

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 218

An Act to amend and reenact § 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 8 of Title 32.1 a section numbered 32.1-297.2 and by adding a section numbered 38.2-3418.18, relating to organ, eye, or tissue transplantation; discrimination prohibited.

[S 846]

Approved March 10, 2020

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-4319 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 8 of Title 32.1 a section numbered 32.1-297.2 and by adding a section numbered 38.2-3418.18 as follows:

§ 32.1-297.2. Discrimination prohibited.

A. As used in this section:

"Auxiliary aids or services" means an aid or service that is used to provide information to an individual with a cognitive, developmental, intellectual, neurological, or physical disability in a format or manner that allows the individual to better understand the information. "Auxiliary aids or services" includes (i) qualified interpreters or other effective methods of making aurally delivered materials available to persons with hearing impairments; (ii) qualified readers, taped texts, texts in accessible electronic format, or other effective methods of making visually delivered materials available to persons with visual impairments; (iii) supported decision-making services, including (a) use of a support individual to communicate information to the individual with a disability, ascertain the wishes of the individual, or assist the individual in making decisions; (b) disclosure of information to a legal guardian, authorized representative, or another individual designated by the individual with a disability for such purpose, as long as the disclosure is consistent with state and federal law; and (c) if an individual has a court-appointed guardian or other individual responsible for making medical decisions on behalf of the individual, any measures used to ensure that the individual is included in decisions involving the individual's health care and that medical decisions are made in accordance with the individual's own expressed interests; and (iv) any other aid or service that is used to provide information in a format that is easily understandable and accessible to individuals with cognitive, developmental, intellectual, neurological, or physical disability, including assistive communication technology.

"Covered entity" means any licensed provider of health care services, including any health care practitioner licensed by a health regulatory board of the Department of Health Professions, hospital, nursing facility, laboratory, intermediate care facility, psychiatric residential treatment facility, institution for individuals with intellectual or developmental disabilities, or prison health center, and any entity responsible for matching anatomical gift donors to potential recipients.

"Eligible individual" means an individual who is a candidate to receive an anatomical gift for transplantation and who is otherwise eligible to receive an anatomical gift for transplantation, with or without auxiliary aids and services.

"Eligible individual with a disability" means an eligible individual with a cognitive, developmental, intellectual, neurological, or physical disability.

"Services related to organ, eye, or tissue transplantation" means referral to a transplant center or specialist; inclusion on an organ, eye, or tissue transplantation waiting list; evaluation; surgery and related health care services; counseling; or post-transplantation treatment and services related to organ, eye, or tissue transplantation.

B. An eligible individual shall not be deemed ineligible to receive an anatomical gift or denied services related to organ, eye, or tissue transplantation solely because he is an eligible individual with a disability. However, an eligible individual may be deemed ineligible to receive an anatomical gift or denied services related to organ, eye, or tissue transplantation to the extent that his cognitive, developmental, intellectual, neurological, or physical disability has been determined by a health care provider, following an individualized evaluation, to be medically significant to the provision of the anatomical gift for organ, eye, or tissue transplantation.

C. If an eligible individual with a disability has the necessary support system to assist the individual in complying with post-transplantation medical requirements, his inability to independently comply with such post-transplantation medical requirements shall not be deemed to be medically significant.

D. No covered entity shall (i) place an eligible individual with a disability on an organ transplant waiting list at a position lower in priority than the position at which the eligible individual with a disability would have been placed if he did not have a disability or (ii) refuse insurance coverage for

any services related to organ, eye, or tissue transplantation provided to an eligible individual with a disability.

E. A covered entity shall (i) make reasonable modifications to its policies, practices, or procedures to allow eligible individuals with disabilities access to services related to organ, eye, or tissue transplantation and (ii) take all steps necessary to ensure that an eligible individual with a disability is not denied medical services or services related to organ, eye, or tissue transplantation due to the absence of auxiliary aids or services. A covered entity shall not be required to comply with clause (ii) if the covered entity demonstrates that taking such steps would fundamentally alter the nature of the medical services or other services related to organ, eye, or tissue transplantation or would result in an undue burden for the covered entity.

F. In cases in which a violation of this section is alleged to have occurred, a petition shall be filed in the circuit court for the jurisdiction in which the violation is alleged to have occurred or in which the individual is located. Any petition filed pursuant to this subsection shall be given priority on the docket. Any order of the court entered on such petition may grant injunctive relief, including (i) requiring auxiliary aids or services to be made available to an eligible individual with a disability; (ii) requiring the modification of a policy, practice, or procedure of a covered entity; or (iii) requiring that facilities be made accessible to and usable by an eligible individual with a disability.

G. The provisions of this section shall apply to each part of the anatomical gift and organ, eye, or tissue transplantation process.

H. The provisions of this section shall not be construed to require the provision of medically inappropriate services related to organ, eye, or tissue transplantation.

§ 38.2-3418.18. Coverage for organ, eye or tissue transplant.

Notwithstanding the provisions of § 38.2-4319, 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 of evidence of coverage issued in connection with such policy, contract, or plan, includes coverage for services related to organ, eye, or tissue transplantation as defined in § 32.1-297.2 shall not:

1. Deny coverage to a covered person solely on the basis of the person's disability;
2. Deny a person eligibility or continued eligibility to enroll in or to renew coverage under the policy, contract, or plan for the purpose of avoiding the requirements of § 32.1-297.2;
3. Penalize a health care provider, reduce or limit the reimbursement of a health care provider, or provide monetary or nonmonetary incentives to a health care provider to induce such health care provider to act in a manner inconsistent with the requirements of § 32.1-297.2; or
4. Reduce or limit coverage for services related to organ, eye, or tissue transplant as defined in § 32.1-297.2 for an eligible individual with a disability as defined in § 32.1-297.2.

B. The provisions of this section shall apply to any policy, contract, or plan delivered, issued for delivery, or renewed in the Commonwealth on and after January 1, 2021.

C. The provisions of this section shall not apply to short-term travel, accident-only, or limited or specified disease policies; 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 government plans; or short-term nonrenewable policies of not more than six months' duration.

D. Nothing in this section shall require an insurer to provide coverage for a medically inappropriate organ, eye or tissue transplant.

§ 38.2-4319. 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, 38.2-316.1, 38.2-322, 38.2-325, 38.2-326, 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.), 5 (§ 38.2-1322 et seq.), 5.1 (§ 38.2-1334.3 et seq.), and 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14, Chapter 15 (§ 38.2-1500 et seq.), Chapter 17 (§ 38.2-1700 et seq.), §§ 38.2-1800 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, 38.2-3407.9 through 38.2-3407.20, 38.2-3411, 38.2-3411.2, 38.2-3411.3, 38.2-3411.4, 38.2-3412.1, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.17, 38.2-3418.18, 38.2-3419.1, 38.2-3430.1 through 38.2-3454, Article 8 (§ 38.2-3461 et seq.) of Chapter 34, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 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, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 35.1 (§ 38.2-3556 et seq.), Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance

with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

B. For plans administered by the Department of Medical Assistance Services that provide benefits pursuant to Title XIX or Title XXI of the Social Security Act, as amended, 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, 38.2-322, 38.2-325, 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.), 5 (§ 38.2-1322 et seq.), 5.1 (§ 38.2-1334.3 et seq.), and 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14, §§ 38.2-3401, 38.2-3405, 38.2-3407.2 through 38.2-3407.5, 38.2-3407.6, 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 § 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, 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, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 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 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

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

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

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

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