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HOUSE BILL NO. 332

Offered January 10, 2018

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A *BILL to amend and reenact § 2.2-2818 of the Code of Virginia, relating to the state employee health insurance plan; coverage for proton therapy.*

Patrons—Yancey, Carter and Murphy

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-2818 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-2818. Health and related insurance for state employees.

A. The Department of Human Resource Management shall establish a plan, subject to the approval of the Governor, for providing health insurance coverage, including chiropractic treatment, hospitalization, medical, surgical and major medical coverage, for state employees and retired state employees with the Commonwealth paying the cost thereof to the extent of the coverage included in such plan. The same plan shall be offered to all part-time state employees, but the total cost shall be paid by such part-time employees. The Department of Human Resource Management shall administer this section. The plan chosen shall provide means whereby coverage for the families or dependents of state employees may be purchased. Except for part-time employees, the Commonwealth may pay all or a portion of the cost thereof, and for such portion as the Commonwealth does not pay, the employee, including a part-time employee, may purchase the coverage by paying the additional cost over the cost of coverage for an employee.

Such contribution shall be financed through appropriations provided by law.

B. The plan shall:

1. Include coverage for low-dose screening mammograms for determining the presence of occult breast cancer. Such coverage shall make available one screening mammogram to persons age 35 through 39, one such mammogram biennially to persons age 40 through 49, and one such mammogram annually to persons age 50 and over and may be limited to a benefit of \$50 per mammogram subject to such dollar limits, deductibles, and coinsurance factors as are no less favorable than for physical illness generally.

The term "mammogram" shall mean an X-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the X-ray tube, filter, compression device, screens, film, and cassettes, with an average radiation exposure of less than one rad mid-breast, two views of each breast.

In order to be considered a screening mammogram for which coverage shall be made available under this section:

a. The mammogram shall be (i) ordered by a health care practitioner acting within the scope of his licensure and, in the case of an enrollee of a health maintenance organization, by the health maintenance organization provider; (ii) performed by a registered technologist; (iii) interpreted by a qualified radiologist; and (iv) performed under the direction of a person licensed to practice medicine and surgery and certified by the American Board of Radiology or an equivalent examining body. A copy of the mammogram report shall be sent or delivered to the health care practitioner who ordered it;

b. The equipment used to perform the mammogram shall meet the standards set forth by the Virginia Department of Health in its radiation protection regulations; and

c. The mammography film shall be retained by the radiologic facility performing the examination in accordance with the American College of Radiology guidelines or state law.

2. Include coverage for postpartum services providing inpatient care and a home visit or visits that shall be in accordance with the medical criteria, outlined in the most current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists. Such coverage shall be provided incorporating any changes in such Guidelines or Standards within six months of the publication of such Guidelines or Standards or any official amendment thereto.

3. Include an appeals process for resolution of complaints that shall provide reasonable procedures for the resolution of such complaints and shall be published and disseminated to all covered state employees. The appeals process shall be compliant with federal rules and regulations governing nonfederal, self-insured governmental health plans. The appeals process shall include a separate

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59 expedited emergency appeals procedure that shall provide resolution within time frames established by
60 federal law. For appeals involving adverse decisions as defined in § 32.1-137.7, the Department shall
61 contract with one or more independent review organizations to review such decisions. Independent
62 review organizations are entities that conduct independent external review of adverse benefit
63 determinations. The Department shall adopt regulations to assure that the independent review
64 organization conducting the reviews has adequate standards, credentials and experience for such review.
65 The independent review organization shall examine the final denial of claims to determine whether the
66 decision is objective, clinically valid, and compatible with established principles of health care. The
67 decision of the independent review organization shall (i) be in writing, (ii) contain findings of fact as to
68 the material issues in the case and the basis for those findings, and (iii) be final and binding if
69 consistent with law and policy.

70 Prior to assigning an appeal to an independent review organization, the Department shall verify that
71 the independent review organization conducting the review of a denial of claims has no relationship or
72 association with (i) the covered person or the covered person's authorized representative; (ii) the treating
73 health care provider, or any of its employees or affiliates; (iii) the medical care facility at which the
74 covered service would be provided, or any of its employees or affiliates; or (iv) the development or
75 manufacture of the drug, device, procedure or other therapy that is the subject of the final denial of a
76 claim. The independent review organization shall not be a subsidiary of, nor owned or controlled by, a
77 health plan, a trade association of health plans, or a professional association of health care providers.
78 There shall be no liability on the part of and no cause of action shall arise against any officer or
79 employee of an independent review organization for any actions taken or not taken or statements made
80 by such officer or employee in good faith in the performance of his powers and duties.

81 4. Include coverage for early intervention services. For purposes of this section, "early intervention
82 services" means medically necessary speech and language therapy, occupational therapy, physical therapy
83 and assistive technology services and devices for dependents from birth to age three who are certified by
84 the Department of Behavioral Health and Developmental Services as eligible for services under Part H
85 of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.). Medically necessary early
86 intervention services for the population certified by the Department of Behavioral Health and
87 Developmental Services shall mean those services designed to help an individual attain or retain the
88 capability to function age-appropriately within his environment, and shall include services that enhance
89 functional ability without effecting a cure.

90 For persons previously covered under the plan, there shall be no denial of coverage due to the
91 existence of a preexisting condition. The cost of early intervention services shall not be applied to any
92 contractual provision limiting the total amount of coverage paid by the insurer to or on behalf of the
93 insured during the insured's lifetime.

94 5. Include coverage for prescription drugs and devices approved by the United States Food and Drug
95 Administration for use as contraceptives.

96 6. Not deny coverage for any drug approved by the United States Food and Drug Administration for
97 use in the treatment of cancer on the basis that the drug has not been approved by the United States
98 Food and Drug Administration for the treatment of the specific type of cancer for which the drug has
99 been prescribed, if the drug has been recognized as safe and effective for treatment of that specific type
100 of cancer in one of the standard reference compendia.

101 7. Not deny coverage for any drug prescribed to treat a covered indication so long as the drug has
102 been approved by the United States Food and Drug Administration for at least one indication and the
103 drug is recognized for treatment of the covered indication in one of the standard reference compendia or
104 in substantially accepted peer-reviewed medical literature.

105 8. Include coverage for equipment, supplies and outpatient self-management training and education,
106 including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using
107 diabetes, gestational diabetes and noninsulin-using diabetes if prescribed by a health care professional
108 legally authorized to prescribe such items under law. To qualify for coverage under this subdivision,
109 diabetes outpatient self-management training and education shall be provided by a certified, registered or
110 licensed health care professional.

111 9. Include coverage for reconstructive breast surgery. For purposes of this section, "reconstructive
112 breast surgery" means surgery performed on and after July 1, 1998, (i) coincident with a mastectomy
113 performed for breast cancer or (ii) following a mastectomy performed for breast cancer to reestablish
114 symmetry between the two breasts. For persons previously covered under the plan, there shall be no
115 denial of coverage due to preexisting conditions.

116 10. Include coverage for annual pap smears, including coverage, on and after July 1, 1999, for
117 annual testing performed by any FDA-approved gynecologic cytology screening technologies.

118 11. Include coverage providing a minimum stay in the hospital of not less than 48 hours for a patient
119 following a radical or modified radical mastectomy and 24 hours of inpatient care following a total
120 mastectomy or a partial mastectomy with lymph node dissection for treatment of breast cancer. Nothing

121 in this subdivision shall be construed as requiring the provision of inpatient coverage where the
122 attending physician in consultation with the patient determines that a shorter period of hospital stay is
123 appropriate.

124 12. Include coverage (i) to persons age 50 and over and (ii) to persons age 40 and over who are at
125 high risk for prostate cancer, according to the most recent published guidelines of the American Cancer
126 Society, for one PSA test in a 12-month period and digital rectal examinations, all in accordance with
127 American Cancer Society guidelines. For the purpose of this subdivision, "PSA testing" means the
128 analysis of a blood sample to determine the level of prostate specific antigen.

129 13. Permit any individual covered under the plan direct access to the health care services of a
130 participating specialist (i) authorized to provide services under the plan and (ii) selected by the covered
131 individual. The plan shall have a procedure by which an individual who has an ongoing special
132 condition may, after consultation with the primary care physician, receive a referral to a specialist for
133 such condition who shall be responsible for and capable of providing and coordinating the individual's
134 primary and specialty care related to the initial specialty care referral. If such an individual's care would
135 most appropriately be coordinated by such a specialist, the plan shall refer the individual to a specialist.
136 For the purposes of this subdivision, "special condition" means a condition or disease that is (i)
137 life-threatening, degenerative, or disabling and (ii) requires specialized medical care over a prolonged
138 period of time. Within the treatment period authorized by the referral, such specialist shall be permitted
139 to treat the individual without a further referral from the individual's primary care provider and may
140 authorize such referrals, procedures, tests, and other medical services related to the initial referral as the
141 individual's primary care provider would otherwise be permitted to provide or authorize. The plan shall
142 have a procedure by which an individual who has an ongoing special condition that requires ongoing
143 care from a specialist may receive a standing referral to such specialist for the treatment of the special
144 condition. If the primary care provider, in consultation with the plan and the specialist, if any,
145 determines that such a standing referral is appropriate, the plan or issuer shall make such a referral to a
146 specialist. Nothing contained herein shall prohibit the plan from requiring a participating specialist to
147 provide written notification to the covered individual's primary care physician of any visit to such
148 specialist. Such notification may include a description of the health care services rendered at the time of
149 the visit.

150 14. Include provisions allowing employees to continue receiving health care services for a period of
151 up to 90 days from the date of the primary care physician's notice of termination from any of the plan's
152 provider panels. The plan shall notify any provider at least 90 days prior to the date of termination of
153 the provider, except when the provider is terminated for cause.

154 For a period of at least 90 days from the date of the notice of a provider's termination from any of
155 the plan's provider panels, except when a provider is terminated for cause, a provider shall be permitted
156 by the plan to render health care services to any of the covered employees who (i) were in an active
157 course of treatment from the provider prior to the notice of termination and (ii) request to continue
158 receiving health care services from the provider.

159 Notwithstanding the provisions of this subdivision, any provider shall be permitted by the plan to
160 continue rendering health services to any covered employee who has entered the second trimester of
161 pregnancy at the time of the provider's termination of participation, except when a provider is terminated
162 for cause. Such treatment shall, at the covered employee's option, continue through the provision of
163 postpartum care directly related to the delivery.

164 Notwithstanding the provisions of this subdivision, any provider shall be permitted to continue
165 rendering health services to any covered employee who is determined to be terminally ill (as defined
166 under § 1861(dd)(3)(A) of the Social Security Act) at the time of a provider's termination of
167 participation, except when a provider is terminated for cause. Such treatment shall, at the covered
168 employee's option, continue for the remainder of the employee's life for care directly related to the
169 treatment of the terminal illness.

170 A provider who continues to render health care services pursuant to this subdivision shall be
171 reimbursed in accordance with the carrier's agreement with such provider existing immediately before
172 the provider's termination of participation.

173 15. Include coverage for patient costs incurred during participation in clinical trials for treatment
174 studies on cancer, including ovarian cancer trials.

175 The reimbursement for patient costs incurred during participation in clinical trials for treatment
176 studies on cancer shall be determined in the same manner as reimbursement is determined for other
177 medical and surgical procedures. Such coverage shall have durational limits, dollar limits, deductibles,
178 copayments and coinsurance factors that are no less favorable than for physical illness generally.

179 For purposes of this subdivision:

180 "Cooperative group" means a formal network of facilities that collaborate on research projects and
181 have an established NIH-approved peer review program operating within the group. "Cooperative group"

182 includes (i) the National Cancer Institute Clinical Cooperative Group and (ii) the National Cancer
183 Institute Community Clinical Oncology Program.

184 "FDA" means the Federal Food and Drug Administration.

185 "Multiple project assurance contract" means a contract between an institution and the federal
186 Department of Health and Human Services that defines the relationship of the institution to the federal
187 Department of Health and Human Services and sets out the responsibilities of the institution and the
188 procedures that will be used by the institution to protect human subjects.

189 "NCI" means the National Cancer Institute.

190 "NIH" means the National Institutes of Health.

191 "Patient" means a person covered under the plan established pursuant to this section.

192 "Patient cost" means the cost of a medically necessary health care service that is incurred as a result
193 of the treatment being provided to a patient for purposes of a clinical trial. "Patient cost" does not
194 include (i) the cost of nonhealth care services that a patient may be required to receive as a result of the
195 treatment being provided for purposes of a clinical trial, (ii) costs associated with managing the research
196 associated with the clinical trial, or (iii) the cost of the investigational drug or device.

197 Coverage for patient costs incurred during clinical trials for treatment studies on cancer shall be
198 provided if the treatment is being conducted in a Phase II, Phase III, or Phase IV clinical trial. Such
199 treatment may, however, be provided on a case-by-case basis if the treatment is being provided in a
200 Phase I clinical trial.

201 The treatment described in the previous paragraph shall be provided by a clinical trial approved by:

202 a. The National Cancer Institute;

203 b. An NCI cooperative group or an NCI center;

204 c. The FDA in the form of an investigational new drug application;

205 d. The federal Department of Veterans Affairs; or

206 e. An institutional review board of an institution in the Commonwealth that has a multiple project
207 assurance contract approved by the Office of Protection from Research Risks of the NCI.

208 The facility and personnel providing the treatment shall be capable of doing so by virtue of their
209 experience, training, and expertise.

210 Coverage under this subdivision shall apply only if:

211 (1) There is no clearly superior, noninvestigational treatment alternative;

212 (2) The available clinical or preclinical data provide a reasonable expectation that the treatment will
213 be at least as effective as the noninvestigational alternative; and

214 (3) The patient and the physician or health care provider who provides services to the patient under
215 the plan conclude that the patient's participation in the clinical trial would be appropriate, pursuant to
216 procedures established by the plan.

217 16. Include coverage providing a minimum stay in the hospital of not less than 23 hours for a
218 covered employee following a laparoscopy-assisted vaginal hysterectomy and 48 hours for a covered
219 employee following a vaginal hysterectomy, as outlined in Milliman & Robertson's nationally recognized
220 guidelines. Nothing in this subdivision shall be construed as requiring the provision of the total hours
221 referenced when the attending physician, in consultation with the covered employee, determines that a
222 shorter hospital stay is appropriate.

223 17. Include coverage for biologically based mental illness.

224 For purposes of this subdivision, a "biologically based mental illness" is any mental or nervous
225 condition caused by a biological disorder of the brain that results in a clinically significant syndrome
226 that substantially limits the person's functioning; specifically, the following diagnoses are defined as
227 biologically based mental illness as they apply to adults and children: schizophrenia, schizoaffective
228 disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder,
229 attention deficit hyperactivity disorder, autism, and drug and alcoholism addiction.

230 Coverage for biologically based mental illnesses shall neither be different nor separate from coverage
231 for any other illness, condition or disorder for purposes of determining deductibles, benefit year or
232 lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits,
233 copayment and coinsurance factors, and benefit year maximum for deductibles and copayment and
234 coinsurance factors.

235 Nothing shall preclude the undertaking of usual and customary procedures to determine the
236 appropriateness of, and medical necessity for, treatment of biologically based mental illnesses under this
237 option, provided that all such appropriateness and medical necessity determinations are made in the same
238 manner as those determinations made for the treatment of any other illness, condition or disorder
239 covered by such policy or contract.

240 18. Offer and make available coverage for the treatment of morbid obesity through gastric bypass
241 surgery or such other methods as may be recognized by the National Institutes of Health as effective for
242 the long-term reversal of morbid obesity. Such coverage shall have durational limits, dollar limits,
243 deductibles, copayments and coinsurance factors that are no less favorable than for physical illness

244 generally. Access to surgery for morbid obesity shall not be restricted based upon dietary or any other
 245 criteria not approved by the National Institutes of Health. For purposes of this subdivision, "morbid
 246 obesity" means (i) a weight that is at least 100 pounds over or twice the ideal weight for frame, age,
 247 height, and gender as specified in the 1983 Metropolitan Life Insurance tables, (ii) a body mass index
 248 (BMI) equal to or greater than 35 kilograms per meter squared with comorbidity or coexisting medical
 249 conditions such as hypertension, cardiopulmonary conditions, sleep apnea, or diabetes, or (iii) a BMI of
 250 40 kilograms per meter squared without such comorbidity. As used herein, "BMI" equals weight in
 251 kilograms divided by height in meters squared.

252 19. Include coverage for colorectal cancer screening, specifically screening with an annual fecal
 253 occult blood test, flexible sigmoidoscopy or colonoscopy, or in appropriate circumstances radiologic
 254 imaging, in accordance with the most recently published recommendations established by the American
 255 College of Gastroenterology, in consultation with the American Cancer Society, for the ages, family
 256 histories, and frequencies referenced in such recommendations. The coverage for colorectal cancer
 257 screening shall not be more restrictive than or separate from coverage provided for any other illness,
 258 condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits,
 259 benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance
 260 factors, and benefit year maximum for deductibles and copayments and coinsurance factors.

261 20. On and after July 1, 2002, require that a prescription benefit card, health insurance benefit card,
 262 or other technology that complies with the requirements set forth in § 38.2-3407.4:2 be issued to each
 263 employee provided coverage pursuant to this section, and shall upon any changes in the required data
 264 elements set forth in subsection A of § 38.2-3407.4:2, either reissue the card or provide employees
 265 covered under the plan such corrective information as may be required to electronically process a
 266 prescription claim.

267 21. Include coverage for infant hearing screenings and all necessary audiological examinations
 268 provided pursuant to § 32.1-64.1 using any technology approved by the United States Food and Drug
 269 Administration, and as recommended by the national Joint Committee on Infant Hearing in its most
 270 current position statement addressing early hearing detection and intervention programs. Such coverage
 271 shall include follow-up audiological examinations as recommended by a physician, physician assistant,
 272 nurse practitioner or audiologist and performed by a licensed audiologist to confirm the existence or
 273 absence of hearing loss.

274 22. Notwithstanding any provision of this section to the contrary, every plan established in
 275 accordance with this section shall comply with the provisions of § 2.2-2818.2.

276 23. *On and after January 1, 2019, include coverage for proton therapy as follows:*

277 *a. As used in this subdivision 23:*

278 *"Aggregate amount" means the total amount paid under the state group insurance program for the*
 279 *applicable CPT code to deliver a biological effective dose.*

280 *"Biological effective dose" means the total, prescribed radiation dose delivered in a course of*
 281 *radiation therapy treatments to induce tumor cell death.*

282 *"CPT code" means the unique numerical designations established by the American Medical*
 283 *Association for various medical, surgical, and diagnostic services used in billing health care services.*

284 *"Eligible patient" means a patient who is prescribed proton therapy for the treatment of cancer.*

285 *"Hypofractionated proton therapy protocol" means a cancer treatment protocol that involves the*
 286 *delivery of fewer, larger treatment doses with proton therapy to deliver the same biological effective*
 287 *dose and achieve the same curative effect as X-ray radiation therapy delivered in smaller treatment*
 288 *doses over an extended period of time.*

289 *"Intensity modulated radiation therapy" or "IMRT" means a type of conformal radiation therapy that*
 290 *delivers X-ray radiation beams of different intensities from many angles for the treatment of tumors.*

291 *"Proton therapy" means the advanced form of radiation therapy that utilizes protons as an*
 292 *alternative radiation delivery method for the treatment of tumors.*

293 *"Radiation therapy" means the delivery of a biological effective dose with proton therapy, IMRT,*
 294 *brachytherapy, stereotactic body radiation therapy, three-dimensional conformal radiation therapy, or*
 295 *other forms of therapy using radiation.*

296 *"Treatment dose" means the amount of radiation delivered in a single treatment or fraction of*
 297 *radiation therapy.*

298 *b. The plan shall cover a physician-prescribed hypofractionated proton therapy protocol to deliver a*
 299 *biological effective dose for a particular indication by paying the same aggregate amount as would be*
 300 *paid for the delivery of the same biological effective dose with IMRT for the same indication, provided*
 301 *that the eligible patient is treated as part of a clinical trial or registry. The amount of reimbursement*
 302 *for the course of a hypofractionated proton therapy protocol shall be calculated pursuant to this*
 303 *subdivisions c, d, and e.*

304 *c. For a hypofractionated proton therapy protocol to be covered pursuant to this subdivision 23, the*

305 radiation oncologist prescribing a hypofractionated proton therapy protocol shall:

306 (1) Be board certified or board eligible in the specialty of radiation oncology; and

307 (2) Determine what the standard course of IMRT for the eligible patient's indication would be, if the
308 patient were treated with IMRT instead of a hypofractionated proton therapy protocol to deliver the
309 same biological effective dose.

310 d. The aggregate amount shall be calculated as the cost of an IMRT treatment dose times the
311 number of IMRT treatments required to deliver the prescribed biological effective dose for the particular
312 indication, as determined by the eligible patient's radiation oncologist pursuant to subdivision c. The
313 IMRT cost per treatment dose for purposes of performing the foregoing calculation shall be the usual
314 and customary amount paid per IMRT treatment dose under the state health insurance plan for the
315 particular indication.

316 e. The amount that the state health insurance plan shall reimburse per treatment dose for
317 hypofractionated proton therapy shall be calculated by dividing the aggregate amount as determined
318 under subdivision d by the number of treatment doses in the hypofractionated proton therapy protocol.
319 The aggregate amount paid for a hypofractionated proton therapy protocol shall be no greater than the
320 aggregate amount for a standard course of IMRT treatment for the same indication. Any other services
321 or procedures that are billed as part of a course of either hypofractionated proton therapy or IMRT
322 treatment shall be covered at the usual and customary rates pursuant to the applicable CPT codes.

323 f. The benefits required by this subdivision 23 shall be subject to the annual deductible and
324 co-insurance established for radiation therapy and other similar benefits within the policy or contract of
325 insurance. The annual deductible and co-insurance for any radiation therapy delivery method permitted
326 by this subdivision 23 shall be no greater than the annual deductible and co-insurance established for
327 all other similar benefits within that policy or contract of insurance.

328 C. Claims incurred during a fiscal year but not reported during that fiscal year shall be paid from
329 such funds as shall be appropriated by law. Appropriations, premiums and other payments shall be
330 deposited in the employee health insurance fund, from which payments for claims, premiums, cost
331 containment programs and administrative expenses shall be withdrawn from time to time. The funds of
332 the health insurance fund shall be deemed separate and independent trust funds, shall be segregated from
333 all other funds of the Commonwealth, and shall be invested and administered solely in the interests of
334 the employees and their beneficiaries. Neither the General Assembly nor any public officer, employee,
335 or agency shall use or authorize the use of such trust funds for any purpose other than as provided in
336 law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight
337 of the health insurance fund.

338 D. For the purposes of this section:

339 "Peer-reviewed medical literature" means a scientific study published only after having been critically
340 reviewed for scientific accuracy, validity, and reliability by unbiased independent experts in a journal
341 that has been determined by the International Committee of Medical Journal Editors to have met the
342 Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical
343 literature does not include publications or supplements to publications that are sponsored to a significant
344 extent by a pharmaceutical manufacturing company or health carrier.

345 "Standard reference compendia" means:

- 346 1. American Hospital Formulary Service — Drug Information;
- 347 2. National Comprehensive Cancer Network's Drugs & Biologics Compendium; or
- 348 3. Elsevier Gold Standard's Clinical Pharmacology.

349 "State employee" means state employee as defined in § 51.1-124.3; employee as defined in
350 § 51.1-201; the Governor, Lieutenant Governor and Attorney General; judge as defined in § 51.1-301
351 and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and
352 domestic relations, and district courts of the Commonwealth; interns and residents employed by the
353 School of Medicine and Hospital of the University of Virginia, and interns, residents, and employees of
354 the Virginia Commonwealth University Health System Authority as provided in § 23.1-2415; and
355 employees of the Virginia Alcoholic Beverage Control Authority as provided in § 4.1-101.05.

356 E. Provisions shall be made for retired employees to obtain coverage under the above plan,
357 including, as an option, coverage for vision and dental care. The Commonwealth may, but shall not be
358 obligated to, pay all or any portion of the cost thereof.

359 F. Any self-insured group health insurance plan established by the Department of Human Resource
360 Management that utilizes a network of preferred providers shall not exclude any physician solely on the
361 basis of a reprimand or censure from the Board of Medicine, so long as the physician otherwise meets
362 the plan criteria established by the Department.

363 G. The plan shall include, in each planning district, at least two health coverage options, each
364 sponsored by unrelated entities. No later than July 1, 2006, one of the health coverage options to be
365 available in each planning district shall be a high deductible health plan that would qualify for a health
366 savings account pursuant to § 223 of the Internal Revenue Code of 1986, as amended.

367 In each planning district that does not have an available health coverage alternative, the Department
368 shall voluntarily enter into negotiations at any time with any health coverage provider who seeks to
369 provide coverage under the plan.

370 This subsection shall not apply to any state agency authorized by the Department to establish and
371 administer its own health insurance coverage plan separate from the plan established by the Department.

372 H. Any self-insured group health insurance plan established by the Department of Human Resource
373 Management that includes coverage for prescription drugs on an outpatient basis may apply a formulary
374 to the prescription drug benefits provided by the plan if the formulary is developed, reviewed at least
375 annually, and updated as necessary in consultation with and with the approval of a pharmacy and
376 therapeutics committee, a majority of whose members are actively practicing licensed (i) pharmacists,
377 (ii) physicians, and (iii) other health care providers.

378 If the plan maintains one or more drug formularies, the plan shall establish a process to allow a
379 person to obtain, without additional cost-sharing beyond that provided for formulary prescription drugs
380 in the plan, a specific, medically necessary nonformulary prescription drug if, after reasonable
381 investigation and consultation with the prescriber, the formulary drug is determined to be an
382 inappropriate therapy for the medical condition of the person. The plan shall act on such requests within
383 one business day of receipt of the request.

384 Any plan established in accordance with this section shall be authorized to provide for the selection
385 of a single mail order pharmacy provider as the exclusive provider of pharmacy services that are
386 delivered to the covered person's address by mail, common carrier, or delivery service. As used in this
387 subsection, "mail order pharmacy provider" means a pharmacy permitted to conduct business in the
388 Commonwealth whose primary business is to dispense a prescription drug or device under a prescriptive
389 drug order and to deliver the drug or device to a patient primarily by mail, common carrier, or delivery
390 service.

391 I. Any plan established in accordance with this section requiring preauthorization prior to rendering
392 medical treatment shall have personnel available to provide authorization at all times when such
393 preauthorization is required.

394 J. Any plan established in accordance with this section shall provide to all covered employees written
395 notice of any benefit reductions during the contract period at least 30 days before such reductions
396 become effective.

397 K. No contract between a provider and any plan established in accordance with this section shall
398 include provisions that require a health care provider or health care provider group to deny covered
399 services that such provider or group knows to be medically necessary and appropriate that are provided
400 with respect to a covered employee with similar medical conditions.

401 L. The Department of Human Resource Management shall appoint an Ombudsman to promote and
402 protect the interests of covered employees under any state employee's health plan.

403 The Ombudsman shall:

404 1. Assist covered employees in understanding their rights and the processes available to them
405 according to their state health plan.

406 2. Answer inquiries from covered employees by telephone and electronic mail.

407 3. Provide to covered employees information concerning the state health plans.

408 4. Develop information on the types of health plans available, including benefits and complaint
409 procedures and appeals.

410 5. Make available, either separately or through an existing Internet web site utilized by the
411 Department of Human Resource Management, information as set forth in subdivision 4 and such
412 additional information as he deems appropriate.

413 6. Maintain data on inquiries received, the types of assistance requested, any actions taken and the
414 disposition of each such matter.

415 7. Upon request, assist covered employees in using the procedures and processes available to them
416 from their health plan, including all appeal procedures. Such assistance may require the review of health
417 care records of a covered employee, which shall be done only in accordance with the federal Health
418 Insurance Portability and Accountability Act privacy rules. The confidentiality of any such medical
419 records shall be maintained in accordance with the confidentiality and disclosure laws of the
420 Commonwealth.

421 8. Ensure that covered employees have access to the services provided by the Ombudsman and that
422 the covered employees receive timely responses from the Ombudsman or his representatives to the
423 inquiries.

424 9. Report annually on his activities to the standing committees of the General Assembly having
425 jurisdiction over insurance and over health and the Joint Commission on Health Care by December 1 of
426 each year.

427 M. The plan established in accordance with this section shall not refuse to accept or make

428 reimbursement pursuant to an assignment of benefits made to a dentist or oral surgeon by a covered
429 employee.

430 For purposes of this subsection, "assignment of benefits" means the transfer of dental care coverage
431 reimbursement benefits or other rights under the plan. The assignment of benefits shall not be effective
432 until the covered employee notifies the plan in writing of the assignment.

433 N. Beginning July 1, 2006, any plan established pursuant to this section shall provide for an
434 identification number, which shall be assigned to the covered employee and shall not be the same as the
435 employee's social security number.

436 O. Any group health insurance plan established by the Department of Human Resource Management
437 that contains a coordination of benefits provision shall provide written notification to any eligible
438 employee as a prominent part of its enrollment materials that if such eligible employee is covered under
439 another group accident and sickness insurance policy, group accident and sickness subscription contract,
440 or group health care plan for health care services, that insurance policy, subscription contract or health
441 care plan may have primary responsibility for the covered expenses of other family members enrolled
442 with the eligible employee. Such written notification shall describe generally the conditions upon which
443 the other coverage would be primary for dependent children enrolled under the eligible employee's
444 coverage and the method by which the eligible enrollee may verify from the plan that coverage would
445 have primary responsibility for the covered expenses of each family member.

446 P. Any plan established by the Department of Human Resource Management pursuant to this section
447 shall provide that coverage under such plan for family members enrolled under a participating state
448 employee's coverage shall continue for a period of at least 30 days following the death of such state
449 employee.

450 Q. The plan established in accordance with this section that follows a policy of sending its payment
451 to the covered employee or covered family member for a claim for services received from a
452 nonparticipating physician or osteopath shall (i) include language in the member handbook that notifies
453 the covered employee of the responsibility to apply the plan payment to the claim from such
454 nonparticipating provider, (ii) include this language with any such payment sent to the covered employee
455 or covered family member, and (iii) include the name and any last known address of the
456 nonparticipating provider on the explanation of benefits statement.

457 R. The Department of Human Resource Management shall report annually, by November 30 of each
458 year, on cost and utilization information for each of the mandated benefits set forth in subsection B,
459 including any mandated benefit made applicable, pursuant to subdivision B 22, to any plan established
460 pursuant to this section. The report shall be in the same detail and form as required of reports submitted
461 pursuant to § 38.2-3419.1, with such additional information as is required to determine the financial
462 impact, including the costs and benefits, of the particular mandated benefit.