LD2084364

HOUSE BILL NO. 2304

Offered January 23, 1995

A BILL to amend and reenact §§ 38.2-3407.7, 38.2-3407.8, 38.2-4209.1, 38.2-4209.2, 38.2-4312.1, and 38.2-4312.2 of the Code of Virginia, relating to pharmacies and ancillary service providers; freedom of choice.

Patrons—Morgan, Abbitt, Armstrong, Bennett, Bloxom, Callahan, Cooper, Cox, Cranwell, Darner, Davies, Dickinson, Dudley, Hargrove, Jackson, Johnson, Jones, J.C., Keating, Moore, Nixon, Parrish, Plum, Putney, Reynolds, Rhodes, Robinson, Ruff, Stump, Thomas, Van Yahres and Way; Senators: Cross, Holland, R.J., Lucas, Saslaw, Trumbo and Waddell

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Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3407.7, 38.2-3407.8, 38.2-4209.1, 38.2-4209.2, 38.2-4312.1, and 38.2-4312.2 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 proposing to issue preferred provider policies or contracts shall prohibit any person receiving 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 pharmacies that are nonpreferred providers and that ~~agree~~ *have previously notified the insurer, by facsimile or otherwise, of their agreement* to accept reimbursement for their services at rates applicable to pharmacies that are preferred providers, *including any copayment consistently imposed by the insurer, as payment in full. Each insurer shall establish a system to permit prompt electronic or telephonic transmittal of the reimbursement agreement by the pharmacy and to 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 provider which has submitted a reimbursement agreement be responsible for amounts that may be charged by the nonpreferred provider in excess of the copayment and the insurer's reimbursement applicable to all of its preferred pharmacy providers*.

B. No such insurer 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 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 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 which is a nonpreferred provider and which has complied with subsection D below; 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 providers.

D. Any pharmacy which wishes to be covered by this section shall, if requested to do so in writing by an insurer, within thirty days of the pharmacy's receipt of the request, execute and deliver to the insurer the direct service agreement or preferred provider agreement which the insurer requires all of its preferred providers of pharmacy benefits to execute. Any pharmacy which fails to timely execute and deliver such agreement shall not be covered by this section with respect to that insurer unless and until the pharmacy executes and delivers the agreement.

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

§ 38.2-3407.8. Ancillary service providers; freedom of choice.

A. Notwithstanding any provision of § 38.2-3407 to the contrary, no insurer proposing to issue preferred provider policies or contracts shall prohibit any person receiving ancillary service benefits furnished thereunder from selecting, without limitation, the ancillary service provider of his choice to furnish such benefits. This right of selection extends to and includes ancillary service providers that are nonpreferred providers and that ~~agree~~ *have previously notified the insurer, by facsimile or otherwise, of their agreement* to accept reimbursement for their services at rates applicable to ancillary service providers that are preferred providers, *including any copayment consistently imposed by the insurer, as*

payment in full. Each insurer shall establish a system to permit prompt electronic or telephonic transmittal of the reimbursement agreement by the ancillary service provider and to ensure prompt verification to the provider of the terms of reimbursement. In no event shall any person receiving a covered ancillary service benefit from a nonpreferred provider which has submitted a reimbursement agreement be responsible for amounts that may be charged by the nonpreferred provider in excess of the copayment and the insurer's reimbursement applicable to all of its preferred providers.

B. No such insurer shall impose upon any person receiving ancillary service 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 ancillary service providers who are nonpreferred providers;

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

3. Any reduction in allowable reimbursement for ancillary services related to utilization of ancillary service providers who are nonpreferred providers.

C. For the purposes of this section:

1. "Ancillary services" means ~~those~~ *only the following* services required to support, facilitate or otherwise enhance medical care and treatment~~.~~*:* ~~Such services include, but are not limited to,~~ *(i)* the furnishing of medical equipment required for therapeutic purposes or life support; *(ii) home health care and home infusion services delivered or arranged by a licensed home health agency or pharmacy; (iii) magnetic resonance imaging, computed tomography, ultrasound, mammography and diagnostic x-ray services; and (iv) independent clinical laboratory services delivered outside of a physician's office; provided that, nothing herein shall excuse compliance with § 54.1-2411 of the Practitioner Self-Referral Act.*

2. "Ancillary service provider" and "ancillary service providers" mean a person or persons providing ancillary services.

D. Any ancillary service provider which wishes to be covered by this section shall, if requested to do so in writing by an insurer, within thirty days of the ancillary service provider's receipt of the request, execute and deliver to the insurer the direct service agreement or preferred provider agreement which the insurer requires all of its preferred providers of such ancillary services to execute. Any ancillary service provider which fails to timely execute and deliver such agreement shall not be covered by this section with respect to that insurer unless and until the ancillary service provider executes and delivers the agreement.

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

§ 38.2-4209.1. Pharmacies; freedom of choice.

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

B. No such corporation shall impose upon any person receiving pharmaceutical benefits furnished under any such 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 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 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 which is a nonpreferred provider and which has complied with subsection D below 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 providers.

D. Any pharmacy which wishes to be covered by this section shall, if requested to do so in writing by a corporation, within thirty days of the pharmacy's receipt of the request, execute and deliver to the corporation the direct service agreement or preferred provider agreement which the corporation requires all of its preferred providers of pharmacy benefits to execute. Any pharmacy which fails to timely execute and deliver such agreement shall not be covered by this section with respect to that corporation unless and until the pharmacy executes and delivers the agreement.

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

§ 38.2-4209.2. Ancillary service providers; freedom of choice.

A. Notwithstanding any provision of § 38.2-4209, no corporation providing preferred provider subscription contracts shall prohibit any person receiving ancillary service benefits thereunder from selecting, without limitation, the ancillary service provider of his choice to furnish such benefits. This right of selection extends to and includes ancillary service providers that are nonpreferred providers and that ~~agree~~ *have previously notified the corporation, by facsimile or otherwise, of their agreement* to accept reimbursement for their services at rates applicable to ancillary service providers that are preferred providers, *including any copayment consistently imposed by the corporation, as payment in full. Each corporation shall establish a system to permit prompt electronic or telephonic transmittal of the reimbursement agreement by the ancillary service provider and to ensure prompt verification to the provider of the terms of reimbursement. In no event shall any person receiving a covered ancillary service benefit from a nonpreferred provider which has submitted a reimbursement agreement be responsible for amounts that may be charged by the nonpreferred provider in excess of the copayment and the corporation's reimbursement applicable to all of its preferred providers.*

B. No such corporation shall impose upon any person receiving ancillary service benefits furnished under any such 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 ancillary service providers who are nonpreferred providers;

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

3. Any reduction in allowable reimbursement for ancillary services related to utilization of ancillary service providers who are nonpreferred providers.

C. For the purposes of this section:

1. "Ancillary services" means ~~those~~ *only the following* services required to support, facilitate or otherwise enhance medical care and treatment~~. Such services include, but are not limited to,~~ *: (i)* the furnishing of medical equipment required for therapeutic purposes or life support; *(ii) home health care and home infusion services delivered or arranged by a licensed home health agency or pharmacy; (iii) magnetic resonance imaging, computed tomography, ultrasound, mammography and diagnostic x-ray services; and (iv) independent clinical laboratory services delivered outside of a physician's office; provided that, nothing herein shall excuse compliance with § 54.1-2411 of the Practitioner Self-Referral Act.*

2. "Ancillary service provider" and "ancillary service providers" mean a person or persons providing ancillary services.

D. Any ancillary service provider which wishes to be covered by this section shall, if requested to do so in writing by such a corporation, within thirty days of the ancillary service provider's receipt of the request, execute and deliver to the corporation the direct service agreement or preferred provider agreement which the corporation requires all of its preferred providers of such ancillary services to execute. Any ancillary service provider which fails timely to execute and deliver such agreement shall not be covered by this section with respect to that corporation unless and until the ancillary service provider executes and delivers the agreement.

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

§ 38.2-4312.1. Pharmacies; freedom of choice.

A. Notwithstanding any other provision in this chapter, no health maintenance organization providing health care plans shall prohibit any person receiving pharmaceutical benefits thereunder from selecting, without limitation, the pharmacy of his choice to furnish such benefits. This right of selection extends to and includes pharmacies that are not participating providers under any such health care plan and that ~~agree~~ *have previously notified the health maintenance organization, by facsimile or otherwise, of their agreement* to accept reimbursement for their 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 shall establish a system to permit prompt electronic or telephonic transmittal of the reimbursement agreement by the pharmacy and to 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 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.

B. No such 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 which is a nonparticipating provider and which has complied with subsection E below 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.

~~C.~~ *D.* The provisions of this section are not applicable to any health care plan whose terms require exclusive utilization of pharmacies wholly owned and operated by the health maintenance organization providing the health care plan.

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

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

§ 38.2-4312.2. Ancillary service providers; freedom of choice.

A. Notwithstanding any other provision in this chapter, no health maintenance organization providing health care plans shall prohibit any person receiving ancillary service benefits thereunder from selecting, without limitation, the ancillary service provider of his choice to furnish such benefits. This right of selection extends to and includes ancillary service providers that are not participating providers under any such health care plan and that ~~agree~~ *have previously notified the health maintenance organization, by facsimile or otherwise, of their agreement* to accept reimbursement for their services at rates applicable to ancillary service providers that are participating providers, *including any copayment consistently imposed by the plan, as payment in full. Each health maintenance organization shall establish a system to permit prompt electronic or telephonic transmittal of the reimbursement agreement by the ancillary service provider and to ensure prompt verification to the provider of the terms of reimbursement. In no event shall any person receiving a covered ancillary service benefit from a nonparticipating provider which 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 providers.*

B. No such health maintenance organization shall impose upon any person receiving ancillary services 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 ancillary service providers who are not participating providers;

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

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

C. For the purposes of this section:

1. "Ancillary services" means ~~those~~ *only the following* services required to support, facilitate or otherwise enhance medical care and treatment~~.~~ ~~Such services include, but are not limited to,~~ *: (i)* the furnishing of medical equipment required for therapeutic purposes or life support; *(ii) home health care and home infusion services delivered or arranged by a licensed home health agency or pharmacy; (iii) magnetic resonance imaging, computed tomography, ultrasound, mammography and diagnostic x-ray services; and (iv) independent clinical laboratory services delivered outside of a physician's office; provided that, nothing herein shall excuse compliance with § 54.1-2411 of the Practitioner Self-Referral*

Act.

2. "Ancillary service provider" and "ancillary service providers" mean a person or persons providing ancillary services.

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

~~D.~~ *E.* The provisions of this section are not applicable to any health care plan whose terms require exclusive utilization of ancillary service providers wholly owned and operated by the health maintenance organization providing the health care plan.

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