

State Corporation Commission 2019 Fiscal Impact Statement

1. Bill Number: HB2223

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: O'Quinn

3. Committee: Health, Welfare and Institutions

4. Title: Pharmacies; delivery of prescription drugs; pharmacy benefits managers.

5. Summary: Provides that whenever any pharmacy delivers a prescription drug order for which refrigeration is required by mail, common carrier, or delivery service, when the drug order is not personally hand-delivered directly to the patient or his agent at the person's residence or other designated location, the shipment shall include a means for the (i) detection of temperature variations that may cause chemical degradation of the drugs and (ii) notification of the patient of the variation. The measure also (a) requires a pharmacy benefits manager (PBM) or carrier to permit each covered individual to fill any mail order-covered prescription, at the covered individual's option, at any mail order pharmacy or network participating retail community pharmacy if the network participating retail community pharmacy agrees to accept a price that is comparable to that of the mail order pharmacy; (b) prohibits the carrier or PBM from imposing a differential co-payment, additional fee, or other condition on any covered individual who elects to fill his prescription at an in-network retail community pharmacy that is not similarly imposed on covered individuals electing to fill a prescription from a mail order pharmacy; (c) requires the PBM to utilize the same benchmark index to reimburse all pharmacies participating in the health benefit plan regardless of whether a pharmacy is a mail order pharmacy or a retail community pharmacy; and (d) requires the PBM to disclose to the carrier in the contract if the PBM retains all or a greater portion of a drug manufacturer's rebate amount or any additional direct or indirect remuneration from any third party for drugs dispensed through the PBM-owned mail order pharmacy than the PBM does for drugs dispensed through a retail community pharmacy. The measure applies with respect to contracts with a PBM entered into, amended, extended, or renewed on or after January 1, 2020.

6. Budget amendment necessary: No

7. Fiscal Impact Estimates: No Fiscal Impact on the State Corporation Commission

8. Fiscal Implications: None on the State Corporation Commission or the Department of Health Professions.

9. Specific agency or political subdivisions affected: State Corporation Commission Bureau of Insurance and the Department of Health Professions;

10. Technical amendment necessary: See Item 11.

11. Other comments: The State Corporation Commission Bureau of Insurance advised the patron of House Bill 2223 that federal rules at 45 CFR 156.122 indicate that there may be instances in which certain prescriptions will not be available at a retail pharmacy: (i) The drug is subject to restricted distribution by the U.S. Food and Drug Administration; or (ii) The drug requires special handling, provider coordination, or patient education that cannot be provided by a retail pharmacy. The bill does not contemplate the provision for these exceptions.

Proposed B 1 of Section 38.2-3407.15:5 of House Bill 2223 creates a conflict with the pharmacy freedom of choice provisions in Subsections 38.2-3407.7 F, 38.2-4209.1 F and 38.2-4312.1 F which allow a carrier to select a single mail order pharmacy provider as the exclusive provider of pharmacy services and not be subject to pharmacy freedom of choice provisions. Proposed B 1 beginning on Line 37 would render those subsections invalid because subsection B 1 allows a covered individual to fill any mail-order covered prescription at any mail order pharmacy.

Subsection C will render this bill not applicable to most fully-insured employer plans. The Bureau of Insurance advised the patron that employer plans can be ERISA plans and still be fully-insured. The Bureau advised that if the bill was not intended to apply to self-insured plans, the definition of “health benefit plan” should only mention the exclusion of Medicaid and Medicare Part D, not the Employee Retirement Income Security Act of 1974, on Line 54.

Date: 01/23/19/V. Tompkins