

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 674

An Act to amend and reenact § 38.2-3407.7 of the Code of Virginia, relating to health insurance; pharmacies; freedom of choice.

[S 1197]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3407.7 of the Code of Virginia is 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 *either* preferred provider policies or contracts *or exclusive 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 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 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 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 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, within 30 days of the pharmacy's receipt of the request, execute and deliver to the insurer 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 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 *or exclusive 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 drug order and to deliver the drug or device to a patient primarily by mail, common carrier, or delivery service.