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HOUSE BILL NO. 2219

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on February 2, 2021)

(Patron Prior to Substitute—Delegate Hodges)

A BILL to amend and reenact §§ 38.2-3407.7, 38.2-4209.1, and 38.2-4312.1 of the Code of Virginia, relating to pharmacies; freedom of choice.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3407.7, 38.2-4209.1, and 38.2-4312.1 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-3407.7. Pharmacies; freedom of choice.

A. Notwithstanding any provision of § 38.2-3407 to the contrary, no insurer or its pharmacy benefits manager, as defined in § 38.2-3465, proposing to issue either preferred provider policies or contracts or exclusive provider policies or contracts shall prohibit any person receiving pharmacy benefits, including specialty pharmacy benefits, furnished 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 a nonpreferred or nonparticipating provider and that has previously notified the insurer 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 preferred or participating providers, including any copayment consistently imposed by the insurer, as payment in full. Each insurer or its pharmacy benefits manager 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 nonpreferred or nonparticipating provider which that has submitted a reimbursement agreement be responsible for amounts that may be charged by the nonpreferred or nonparticipating provider in excess of the copayment and the insurer's reimbursement applicable to all of its preferred or participating pharmacy providers. If a pharmacy has provided notice pursuant to this subsection through an intermediary, the insurer or its intermediary may elect to respond directly to the pharmacy instead of the intermediary. Nothing in this subsection shall (i) require an insurer or its intermediary to contract with or to disclose confidential information to a pharmacy's intermediary or (ii) prohibit an insurer or its intermediary from contracting with or disclosing confidential information to a pharmacy's intermediary.

B. No such insurer or its pharmacy benefits manager shall impose upon any person receiving pharmaceutical benefits furnished under any such policy or contract:

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 nonpreferred or nonparticipating 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 nonpreferred or nonparticipating 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 nonpreferred or nonparticipating provider and that has complied with subsection D 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 preferred or participating providers.

D. Any pharmacy that wishes to be covered by this section shall, if requested to do so in writing by an insurer or its pharmacy benefits manager, within 30 days of the pharmacy's receipt of the request, execute and deliver to the insurer or its pharmacy benefits manager the direct service agreement or preferred or participating provider agreement that the insurer requires all of its preferred or 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 insurer or its pharmacy benefits manager unless and until the pharmacy executes and delivers the agreement. No pharmacy shall be precluded from obtaining a direct service agreement or participating provider agreement for retail and specialty pharmacy if the pharmacy meets the terms and conditions of participation. Any request by a pharmacy for a direct service agreement or a participating provider agreement shall be acted upon by an insurer or its pharmacy benefits manager within 60 days of receipt of the pharmacy's request or any subsequent submission of supplemental information if requested by the insurer or its pharmacy benefits manager.

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

F. Nothing in this section shall limit the authority of an insurer proposing to issue preferred provider

60 policies or contracts or exclusive provider policies or contracts to select a single mail order pharmacy
61 provider as the exclusive provider of pharmacy services that are delivered to the covered person's
62 address by mail, common carrier, or delivery service. The provisions of this section shall not apply to
63 such contracts. As used in this subsection, "mail order pharmacy provider" means a pharmacy permitted
64 to conduct business in the Commonwealth whose primary business is to dispense a prescription drug or
65 device under a prescriptive drug order and to deliver the drug or device to a patient primarily by mail,
66 common carrier, or delivery service.

67 **§ 38.2-4209.1. Pharmacies; freedom of choice.**

68 A. Notwithstanding any provision of § 38.2-4209, no corporation providing preferred provider
69 subscription contracts *or its pharmacy benefits manager, as defined in § 38.2-3465*, shall prohibit any
70 person receiving pharmaceutical benefits, *including specialty pharmacy benefits*, thereunder from
71 selecting, without limitation, the pharmacy of his choice to furnish such benefits. This right of selection
72 extends to and includes pharmacies that are nonpreferred providers and that have previously notified the
73 corporation *or its pharmacy benefits manager*, by facsimile or otherwise, of their agreement to accept
74 reimbursement for their services at rates applicable to pharmacies that are preferred providers, including
75 any copayment consistently imposed by the corporation, as payment in full. Each corporation *or its*
76 *pharmacy benefits manager* shall permit prompt electronic or telephonic transmittal of the reimbursement
77 agreement by the pharmacy and ensure payment verification to the pharmacy of the terms of
78 reimbursement. In no event shall any person receiving a covered pharmacy benefit from a nonpreferred
79 provider ~~which~~ *that* has submitted a reimbursement agreement be responsible for amounts that may be
80 charged by the nonpreferred provider in excess of the copayment and the corporation's reimbursement
81 applicable to all of its preferred pharmacy providers.

82 B. No such corporation *or its pharmacy benefits manager* shall impose upon any person receiving
83 pharmaceutical benefits furnished under any such contract:

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

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

88 3. Any reduction in allowable reimbursement for pharmacy services related to utilization of
89 pharmacists who are nonpreferred providers.

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

95 D. Any pharmacy that wishes to be covered by this section shall, if requested to do so in writing by
96 a corporation *or its pharmacy benefits manager*, within 30 days of the pharmacy's receipt of the request,
97 execute and deliver to the corporation *or its pharmacy benefits manager* the direct service agreement or
98 preferred provider agreement that the corporation requires all of its preferred providers of pharmacy
99 benefits to execute. Any pharmacy that fails to timely execute and deliver such agreement shall not be
100 covered by this section with respect to that corporation *or its pharmacy benefits manager* unless and
101 until the pharmacy executes and delivers the agreement. *No pharmacy shall be precluded from obtaining*
102 *a direct service agreement or participating provider agreement for any retail and specialty pharmacy if*
103 *the pharmacy meets the terms and conditions of participation. Any request by a pharmacy for a direct*
104 *service agreement or a participating provider agreement shall be acted upon by a corporation or its*
105 *pharmacy benefits manager within 60 days of receipt of the pharmacy's request or any subsequent*
106 *submission of supplemental information if requested by the corporation or its pharmacy benefits*
107 *manager.*

108 E. The Commission shall have no jurisdiction to adjudicate controversies arising out of this section.

109 F. Nothing in this section shall limit the authority of a corporation issuing preferred provider policies
110 or contracts to select a single mail order pharmacy provider as the exclusive provider of pharmacy
111 services that are delivered to the covered person's address by mail, common carrier, or delivery service.
112 The provisions of this section shall not apply to such contracts. As used in this subsection, "mail order
113 pharmacy provider" means a pharmacy permitted to conduct business in the Commonwealth whose
114 primary business is to dispense a prescription drug or device under a prescriptive drug order and to
115 deliver the drug or device to a patient primarily by mail, common carrier, or delivery service.

116 **§ 38.2-4312.1. Pharmacies; freedom of choice.**

117 A. Notwithstanding any other provision in this chapter, no health maintenance organization providing
118 health care plans, *or its pharmacy benefits manager, as defined in § 38.2-3465*, shall prohibit any person
119 receiving pharmaceutical benefits, *including specialty pharmacy benefits*, thereunder from selecting,
120 without limitation, the pharmacy of his choice to furnish such benefits. This right of selection extends to
121 and includes any pharmacy that is not a participating provider under any such health care plan and that

has previously notified the health maintenance organization *or its pharmacy benefits manager* 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 health maintenance organization *or its pharmacy benefits manager* 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 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 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 health maintenance organization *or its pharmacy benefits manager* 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 health maintenance organization *or its pharmacy benefits manager*, within 30 days of the pharmacy's receipt of the request, execute and deliver to the health maintenance organization *or its pharmacy benefits manager*, the direct service agreement or participating provider agreement that the health maintenance organization *or its pharmacy benefits manager* 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 health maintenance organization *or its pharmacy benefits manager* unless and until the pharmacy executes and delivers the agreement. *No pharmacy shall be precluded from obtaining a direct service agreement or participating provider agreement for retail and specialty pharmacy if the pharmacy meets the terms and conditions of participation. Any request by a pharmacy for a direct service agreement or a participating provider agreement shall be acted upon by a health maintenance organization or its pharmacy benefits manager within 60 days of receipt of the pharmacy's request or any subsequent submission of supplemental information if requested by the health maintenance organization or its pharmacy benefits manager.*

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

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