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HOUSE BILL NO. 2219

Offered January 13, 2021

Prefiled January 13, 2021

A *BILL to amend and reenact § 38.2-4312.1 of the Code of Virginia, relating to pharmacies; freedom of choice.*

Patron—Hodges

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-4312.1 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-4312.1. Pharmacies; freedom of choice.

A. Notwithstanding any other provision in this chapter, no *carrier, as defined in § 38.2-3465, or health maintenance organization providing health care plans, or its pharmacy benefits manager, as defined in § 38.2-3465*, shall prohibit any person receiving *retail, mail order, or specialty* pharmaceutical benefits thereunder from selecting, without limitation, the pharmacy of his choice to furnish such benefits. This right of selection extends to and includes any pharmacy that is not a participating provider under any such health care plan and that has previously notified the *carrier, pharmacy benefits manager, or health maintenance organization* on its own behalf or through an intermediary, by facsimile or otherwise, of its agreement to accept reimbursement for its services at rates applicable to pharmacies that are participating providers, including any copayment consistently imposed by the plan, as payment in full. Each *carrier, pharmacy benefits manager, or health maintenance organization* shall permit prompt electronic or telephonic transmittal of the reimbursement agreement by the pharmacy and ensure prompt verification to the pharmacy of the terms of reimbursement. In no event shall any person receiving a covered pharmacy benefit from a nonparticipating provider ~~which~~ that has submitted a reimbursement agreement be responsible for amounts that may be charged by the nonparticipating provider in excess of the copayment and the health maintenance organization's reimbursement applicable to all of its participating pharmacy providers. If a pharmacy has provided notice pursuant to this subsection through an intermediary, the *carrier, pharmacy benefits manager, or health maintenance organization* or its intermediary may elect to respond directly to the pharmacy instead of the intermediary. Nothing in this subsection shall (i) require a *carrier, pharmacy benefits manager, or health maintenance organization* or its intermediary to contract with or to disclose confidential information to a pharmacy's intermediary or (ii) prohibit a health maintenance organization or its intermediary from contracting with or disclosing confidential information to a pharmacy's intermediary.

B. No such *carrier, pharmacy benefits manager, or health maintenance organization* shall impose upon any person receiving pharmaceutical benefits furnished under any such health care plan:

1. Any copayment, fee or condition that is not equally imposed upon all individuals in the same benefit category, class or copayment level, whether or not such benefits are furnished by pharmacists who are not participating providers;

2. Any monetary penalty that would affect or influence any such person's choice of pharmacy; or

3. Any reduction in allowable reimbursement for pharmacy services related to utilization of pharmacists who are not participating providers.

C. For purposes of this section, a prohibited condition or penalty shall include, without limitation: (i) denying immediate access to electronic claims filing to a pharmacy that is a nonparticipating provider and that has complied with subsection E or (ii) requiring a person receiving pharmacy benefits to make payment at point of service, except to the extent such conditions and penalties are similarly imposed on participating providers.

D. The provisions of this section are not applicable to any pharmaceutical benefit covered by a health care plan when those benefits are obtained from a pharmacy wholly owned and operated by, or exclusively operated for, the health maintenance organization providing the health care plan.

E. Any pharmacy that wishes to be covered by this section shall, if requested to do so in writing by a *carrier, pharmacy benefits manager, or health maintenance organization*, within 30 days of the pharmacy's receipt of the request, execute and deliver to the *carrier, pharmacy benefits manager, or health maintenance organization* the direct service agreement or participating provider agreement that the *carrier, pharmacy benefits manager, or health maintenance organization* requires all of its participating providers of pharmacy benefits to execute. Any pharmacy that fails to timely execute and deliver such agreement shall not be covered by this section with respect to that *carrier, pharmacy benefits manager, or health maintenance organization* unless and until the pharmacy executes and delivers the agreement.

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59 *No pharmacy shall be precluded from obtaining a direct service agreement or participating provider*
60 *agreement for any, some, or all service lines, including retail, mail order, or specialty pharmacy, if the*
61 *pharmacy meets the terms and conditions of participation. Any request by a pharmacy for a direct*
62 *service agreement or a participating provider agreement shall be acted upon by a carrier, pharmacy*
63 *benefits manager, or health maintenance organization within 30 days of receipt of the pharmacy's*
64 *request or any subsequent submission of supplemental information if requested by the carrier, pharmacy*
65 *benefits manager, or health maintenance organization.*

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

67 G. Nothing in this section shall limit the authority of a health maintenance organization providing
68 health care plans to select a single mail order pharmacy provider as the exclusive provider of pharmacy
69 services that are delivered to the covered person's address by mail, common carrier, or delivery service.
70 The provisions of this section shall not apply to such contracts. As used in this subsection, "mail order
71 pharmacy provider" means a pharmacy permitted to conduct business in the Commonwealth whose
72 primary business is to dispense a prescription drug or device under a prescriptive drug order and to
73 deliver the drug or device to a patient primarily by mail, common carrier, or delivery service.