

## Department of Planning and Budget 2019 Fiscal Impact Statement

**1. Bill Number:** HB2223-H1

<b>House of Origin</b>	<input type="checkbox"/> Introduced	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<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:** Requires health carriers to administer its health benefit plans in a manner consistent with, and include in contracts for pharmacy benefits management, criteria and provisions that (i) permit a 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, calculated to reflect all drug manufacturer's rebates, direct and indirect administrative fees, costs and any remuneration; (ii) prohibit a pharmacy benefits manager (PBM) or carrier from imposing 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 (iii) require the PBM to use 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. The measure applies with respect to contracts entered into, amended, extended, or renewed on or after January 1, 2020.

**6. Budget Amendment Necessary:** No.

**7. Fiscal Impact Estimates:** 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 any mail order pharmacy or 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 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 and prescription copayment levels that are imposed similarly for mail order and retail prescription delivery methods, as required by the bill.

- 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 State Corporation Commission Bureau of Insurance notes 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. This 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 notes that employer plans can be ERISA plans and still be fully-insured. The Bureau advises 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.