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SENATE BILL NO. 867

Offered January 9, 2013

Prefiled January 3, 2013

A *BILL to amend and reenact § 38.2-4319, as it is currently effective and as it shall become effective, of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3418.18, relating to health insurance coverage for certain low protein foods for individuals diagnosed as having phenylketonuria.*

Patron—Edwards

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-4319, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-3418.18 as follows:

§ 38.2-3418.18. Coverage for certain low protein foods for individuals diagnosed as having phenylketonuria.

A. Notwithstanding the provisions of § 38.2-3419, each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each corporation providing individual or group accident and sickness subscription contracts; and each health maintenance organization providing a health care plan for health care services, whose policy, contract, or plan, including any certificate or evidence of coverage issued in connection with such policy, contract, or plan, includes coverage for prescription drugs on an outpatient basis shall provide coverage thereunder for any low protein (low phenylalanine) foods prescribed for treatment of phenylketonuria and approved by the U.S. Food and Drug Administration for such purpose.

B. For the purposes of this section, prescription drugs shall be deemed to include low protein (low phenylalanine) foods prescribed for the treatment of phenylketonuria; however, low protein (low phenylalanine) foods shall not include commercial food products that may be low in protein but have not been developed for the treatment of phenylketonuria.

C. No insurer, corporation, or health maintenance organization shall impose upon any person receiving benefits for any low protein (low phenylalanine) food pursuant to this section any (i) copayment, coinsurance payment, or fee that is not equally imposed upon all individuals in the same benefit category, class, coinsurance level, or copayment level receiving benefits for prescription drugs or (ii) reduction in allowable reimbursement for prescription drug benefits.

D. The provisions of subsection A shall not be construed to:

1. Require coverage for prescription coverage benefits in any contract, policy, or plan that does not otherwise provide coverage for prescription drugs;

2. Preclude the use of closed formularies; however, such formularies shall include low protein (low phenylalanine) foods; or

3. Require coverage for experimental drugs for the treatment of phenylketonuria which are not approved by the U.S. Food and Drug Administration.

E. The requirements of this section shall apply to all insurance policies, contracts, and plans delivered, issued for delivery, reissued, or extended in the Commonwealth on and after January 1, 2014, or at any time thereafter when any term of the policy, contract, or plan is changed or any premium adjustment is made.

F. The provisions of this section shall not apply to short-term travel, accident-only, limited or specified disease policies, or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans, or to short-term nonrenewable policies of not more than six months' duration.

§ 38.2-4319. (Effective until July 1, 2014) Statutory construction and relationship to other laws.

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1, Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.)

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59 of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800
60 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3406.1, 38.2-3407.2 through 38.2-3407.6:1,
61 38.2-3407.9 through 38.2-3407.18, 38.2-3411.2, 38.2-3411.3, 38.2-3411.4, 38.2-3412.1:01, 38.2-3414.1,
62 38.2-3418.1 through ~~38.2-3418.17~~ 38.2-3418.18, 38.2-3419.1, 38.2-3430.1 through 38.2-3446, 38.2-3500,
63 subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1
64 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.1, 38.2-3541.2, 38.2-3542,
65 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 35.1 (§ 38.2-3556 et seq.), Chapter
66 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall
67 be applicable to any health maintenance organization granted a license under this chapter. This chapter
68 shall not apply to an insurer or health services plan licensed and regulated in conformance with the
69 insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health
70 maintenance organization.

71 B. For plans administered by the Department of Medical Assistance Services that provide benefits
72 pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title
73 except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136,
74 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229,
75 38.2-232, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through
76 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1,
77 Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et
78 seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et
79 seq.) of Chapter 14, §§ 38.2-3401, 38.2-3405, 38.2-3407.2 through 38.2-3407.5, 38.2-3407.6 and
80 38.2-3407.6:1, 38.2-3407.9, 38.2-3407.9:01, and 38.2-3407.9:02, subdivisions F 1, F 2, and F 3 of
81 § 38.2-3407.10, §§ 38.2-3407.11, 38.2-3407.11:3, 38.2-3407.13, 38.2-3407.13:1, 38.2-3407.14,
82 38.2-3411.2, 38.2-3418.1, 38.2-3418.2, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500,
83 subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1
84 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Chapter
85 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall
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87 shall not apply to an insurer or health services plan licensed and regulated in conformance with the
88 insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health
89 maintenance organization.

90 C. Solicitation of enrollees by a licensed health maintenance organization or by its representatives
91 shall not be construed to violate any provisions of law relating to solicitation or advertising by health
92 professionals.

93 D. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful
94 practice of medicine. All health care providers associated with a health maintenance organization shall
95 be subject to all provisions of law.

96 E. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health
97 maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to
98 offer coverage to or accept applications from an employee who does not reside within the health
99 maintenance organization's service area.

100 F. For purposes of applying this section, "insurer" when used in a section cited in subsections A and
101 B shall be construed to mean and include "health maintenance organizations" unless the section cited
102 clearly applies to health maintenance organizations without such construction.

103 **§ 38.2-4319. (Effective July 1, 2014) Statutory construction and relationship to other laws.**

104 A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this
105 chapter, §§ 38.2-100, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218
106 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through
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108 §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1, Article 2 (§ 38.2-1306.2 et seq.),
109 § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.), and 5 (§ 38.2-1322 et seq.)
110 of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800
111 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3406.1, 38.2-3407.2 through 38.2-3407.6:1,
112 38.2-3407.9 through 38.2-3407.18, 38.2-3411.2, 38.2-3411.3, 38.2-3411.4, 38.2-3412.1:01, 38.2-3414.1,
113 38.2-3418.1 through ~~38.2-3418.17~~ 38.2-3418.18, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500,
114 subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1
115 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.1, 38.2-3541.2, 38.2-3542,
116 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55
117 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and § 38.2-5903 shall be applicable to any
118 health maintenance organization granted a license under this chapter. This chapter shall not apply to an
119 insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter
120 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

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