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HOUSE BILL NO. 1450

Offered January 11, 2017

Prefiled December 2, 2016

A BILL to amend and reenact §§ 38.2-3407.7 and 38.2-4312.1 of the Code of Virginia, relating to pharmacy freedom of choice; pharmacy's intermediary.

Patron—Ware

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3407.7 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 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 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 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 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. *If a pharmacy's intermediary notifies an insurer or its intermediary, by facsimile or otherwise, of the pharmacy's agreement to accept reimbursement for its services at rates applicable to pharmacies that are preferred providers, including any copayment consistently imposed by the insurer, as payment in full, the insurer or its intermediary shall respond to such notice in the same manner as it is required herein to respond to a notice received from the pharmacy. Nothing in this subsection shall require an insurer or its intermediary to contract with a pharmacy's intermediary, nor shall it prohibit an insurer or its intermediary from contracting with a pharmacy's intermediary.*

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 that is a nonpreferred 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 providers.

D. Any pharmacy that wishes to be covered by this section shall, if requested to do so in writing by an insurer, within 30 days of the pharmacy's receipt of the request, execute and deliver to the insurer the direct service agreement or preferred provider agreement that the insurer requires all of its preferred 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 unless and until the pharmacy executes and delivers the agreement.

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 policies or contracts 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

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59 drug order and to deliver the drug or device to a patient primarily by mail, common carrier, or delivery
60 service.

61 **§ 38.2-4312.1. Pharmacies; freedom of choice.**

62 A. Notwithstanding any other provision in this chapter, no health maintenance organization providing
63 health care plans shall prohibit any person receiving pharmaceutical benefits thereunder from selecting,
64 without limitation, the pharmacy of his choice to furnish such benefits. This right of selection extends to
65 and includes pharmacies that are not participating providers under any such health care plan and that
66 have previously notified the health maintenance organization, by facsimile or otherwise, of their
67 agreement to accept reimbursement for their services at rates applicable to pharmacies that are
68 participating providers, including any copayment consistently imposed by the plan, as payment in full.
69 Each health maintenance organization shall permit prompt electronic or telephonic transmittal of the
70 reimbursement agreement by the pharmacy and ensure prompt verification to the pharmacy of the terms
71 of reimbursement. In no event shall any person receiving a covered pharmacy benefit from a
72 nonparticipating provider which has submitted a reimbursement agreement be responsible for amounts
73 that may be charged by the nonparticipating provider in excess of the copayment and the health
74 maintenance organization's reimbursement applicable to all of its participating pharmacy providers. *If a*
75 *pharmacy's intermediary notifies a health maintenance organization or its intermediary, by facsimile or*
76 *otherwise, of the pharmacy's agreement to accept reimbursement for its services at rates applicable to*
77 *pharmacies that are preferred providers, including any copayment consistently imposed by the health*
78 *maintenance organization, as payment in full, the health maintenance organization or its intermediary*
79 *shall respond to such notice in the same manner as it is required herein to respond to a notice received*
80 *from the pharmacy. Nothing in this subsection shall require a health maintenance organization or its*
81 *intermediary to contract with a pharmacy's intermediary, nor shall it prohibit a health maintenance*
82 *organization or its intermediary from contracting with a pharmacy's intermediary.*

83 B. No such health maintenance organization shall impose upon any person receiving pharmaceutical
84 benefits furnished under any such health care plan:

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

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

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

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

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

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

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

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