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SENATE BILL NO. 1086

Offered January 17, 2020

A *BILL to amend and reenact § 38.2-4319 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 infertility treatment.*

Patron—Pillion

Referred to Committee on Commerce and Labor

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 a section numbered 38.2-3418.18 as follows:

§ 38.2-3418.18. Coverage for infertility treatment.

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 shall provide coverage for infertility treatment under any such policy, contract, or plan.*

B. As used in this section:

"Covered individual" means a policyholder, subscriber, enrollee, participant, or other individual covered by an insurance policy, subscription contract, or health care plan described in subsection A.

"Infertility" means the inability to conceive after (i) one year of unprotected sexual intercourse if the covered individual is younger than 35 years of age or (ii) six months of unprotected sexual intercourse if the covered individual is 35 years of age or older. For a covered individual who conceives but is unable to carry the pregnancy to a live birth, the period of time the covered individual attempted to conceive prior to achieving such conception shall be included in the calculation of the applicable time period.

"Infertility treatment" includes the following procedures performed on a covered individual who is younger than 50 years old: in vitro fertilization, embryo transfer, artificial insemination, gamete intrafallopian tube transfer, intracytoplasmic sperm injection, zygote intrafallopian transfer, and low tubal ovum transfer. "Infertility treatment" does not include the reversal of a vasectomy or reversal of a tubal ligation.

C. *Infertility treatment shall be required to be covered under this section only if the covered individual has not undergone four complete oocyte retrievals, except that if a live birth follows a complete oocyte retrieval, then two more oocyte retrievals shall be covered.*

D. *The reimbursement for infertility treatment shall be determined according to the same formula by which charges are developed for other medical and surgical procedures. Such coverage shall have durational limits, deductibles, and coinsurance factors that are no less favorable than for physical illness generally.*

E. *The provisions of this section shall apply to all insurance policies, subscription contracts, and health care plans delivered, issued for delivery, reissued, extended, or renewed in the Commonwealth on or after January 1, 2021, and to all such policies, contracts, or plans to which a term is changed or any premium adjustment is made on or after such date.*

F. *Except as provided in subsection B of § 38.2-4319, 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 governmental plans; or short-term nonrenewable policies of not more than six months' duration.*

§ 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

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59 seq.), Chapter 17 (§ 38.2-1700 et seq.), §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405,
60 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,
61 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
62 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.)
63 of Chapter 34, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1,
64 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,
65 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 35.1 (§ 38.2-3556 et
66 seq.), Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et
67 seq.) shall be applicable to any health maintenance organization granted a license under this chapter.
68 This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance
69 with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its
70 health 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, 38.2-325, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600
76 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057,
77 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
78 (§ 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
79 seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.)
80 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,
81 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,
82 §§ 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,
83 38.2-3418.2, 38.2-3418.18, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, subdivision 13 of
84 § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through
85 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
86 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall be
87 applicable to any health maintenance organization granted a license under this chapter. This chapter shall
88 not apply to an insurer or health services plan licensed and regulated in conformance with the insurance
89 laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance
90 organization.

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

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

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

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