administration; or (ii) The drug requires special handling, provider coordination, or patient education that cannot be provided by a retail pharmacy. The bill does not contemplate the provision for these exceptions.

Proposed B 1 of Section 38.2-3407.15:5 of House Bill 2223 creates a conflict with the pharmacy freedom of choice provisions in Subsections 38.2-3407.7 F, 38.2-4209.1 F and 38.2-4312.1 F which allow a carrier to select a single mail order pharmacy provider as the exclusive provider of pharmacy services and not be subject to pharmacy freedom of choice provisions. Proposed B 1 beginning on Line 37 would render those subsections invalid because subsection B 1 allows a covered individual to fill any mail-order covered prescription at any mail order pharmacy.

Subsection C will render this bill not applicable to most fully-insured employer plans. The Bureau of Insurance advised the patron that employer plans can be ERISA plans and still be fully-insured. The Bureau advised that if the bill was not intended to apply to self-insured plans, the definition of “health benefit plan” should only mention the exclusion of Medicaid and Medicare Part D, not the Employee Retirement Income Security Act of 1974, on Line 54.